

CITY OF VERO BEACH, FLORIDA
JUNE 21, 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 David Charlton/Living Lord Lutheran Church
- C. Pledge of Allegiance

2. PRELIMINARY MATTERS

- A. Agenda Additions, Deletions, and Adoption
- B. Proclamations
 - 1. Marine Debris Removal Month – July 2011
 - 2. General Aviation Appreciation Month – June 2011
 - 3. Tree & Beautification Commission to be presented with 30th Year Award of being Tree City USA
 - 4. Mulligans Grille to be recognized for sponsoring this year's City of Vero Beach Fourth of July events
 - 6. Key to the City to be presented to Vero Beach High School Girls Lacrosse Team
- C. Public Comment
 - 1. Suzy Reiser to speak about the Best Community for Music Award
- D. Adoption of Consent Agenda
 - 1. Regular City Council Minutes – June 7, 2011
 - 2. [Humiston Park Improvements – Recommendation of Project Acceptance and Final Payment – City of Vero Beach Project No. 2003-22](#)
 - 3. [Final Payment and Project Acceptance – Force Main from WWTP to WTP and Reuse Water Main from Royal Palm Pointe to Country Club Drive – COVB Project No. WSO7014 – Contract No. 1483](#)
 - 4. [Disaster Debris Removal Management Contract – Recommendation of One-Year Renewal – FRP #260-06/JV](#)
 - 5. [Solid Waste Franchise Agreement – B&F Waste Solutions, LLC dba Anytime Waste Systems, LLC](#)
 - 6. [Monthly Capital Projects' Status Reports](#)

(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 Council of the City of Vero Beach, Florida, releasing from all City Easements the North 3 feet of Lot 5 and the South 3 feet of Lot 4, Block 4, Royal Park Plat No. 3.

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

A) An Ordinance of the City of Vero Beach, Florida, amending Section 58-106 of Chapter 58 "Personnel and Retirement," Article II, Division 4, of the Code of Ordinances of the City of Vero Beach to provide for enhanced investment opportunities; providing for repeal of all Ordinances in conflict herewith; providing for Severability; providing for Codification and providing for an Effective Date.

B) An Ordinance of the City of Vero Beach, Florida, amending Section 58-101 of Chapter 58 "Personnel and Retirement," Article II, Division 4 of the Code of Ordinances of the City of Vero Beach to provide clarification that an optional benefit selected by a Police Officer shall only be reduced on the death of the Police Officer; providing for repeal of all Ordinances in conflict herewith; providing for Severability; providing for Codification and providing for an Effective Date.

6. CITY CLERK'S MATTERS

A) Reappointments to Commission/Boards

7. CITY MANAGER'S MATTERS

A) GAI Status Report on Water and Sewer Utility

B) GAI Status Report on Electric Utility

C) Request for Qualifications for Potential Purchase of Vero Beach Power Entitlements and Obligations

D) Change in the "Electric Service – Fuel Cost"

8. CITY ATTORNEY'S MATTERS

A) City Deed to County – Dodgertown land swap

B) Extension of Work Agreement

C) Ordinances for Referendum Questions

9. CITY COUNCIL MATTERS

A. Old Business

1. GAI Electrical Consulting Contract – Requested by Vice Mayor Turner
2. Water and Sewer Regionalization – Requested by Vice Mayor Turner
3. City Manager Objectives – Requested by Vice Mayor Turner
4. City Policies and Procedures – Requested by Vice Mayor Turner
5. Council notification of meetings with FPL, GAI, City of IRS and County in regards to WSI and Electric issues – Requested by Councilmember Carroll
6. Status of expenses to consultant, legal subcontractor, meetings with regulatory agencies – Requested by Councilmember Carroll
7. Status of Live Oak and Indian River Drive Improvements and public safety measures – Requested by Councilmember Carroll
8. Discussion of Status of Finance Department management – Requested by Councilmember Carroll
9. Status of Grand Harbor and continuing electric outages – Requested by Councilmember Carroll
10. FPL Update – Requested by Councilmember Heady

B. New Business

1. Consideration of Referendum – Requested by Mayor Kramer
2. Indian River Shores Franchise Agreement – Requested by Vice Mayor Turner
3. Request HR post for position of City Attorney – Requested by Councilmember Carroll
4. Elimination of Election Fee – Requested by Councilmember Heady
5. Proper uses of Channel 13 – Requested by Councilmember Heady
6. Referendum of Sale of Electric – Requested by Councilmember Heady
7. Use of Consultants and possible cuts – Requested by Councilmember Heady
8. Needed cuts in budget (elimination of employee positions) – Requested by Councilmember Heady
9. Live Oak Solution – Requested by Councilmember Heady
10. Scan Documents/Note Books – 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
- 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
JUNE 21, 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

Pastor David Charlton of Living Lord Lutheran Church 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

The City Clerk removed item 2C-1) “Suzy Reiser to speak about the Best Community for Music Award” from the agenda.

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

B. Proclamations

- 1. Marine Debris Removal Month – July 2011**
- 2. General Aviation Appreciation Month – June 2011**
- 3. Tree & Beautification Commission to be presented with 30th Year Award of being Tree City USA**
- 4. Mulligan’s Grille to be recognized for sponsoring this year’s City of Vero Beach Fourth of July events**
- 6. Key to the City to be presented to Vero Beach High School Girls Lacrosse Team**

Mayor Kramer presented all the Proclamations, a certificate of appreciation to Mulligan’s and a Key to the City to the Vero Beach High School Girls Lacrosse Team.

C. Public Comment

1. Suzy Reiser to speak about the Best Community for Music Award

This item was removed from the agenda.

Ms. Janet Widmann, 619 Conn Way, was opposed to the proposed cul-de-sac to be placed on the end of Live Oak Road and the signage that has been placed there. She referred to the neighborhood meeting held last week at the River House and said that it was refreshing to know that City Council is open and responsive to the concerns of their citizens. She thanked everyone who attended the meeting last week. She told Council that it was important to them that they care and are willing to listen. She mentioned by closing Live Oak Road it could cause terrible consequences if people needed to be evacuated from the Island. She agreed with the proposed sidewalk because she felt that it keeps children and adults safe. She asked what kind of traffic measures were being done on Conn Way. She noticed that there were people out there counting cars.

Mr. Monte Falls, Interim City Manager, informed her that they (staff) were gathering data, which is a typical thing to do to help tell them what kind of traffic is occurring on Conn Way.

Ms. Widmann continued by saying that by putting up this no left turn sign it makes it a cul-de-sac. It is not a solution to push one problem on to another street. She noted that Conn Way has scheduled bus stops and they could be putting children at a greater risk. She thanked Council for listening and especially wanted to thank the Public Work's Department for all their hard work.

Ms. Adrianna Landcaster, 618 Conn Way, noted that she attended the neighborhood meeting last week and thanked Council for scheduling it. She said that most of the discussion at that meeting was about the cul-de-sac and not the sign that was put up. She was opposed to the no left turn sign that was installed on Live Oak Road.

Mr. Dennis Rings, Date Palm Road, requested that Council remove the left hand turn sign on Live Oak Road and "kill" the proposed cul-de-sac on Live Oak Road. He mentioned that making a left hand turn on Date Palm Road is deadly particularly in the season, but he would never ask that a no left turn signal be installed. He said that they have over 200 signatures on the petition so far (he presented it to the Clerk at today's meeting).

Mr. Bob Blumstein, 605 Conn Way, commented that at the neighborhood meeting that City staff presented the idea of having speed bumps (speed tables) and there was an agreement that the speed bumps were a good idea. He said that the speed tables should be the answer and not signs. The City just recently dropped the speed limit down from 35 mph to 25 mph and they have not given it a chance to see if this will make a difference.

A gentleman (name not clear) said that himself and his wife Judy were upset about the sign being put up on Live Oak Road and would like to know why the sign was put there and the surrounding neighborhood was not notified.

Mr. Richard Rogers, resides on Indian River Boulevard and Live Oak Road, which he said are one in the same. He feels since the sign has been put up that there has been a dramatic change (reduction) in traffic. He suggested possibly on A1A and Beachland Boulevard having two (2) turning lanes, which may alleviate backup on A1A.

Mr. Heady pointed out that they did have a neighborhood meeting, staff was there, all three Charter Officers were present and four Councilmembers were in attendance. He spoke at the meeting and told the audience that they could "Tar and feather" him because it was his suggestion to put up the signs. But, by putting up the signs it has shown them what could happen. They have a City Manager who has a lot of experience in this area and he has come up with different solutions to look at and ways to calm the traffic in that area. He expressed to the residents of this neighborhood that they have a City Council and staff who are listening to their concerns.

Mrs. Carroll mentioned that later on in the agenda under items 9A-7) and 9B-7) this item will be discussed.

Mr. Warren Winchester stated that last week he asked for a copy of the attendees attending the meetings that have included Florida Power Light (FPL). He said that the record was not available at staff level. He suggested that the person who Chairs the meeting should be the one who submits a list of attendees of the meeting to the Clerk. He has been told on more than one occasion that more than one Council person has been sitting in on those meetings. This is the reason that he was asking for a list of attendees. He felt that this could be a violation of the Sunshine Law and they don't want to go down the path of having lawsuits filed. He suggested keeping an audible record of the meetings, minutes would not be necessary, but at least a tape would be on file.

Mrs. Carroll asked Mr. Coment to clarify what Mr. Winchester has just said about a possible Sunshine Law violation if two (2) Councilmembers were to attend the same meeting.

Mr. Wayne Coment, Acting City Attorney, did not see any problems as long as there was no interaction among Councilmembers at these meetings. However, he would just like to see one Councilmember attending these meetings and that would be his recommendation. He expressed that these are not public meetings so a recording of the meetings is not required.

Mrs. Turner suggested making a policy that they only have one (1) Councilmember attending any of these meetings.

Mr. Fletcher and Mr. Heady were not in agreement with that sort of policy. They said that they both have the right to sit in on a meeting if they choose to.

Mr. Coment said that they also have the option of opening the meeting up to the public.

Mr. Heady understood the concerns of the former Mayor (Warren Winchester). However, Mrs. Carroll provided the Clerk with notes of the meeting that she attended so they are not operating in secret and the public has been made aware of who was in attendance. He doesn't see that there has been a problem so far and doesn't see a problem in the future. He thanked Mrs. Carroll for the notes that she took at the meeting and stated that those notes were available to the public.

Mr. J. Rock Tonkel commented that he has been a resident of Grand Harbor for almost fifteen (15) years. He thanked Mrs. Carroll for putting item 9-A9) on the agenda "Status of Grand Harbor and continuing electric outages." He noted that the incidents have slowed down, but of a minor nature. It looks as if the City is making progress and we (residents of Grand Harbor) appreciate that. However, he still feels that the City Council needs to be provided with a regular report. He commented that residents in Grand Harbor are active and organized. They have prepared a Proclamation (attached to the minutes) explaining that the Grand Harbor Community Association is in support of the transfer of the City of Vero Beach electric utility system to FPL dated June 3, 2011. He told Council that they probably would be receiving more correspondence from the Grand Harbor Community Association President. He submitted one letter for the record from Chris Cleary (please see attached). The views from the people he is working with is that they just want to encourage Council to look at all these proposals keeping an open mind. He said some of things that the residents are looking for are a financial analysis, position paper supporting objectives of the City if they elect to pursue another remedy, etc. He mentioned the fifteen (15) years he has been living in Vero Beach and having a vision and looking five (5) years down the road that 61% of the utility users are not going to be with the City anymore, so where will they be if they choose not to sell to FPL. He said this opportunity will not surface again. He asked Council to please consider our comments (Grand Harbor residents) in their deliberations.

Mr. Bill Baker, 329 Live Oak Road, stated that he has lived at this location for twenty-two (22) years and has watched the traffic build and build. He mentioned that there is severe flooding at the East end of Live Oak Road. So the idea of a cul-de-sac can save a lot of money in drainage. He said that the traffic on Live Oak Road during the season has been tough and is actually dangerous. The street has earned the nick name "Live Oak Speedway." The idea of not being able to make a left turn going north is a very good idea. He sees no difference as far as speed is concerned with the speed limit going down from 35 mph to 25 mph. He feels that something needs to be done to address this serious problem that they have on Live Oak Road.

Mr. Falls briefly discussed the flooding issue on Live Oak Road.

Mr. R.J. McMillan, 305 Live Oak Road, commented that he was amazed on how many residents came out from other surrounding streets for the neighborhood meeting held last week. He said that he does understand their concerns. They showed up in force and

were worried that some of the cut thru traffic will go to their streets. Everyone agrees that there is a problem on Live Oak Road and that the Police have done a great job by being out there. However, he feels that something else other than Police force needs to be done. The speed tables are a good idea, but they are expensive. He believes that the Council is allowed to put up stop signs and one should be placed by the Marina and Date Palm Road just to slow down traffic. He felt this would be a cheaper alternative then speed bumps. He expressed to Council to remember that the residents of Live Oak Road and Indian River Drive are outnumbered by the other streets and all the residents that live on those streets.

Mr. Ken Daige commented on the FPL meetings that took place and that there was no actual recording of the meetings and minutes taken by the Clerk. He agrees with Mr. Fletcher that their rights should not be given up (limiting the meetings to only allow one Councilmember to attend). You should be able to sit in the meetings and they should be recorded and available to the public. He expressed that the sale of the utilities will have an impact on them (the citizens) and with the entire project due-diligence needs to be played out. The public needs to know how the Public Service Commission (PSC) works. There are a lot of concerns from the citizens that rates will go up. He then brought up the position of the City Attorney and suggested that they leave Mr. Coment in the position of Acting City Attorney for the time being, because of all the things that they have on their plate. He has a good history of what is going on. Mr. Daige mentioned the compliments that staff (Public Work's Department, Police Department, etc.) have received tonight. It shows that the City is receiving good service. However, this service does cost money and it has to be funded. He wondered if they sell the utilities, how will these services be paid for. Taxation without representation has been hit on a lot of that lately. He brought up a lawsuit filed by Mr. Walter M. Bush against the City and the findings made in the case. He said that he will make sure that the Clerk receives a copy of the case for the public record. Mr. Daige referred to item 7-A) on the agenda "GAI Status Report on Water and Sewer Utility." He said that their hired consultant has outlined the process that will be taking place and he asked Council not to shorten up the process. The citizens of this community have a vested interest and need to see the numbers. He referred to the water and sewer regionalization and said that the dollar amount that the County is offering the City is low. He felt that they should let the entire process roll out and then make a decision from there. He referred to item 7-B) on the agenda "GAI Status Report on Electric Utility." He said that on page 2, that a data room was established at the request of FPL. He asked what is a data room, how will it be set up and does the public have access to the data room. Also, FPL has requested that the City enter into a confidential agreement. He asked if the public was going to know what is in the agreement and will it be discussed out in the open and is it being dictated by FPL. He said that this is a public utility and the citizens have every right to know what is being negotiated behind closed doors. He did not see any reason why these meetings could not be recorded.

D. Adoption of Consent Agenda

1. Regular City Council Minutes – June 7, 2011

2. **Humiston Park Improvements – Recommendation of Project Acceptance and Final Payment – City of Vero Beach Project No. 2003-22**
3. **Final Payment and Project Acceptance – Force Main from WWTP to WTP and Reuse Water Main from Royal Palm Pointe to Country Club Drive – COVB Project No. WSO7014 – Contract No. 1483**
4. **Disaster Debris Removal Management Contract – Recommendation of One-Year Renewal – FRP #260-06/JV**
5. **Solid Waste Franchise Agreement – B&F Waste Solutions, LLC dba Anytime Waste Systems, LLC**
6. **Monthly Capital Projects’ Status Reports**

Mrs. Carroll pulled item 2D-6) off of the consent agenda.

Mrs. Carroll did not want to pull item 2D-4) off of the consent agenda, but just wanted to make sure that if there was no need for the debris removal management contract that there was no cost to the City. Mr. Falls told her that was correct.

Mrs. Turner pulled items 2D-2), 2D-4) and 2D-5) off of the consent agenda.

Mr. Heady pulled item 2D-1) off of the consent agenda.

Mrs. Turner made a motion to adopt the remaining items on the consent agenda. Mrs. Carroll seconded the motion and it passed unanimously.

Mr. Heady referred to the minutes on page 5 and noted that the second to the motion was made by Mrs. Turner and not Mrs. Carroll. Also, on page 30, in the second paragraph the word “abdominal” should be “abnormal”. He made a motion to adopt the minutes as corrected. Mrs. Turner seconded the motion.

Mr. Falls mentioned that at the last Council meeting there was a gentleman talking under Public Comments who mentioned that he gave some questions to the City Manager to answer and never received a reply back. Mr. Falls made it clear that he never did receive those questions.

Mr. Heady recalled that part of the meeting, where he (Mr. Heady) said if staff was not answering questions from a citizen that the questions be presented to him and he will ask staff for the answers. He has not heard or received anything saying that staff was not supplying the information asked by the public.

The motion passed unanimously to approve the minutes with the corrections made.

Item 2D-2) Humiston Park Improvements

Mrs. Turner asked if there will be any guarantees that the plants lost from the freeze will be replaced at Humiston Park and who would be paying for the replacement of the plants.

Mr. Falls explained that typically when something happens that is an act of God then replacements are not included. However, he is working with the contractor of this project on this matter.

Mrs. Turner made a motion to approve the Humiston Park Improvements – Recommendation of Project Acceptance and Final Payment – City of Vero Beach Project No. 2003-22. Mrs. Carroll seconded the motion and it passed unanimously.

Item 2D-4 – Disaster Debris Removal Management Contract

Mrs. Turner commented that once again she was concerned about their procurement policy. She did receive a document yesterday regarding this matter that she has a few comments on. But, in following that she would expect to see a verification of rights being reasonable on this contract. The original contract was negotiated in 2006. Although the contractor has offered a 10% reduction, she wondered if they have seen anything to substantiate that is where they should be with the market before they renew this contract.

Mr. Falls explained that the reason that they did not go out to bid was because of hurricane season. Their intent is as soon as hurricane season is over to rebid this contract and have something to Council before next year.

Mrs. Turner still wanted to see some substantiation that the rates are within the market for approval.

Mrs. Carroll asked Mr. Falls where it states that this is only a five or six month contract.

Mr. Falls explained that it will be a one year contract, but it will allow staff why the contract is still enforced, to advertise for bids and have another one to award once this contract expires.

Mayor Kramer asked if they used this firm last year.

Mr. Falls stated that they have been on board since 2006, but fortunately they have not had to use them. He explained that this is a 10% reduction from last year's rate. They are also experts in managing debris removal operation and providing reports that FEMA requires.

Mrs. Turner referred to page 6 of the contract and alluded to the additional service fee. She would request that this requires a written authorization for additional services that are outside or beyond the additional services described in the contract.

Mr. Fletcher asked what kind of additional services in the past have been required.

Mr. Falls explained that this would cover things that could come up that they cannot foresee. There is a need to have this contract in place so they do not have to be negotiating a contract during emergency situations.

Mr. Fletcher brought up the last FEMA reimbursements and mentioned that there were some challenges. He asked where do they stand with these negotiations and have they been settled.

Mr. Falls reported that he was still waiting for all of the information to come in from FEMA and hopefully would have something to report to Council by their next meeting.

Mr. Fletcher made a motion to adopt the Disaster Debris Removal Management Contract. Mrs. Carroll seconded the motion.

Mrs. Carroll was happy to see that they were utilizing local firms (referring to this contract).

Mr. Heady brought up that Mrs. Turner requested that if there was any additional work that the request be in writing.

Mrs. Turner told Mr. Heady she wanted that to occur, as well as substantiation on the rates. This would be in agreement with the revised procurement policy that she received yesterday.

Mr. Heady said so with this contract if they just add if there is additional work needed that the request be in writing, would cover what Mrs. Turner is requesting. He amended the motion to include this.

Mayor Kramer reminded Council that the only time that this would come into play is if there is an emergency and the City Manager would have the authority to sign anyway.

Mrs. Carroll informed the public that during an emergency the City Manager takes over as the Emergency Management Director.

Mrs. Carroll seconded the amendment to the motion.

The motion passed 4-1 with Mrs. Turner voting no.

2D-5) Solid Waste Franchise Agreement – B&F Waste Solutions, LLC dba Anytime Waste Systems, LLC

Mrs. Turner asked for some more background on this solid waste franchise agreement. She noted that there are thirteen (13) of these agreements in the City.

Mr. Falls explained that the City allows private businesses to offer waste removal services with roll off dumpsters and this is a way for them to generate revenue and to

protect the others who have gone through the franchise process. The City collects a fee for providing this service.

Mr. Coment explained that in this case the name of the company is being changed so they are just cleaning up their records so that the City has the new name of the company on record.

Mrs. Turner asked how they utilize these firms with their own solid waste.

Mr. Falls explained that they don't. These companies are contracted by their own private residences.

Mr. Coment added that this is just a privilege for these companies to provide this service and the City gets a franchise fee back.

Mrs. Carroll felt that it was a great idea to allow private businesses to take on this roll within their City, as well as the fact the City is making sure that they meet the proper requirements for insurance and whatever else is required from the Planning and Zoning Department.

Mrs. Carroll made a motion to approve the Solid Waste Franchise Agreement – B&F Waste Solutions, LLC dba Anytime Waste Systems, LLC. Mrs. Turner seconded the motion and it passed unanimously.

2D-6) Monthly Capital Projects' Status Reports

Mrs. Carroll noted that she did not see a status report for the construction project that is around the outfalls on Indian River Drive. She wanted to know if this project has been completed and why construction fencing is still on this property.

Mr. Don Dexter, Acting Assistant Public Work's Director, explained that this project is being done in response to requirements to add some riprap to the outfalls area. He said that it is a minor project and should be completed in a few days.

Mrs. Carroll mentioned that the construction fencing has been up for a couple months now.

Mr. Dexter explained that the fencing was put up for safety reasons until they were able to get this part of the project completed.

Mrs. Carroll asked after the riprap is put on, will there be some fencing added to prevent children of the neighborhood from getting hurt.

Mr. Dexter explained that they will be adding a little bit of handrail to the structure. The time frame they are looking at is within a month everything should be put in place.

3. PUBLIC HEARINGS

None

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) A Resolution of the City Council of the City of Vero Beach, Florida, releasing from all City Easements the North 3 feet of Lot 5 and the South 3 feet of Lot 4, Block 4, Royal Park Plat No. 3.**

The City Clerk read the Resolution by title only.

Mr. Falls explained that they received a request for this release of easement, which was routed to various City departments, as well as outside utilities and all the responses were favorable.

Mrs. Turner made a motion to adopt the Resolution. Mrs. Carroll 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

- A) An Ordinance of the City of Vero Beach, Florida, amending Section 58-106 of Chapter 58 "Personnel and Retirement," Article II, Division 4, of the Code of Ordinances of the City of Vero Beach to provide for enhanced investment opportunities; providing for repeal of all Ordinances in conflict herewith; providing for Severability; providing for Codification and providing for an Effective Date.**

The City Clerk read the Ordinance by title only.

Mrs. Turner wanted to hear the background behind this Ordinance. She said in a quick review it looks like they are asking to not limit any risks further in the investment of these Police funds, which she finds very disconcerting that they might be jeopardizing the Police Pension fund.

Mr. David Pusher, Detective Sergeant for the City of Vero Beach Police Department and Chairman of the Police Pension Board, explained that the Police Pension fund is covered under Chapter 185. He said that the State made some modifications to their law, which is the reason for this change. What it does is it allows them to further invest in adverse equities so that they can get a better return on their money.

Mr. Fletcher asked Sergeant Pusher if the Police Bargaining Union agreed to this.

Sergeant Pusher explained that this would not need to go through the Union, only the Police Pension Board.

Mr. Fletcher would be happier if they had some system in place where they received approval from the Union. He felt they (PBA Union) should know what is going on.

Mayor Kramer asked if this would allow them to increase the risk of their investments.

Sergeant Pusher explained that what it does is it allows them to diversify that risk over different investments so it reduces the risk.

Mayor Kramer asked what type of investments would this allow them to go into that they were not allowed to go into before.

Sergeant Pusher explained that it will not allow anything that is not already covered in Chapter 185. However, what it does is just cleans up the language.

Mrs. Carroll asked Sergeant Pusher to provide the Council with a copy of the State Statute that covers the passing of this Ordinance.

Mr. Fletcher made a motion to approve the Ordinance on first reading and set the public hearing for July 19, 2011. Mr. Heady 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.

Mr. Heady asked the Clerk to verify on the agenda who the request for items are coming from.

B) An Ordinance of the City of Vero Beach, Florida, amending Section 58-101 of Chapter 58 "Personnel and Retirement," Article II, Division 4 of the Code of Ordinances of the City of Vero Beach to provide clarification that an optional benefit selected by a Police Officer shall only be reduced on the death of the Police Officer; providing for repeal of all Ordinances in conflict herewith; providing for Severability; providing for Codification and providing for an Effective Date.

The City Clerk read the Ordinance by title only.

Mayor Kramer referred to Section 3 of the Ordinance and asked if the changes would give Police Officers different options on how to obtain their retirement income.

Sergeant Pusher answered yes. He said that with the joint survivor, they are adding the last survivor availability so that if the retiree is the survivor then their benefit is not reduced. He said in the past if you elected a joint survivor and either of you passed away the amount you received monthly would be reduced. This just gives the Police Officers another option.

Mrs. Carroll said in other words this will be paying out more funds.

Sergeant Pusher answered no. He said that it was actuarial equivalent and there will be no impact on the fund itself.

Mrs. Carroll said so what Sergeant Pusher is saying is that this will not have any financial increase of benefits being paid out to any of the Police Officers. Sergeant Pusher said that is correct and said that they have been provided a copy of this from their actuary firm. Mrs. Carroll asked Sergeant Pusher to explain the difference between survivor and last survivor, which he did.

Mr. Fletcher commented that this was a very common issue and he was glad to see that it was being updated.

Mr. Fletcher made a motion to approve the Ordinance on first reading and set the public hearing for July 19, 2011. Mr. Heady 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.

6. CITY CLERK'S MATTERS

A) Reappointments to Commission/Boards

BOARD OF BUILDING APPEALS

Mr. Jim Wright's term on the Board of Building Appeals expires on June 15, 2011 and he would like to be reappointed.

Mr. Fletcher made a motion to reappoint Mr. Wright to the Board of Building Appeals. Mrs. Turner seconded the motion and it passed unanimously.

TREE AND BEAUTIFICATION COMMISSION

Ms. Barbara Cunningham's term on the Tree and Beautification Commission expires on June 15, 2011. She would like to be reappointed to the Commission.

Mr. Fletcher made a motion to reappoint Ms. Cunningham to the Tree and Beautification Commission. Mrs. Turner seconded the motion and it passed unanimously.

VETERANS MEMORIAL ISLAND SANCTUARY COMMITTEE

Ms. Alma Lee Loy, Mr. Tony Young and Ms. Barbara Fallon's terms on the Veterans Memorial Island Sanctuary Committee expires on June 15, 2011. All three members would like to be reappointed.

Mr. Fletcher made a motion to reappoint Ms. Loy, Mr. Young, and Ms. Fallon to the Veterans Memorial Island Sanctuary Committee. Mr. Heady seconded the motion and it passed unanimously.

7. CITY MANAGER'S MATTERS

A) GAI Status Report on Water and Sewer Utility

Mr. Gerry Hartman, of GAI Consultants, said that they gave a status report on the water, wastewater, and reclaimed water evaluation and optimization project to the City Manager on June 14, 2011 (on file in the City Clerk's office). He said that in the Optimization Study they have extended the financial performance to a ten year period. He said that work is being done right now and in the process they are going through the operational aspects.

Mrs. Turner said as far as tentative performance, he has not provided any of that financial data and as far as the financial reports the Council has received from Mr. Rob Bolton, Water and Sewer Director, to date. She asked Mr. Hartman if he has been involved in any of the documents.

Mr. Hartman said that Mr. Bolton provided information to GAI relative to some of his financial aspects in base data. Mr. Hartman said that they are compiling their computer models (financial performance).

Mrs. Turner said the data that they have to date is strictly Mr. Bolton's.

Mr. Hartman said that is correct.

Mrs. Carroll said that Mr. Hartman is using data provided by Mr. Bolton as opposed to going in and looking at the numbers himself in making sure that he could verify that the data is correct.

Mr. Harman said that they are using base data. They are meeting with Mr. Bolton regarding certain issues that include the financial aspects.

Mrs. Turner asked where is the schedule and the number of man hours for this project. She was appalled at this report stating that she has never seen a consulting contract where it doesn't give you estimated man hours per task, percentage on completion on a monthly basis, costs, a target schedule, etc. She said that it looks like an open checkbook.

Mr. Hartman did not know that Council wanted each task broken down. The contract is for a total amount for all tasks.

Mrs. Turner said that she asked at an earlier meeting to have a breakdown and a schedule. She asked how could they monitor a contract that hasn't been given those mile stones and criteria tools. She said that they have to have the tools to manage the contract.

Mr. Hartman did not know that was a requirement. He said that they would have that information to Council next week.

Mrs. Carroll thought that at the last three or four Council meetings, since the awarding of this contract, that they asked Mr. Falls to provide them with a breakdown of the financials of what the bills were coming in. She said that Council finally received that this week.

Mr. Falls reported that they received one invoice from GAI and those numbers are consistent with the scope of work that was approved. That scope of work has a schedule of events. If that is not the level of detail that Council is looking for...

Mrs. Turner said not by any stretch. She said there is not any tool to manage this.

Mr. Falls said that they have a not to exceed contract with GAI. He said that he personally is looking at the invoices and would not pay them more than that amount unless Council directs them otherwise.

Mrs. Turner asked how they are maintaining the schedule. She asked how they would know what activities are suppose to be done and in what order and evaluate the percent of completed activity verses the man hours expended unless they have a schedule. She said it appears that there has not been any activities for the month of May. She assumed that was why they did not have an invoice at the end of May. That all these activities began in June on water and sewer.

Mr. Hartman said that they did a marketing dollar for Council in May. The aspects on the water, wastewater, and reclaimed water has not been charged to the City. In addition, Council requested changes in their contract on May 17th, which they revised it on May 18th and began work on the inspections on June 6th. What happened was that the contract they negotiated with the City was changed, which those changes were made and brought back to the City for approval.

Mrs. Turner said that she also made a request that City staff give an update on this contract so that the City is not paying for the expense of having a consultant give an update (Mr. Hartman).

Mr. Hartman said that he told Council that he would personally give updates to Council and would not charge the City. That was his commitment to the City and he stands by that commitment.

Mrs. Turner asked that staff makes sure they review the invoices so there is no charge for this.

Mrs. Hartman reported that they are working on the standard operating procedures. They have had discussions with FDEP relative to permit compliance. They are working with staff in looking at the augmentation of reuse water because one of the actions to optimize

the system was to sell additional reclaimed water because the demand is greater than the supply. They are looking at the stormwater utilization at the canal, stormwater harvesting, etc., to allow for expansions associated with reclaimed water. This would allow for expansions for capacity in sales to Indian River Shores, John's Island Water Management, Inc., City customers, etc. He reported that they are working with Mr. Tom Cloud and Mr. Bolton relative to bulk sales. They have contacted St. Lucie County who desires additional water supply from the City's main transmission system.

Mrs. Carroll asked Mr. Hartman if he was talking about selling City water to St. Lucie County.

Mr. Hartman said that is an optimization aspect. This would come back to Council in an agreement if the Council wishes to implement it. He said that St. Lucie County has a shortfall in water supply capacity and the City has 100% available and 50% additional available capacity or twice what the City is actually utilizing. In optimization they try to increase the use. Therefore, they looked at potential customers for additional water supply utilizing hydraulic characteristics in the capacity of the City's system.

Mr. Fletcher asked Mr. Hartman to explain what a horizontal well is.

Mr. Hartman explained that it is a well that goes straight down into the saltwater and then goes laterally, which is typically trenched in.

Mr. Fletcher said his point is that the City has a shortfall in reuse water.

Mr. Hartman said that is correct and this is a very inexpensive way to augment the reuse system in an area that doesn't fluctuate as much surface water. Surface water in drainage canals fluctuate in water levels substantially and horizontal wells utilize the surficial aquifer.

Mr. Fletcher said that currently the City is using some deep well injected water as a mix.

Mr. Hartman said that is correct.

Mrs. Carroll asked Mr. Bolton, has the City ever been contacted by St. Lucie County in terms of purchasing water from their system.

Mr. Bolton answered yes. He said that the City has been in discussions with St. Lucie County for over a year. He said that they have discussed the possibility of future sales. He said that Mr. Hartman would be helping the City in determining what rate the City could offer them.

Mrs. Carroll asked Mr. Bolton is Mr. Hartman serving the City in this role as part of this contract.

Mr. Bolton answered yes.

Mrs. Carroll asked was that part of the initial contract.

Mr. Bolton answered yes, in the initial contract that was signed before this Council (previous Council).

Mr. Hartman said the systems are very close to each other and is much more cost effective. He then continued with his report. He said that there would be future discussions on CIP issues with water and sewer staff. They are looking at various programming options for capital improvements to match the project with the need. They are looking at financial obligations. They have yet to have meetings with Mr. Craig Dunlap, but will be doing that shortly to evaluate the best possible financial way to have the utility. They have found many times that extending time periods relative to existing loan offers (SRF) can lower payments and contain costs. These are options that are available in the market place.

Mrs. Turner asked Mr. Hartman to go through the tasks in the contract and tell Council where they are in percent complete to date.

Mr. Hartman said that he can't do that today, but will send it to Council.

Mrs. Turner requested man hours estimated in the numbers, work complete in both man hours versus costs. She said that this is how to monitor a consultant contract. They have to have the tools to manage the contract.

Mr. Hartman said that he would do this. He said the optimization issues included in the backup material included South Beach, Indian River Shores, the Wastewater Plant relocation, etc.

Mrs. Turner asked when the preliminary findings report would be delivered.

Mr. Hartman answered approximately 80 days after the notice to proceed of June 10th.

Mrs. Turner said that she would like to see a copy of the goals and objectives.

Mr. Hartman said that they would be meeting on various aspects of the project and will document those things for Council.

Mrs. Carroll voiced a concern that she made when the contracts were originally approved. She said that Council saw a spreadsheet presentation by members of the community that said when Indian River Shores and the South County customers leave rates will go up. She said that Council asked the Finance Department and the Water and Sewer Department if that was true and were told at that time that they (staff) could not give those numbers because they cannot get them out of the computer system. For months Council was told that the numbers could not be produced because the City's billing system did not allow them to track customer volumes back down to where they

lived within the County. Council finally received numbers about one month ago. Since that time Mr. Bolton and his department has been very adept in providing documentation. She showed the reports that she has seen over the past month or two. A number of the reports show what looks like a number of suggestions by GAI are already implemented (the Plant being torn down, the Plant being moved, etc.). Prior to getting the optimization report they are already using that data for some of the reports that Mr. Bolton has done. She said the reports show that if Indian River Shores leaves and pays the City many millions of dollars for the pipes, then the City would be fine and not raise rates. This is the same with South County. The problem is that in speaking with people from the County and from Indian River Shores, they say the City thinks they are going to pay millions of dollars for the pipes. She felt that there needed to be a meeting between the City, County, and Indian River Shores in order to determine the value. She understands that the numbers are based on reports that GAI has done in the past.

Mr. Hartman said that Mrs. Carroll was blending a value in October 2010 that all the assets were in the City's ownership at that time. He said that was a last year partial appraisal of the City's system, which was valid at that time. There is a franchise agreement between the City and Indian River Shores.

Mrs. Carroll understands that there are franchise agreements. Her point is that she is trying to bring the general public up to what is going on right now. She said that there are numbers coming out between GAI and Mr. Bolton that the City will be financially "fine and dandy." But, they need to sit down and have discussions with the County because those numbers are up in the sky.

Mayor Kramer asked Mr. Hartman if he would be available after lunch.

Mr. Hartman answered yes.

Mayor Kramer asked Mr. Hartman if he could just go through the status report and bring this back after lunch.

Mrs. Carroll said the City did not go to the County and ask for a price on the system. The County decided to give the City an offer for the system. The County coming to the City with an offer then caused City staff to bring forward the possibility of the two contracts with GAI to evaluate the wastewater system and an optimization study. This is how they got to this point. It was not that Council was trying to get rid of the water system.

Mr. Hartman said that he was asked to do those two tasks. What he has seen is a number of \$12.6 million dollars for City owned assets as of last year in the Town of Indian River Shores. During that same time period Indian River Shores owned about \$2.9 million dollars of assets.

Mrs. Carroll said that was when he did an evaluation for Indian River Shores and did an evaluation for the City.

Mr. Hartman said that he did an appraisal of two different sets of assets located in the same jurisdiction, but they are totally different assets.

Mrs. Turner asked during the appraisal review, did his (Mr. Hartman's) attorney look at the franchise agreement and provide an opinion on the ownership of the assets.

Mr. Hartman said the ownership of the assets is of the effective date of the appraisal.

Mrs. Turner said the actual document states that at the end of the thirty (30) year contract, the assets would revert back to Indian River Shores. She asked did their attorney review that.

Mr. Hartman said that is another issue. He said that Indian River Shores asked for the fair market value of the assets that they owned within Indian River Shores.

Mrs. Turner said the question is did his attorney review it.

Mr. Hartman said that he reviewed the two franchise agreements, but as of that day and time. Ownership is ownership.

Mrs. Turner said that she is talking about assets reverting to Indian River Shores. She wanted to know if his attorney reviewed that to interpret that all assets within Indian River Shores revert back to Indian River Shores or if it would only be the assets that Indian River Shores had at the time of signing the initial franchise agreement.

Mr. Hartman said that he has not been asked that question. He said that both franchises, water and wastewater, were separate. From those franchises, he can value the assets as an effective date. That was what he was hired to do and that is what he did last year.

Mrs. Carroll asked wouldn't that be part of the optimization study.

Mr. Hartman answered absolutely. This Council hired him to look at Indian River Shores and the South beaches relative to the assets as of 2016 and after. That is a different task. He has read the 1989 service area agreement that the City has the South beaches and Indian River Shores that does not have a term.

Mayor Kramer asked Mr. Hartman that he continue going over his report and then after lunch more discussion on this current topic could take place.

Mr. Hartman said relative to the evaluation of the assets, they are valuing all the assets (water, wastewater, reclaimed water) and the breakdown. They have inspected and assessed the assets.

B) GAI Status Report on Electric Utility

Mr. Hartman reported that this is also a valuation project. GAI was hired to value the electric assets that the City owns. The intangible property has potential liabilities equal to the offer so they have started looking at the OUC obligations under their contract, the FMPA entitlements and value, as well as obligations if those entitlements are not sold. He noted that there is an ongoing payment associated with that. In the marketplace by looking at utilization of power reserves and power capacity of FMPA entities, there is not a tremendous shortfall of power production. The only transaction that he has received is not good comparable because it is an emergency transaction. He said that they met with FMPA and are in the process of getting numbers (the cost to get through FMPA's process) and were promised that he would have the numbers this week. He was first told that he would have the numbers last week. He said that he met with the entities and discussed the issues and is getting the information.

Mrs. Carroll said you are in no way negotiating with them (FMPA).

Mr. Hartman said that is correct.

Mrs. Carroll said that they are only asking what it is going to cost.

Mr. Hartman said that they would receive FMPA's cost and basis for the cost.

Mr. Coment explained that when Mr. Hartman is talking about cost, he is talking about FMPA's approval process, not the cost of getting rid of the obligation.

Mrs. Carroll said that members of the public have asked her if Gray Robinson was helping the City negotiate the sale of the system to FPL. She said according to the contract they signed with GAI and their consultant, they were not hired to do any negotiations on behalf of the City.

Mr. Hartman said that they were charged with assessing the intangible relative to evaluation.

Mrs. Carroll said that OUC has some number in their contract in terms of a penalty. For Mr. Hartman to value that, wouldn't he have to sit down with them (OUC) and ask what the penalty would be. She asked how the City is going to know the number.

Mrs. Turner said that is not in GAI's scope at this time. They were hired to do an appraisal. The City does not have anyone representing them in doing negotiations.

Mrs. Carroll understood that, but asked how they could evaluate the system without knowing what the possible penalties might be.

Mr. Hartman said that GAI would get the values associated with the OUC penalties and they have full capability of running that through their analysis to see if that is cost recovery. He explained that the intangible that they can document is what they show in the appraisal. A premium over what they can document is shown as a significant aspect.

He said that they will show Council both so they will know what GAI believes is the intangible value or cost. He said that Council would also know if GAI believes there is a premium being delineated for OUC.

Mrs. Carroll said Mr. Hartman is going to tell the Council what he thinks the City's penalty should be and he is not going to negotiate with OUC.

Mr. Hartman said that they would be given the information from OUC that they (GAI) run through their analysis.

Mrs. Carroll said that earlier Mr. Daige asked a question about the data room. She explained that the data room would be similar to the technological cloud. It would be a room where data is generated by FPL or by the City to place files. There would be a secret code that only the team could access. This way they all would be looking at the same numbers and they could not be accessed by the general public. Through a public information request, they could get that information.

Mr. Hartman said that FPL hired a third party contractor. They do not wish to use Gray Robinson because of certain capabilities that they had.

Mrs. Turner asked that Council receives man hours per task and dollars, tracking completion on tasks, and an overall schedule on their invoices.

Mayor Kramer noticed in the audience that there were people present that would like to speak on the issue of Live Oak Road.

Mrs. Carroll was fine with putting this utility issue on hold until after lunch.

Council agreed to put the utility issue on hold and discuss it after lunch.

At this time Council heard item 9A-7).

C) Request for Qualifications for Potential Purchase of Vero Beach Power Entitlements and Obligations

Mr. Falls said that this item ties into the status reports. He said that one of the things that they have to do to further their negotiations with FPL is allow staff to determine if there is a potential purchaser for the City's FMPA entitlements. He said that they can only be acquired by FMPA members and for the City to ascertain if there is any interest they need to do an RFQ. This item would allow them to move forward and do this. Mr. Hartman has already discussed the process of FMPA and this is the first step.

Mr. Heady said the only real buyers are the members and we know who those members are. He said that rather than spend \$35,000 tax dollars, why doesn't the City send a letter to them telling them that the City has entitlements for sale.

Mr. Falls said that they could do that. He asked Mr. Hartman to give him some information about the process that has to be followed.

Mr. Fletcher asked if he is correct that if anyone does assume or buy those responsibilities that they have to have the same or better bond rating.

Mr. Hartman answered yes.

Mrs. Turner said before they send out a letter, that they establish the criteria they are going to evaluate them on.

Mr. Hartman said that is what they have in front of them (backup material). He explained that there are three steps. One is to prepare and approve the criteria for response to the RFQ. He said that it could be one entity or multiple entities in one bid. The second step is to answer questions through the process and then they would evaluate the qualifications and make a recommendation to the City Council on which one they would recommend award. Based upon Council's acceptance of the award, it then would go through their engineer's evaluation. GAI said that they would do this to shorten up the time frame and to expedite the process. He noted that once they apply all their fees and costs that they lay out, the City pays for.

Mayor Kramer asked if FMPA gave any indication on how much they would charge if they did this process.

Mr. Hartman said FMPA's engineer has been charging about \$40,000, but they have three sets of attorney's that are working on this. He said that this is a key element and FPL said that this is the City's issue and the City has to take care of it.

Mrs. Turner concurred that this is a key issue. She said that she wants to be a good steward of the City's money and she wants to see man hours on each of these tasks.

Mr. Hartman said that he would get that information for Council.

Mrs. Turner said that they may be overloading Mr. Hartman and it may be an issue.

Mr. Hartman said that GAI is a pretty big company. If they don't want GAI to do this work and they want to do it themselves or hire someone else to do it that is fine. But, it needs to be done. He said that GAI could expedite the process and facilitate the decision making on the FPL offer.

Mr. Heady said that they know who the buyers would be, which are current members of FMPA. He said that they know investor owners are not eligible to buy.

Mr. Hartman said that there are probably less than 10 bidders that would be eligible to buy.

Mr. Heady was not sure whether or not any municipality in the State of Florida might not have the legal authority to buy without upsetting the underlying bonds.

Mr. Hartman said it was his understanding that it is a member entity because it is an overall entity revenue bond issue and all they are doing is transferring the credit worthiness and the repayment aspect to another member. If they go outside the membership it does not work.

Mr. Heady said that cuts the potential down to strictly those members. Rather than spend \$35,000 tax dollars, wouldn't it be prudent for this Council to notify those few members that the City would like to sell entitlements and ask if they are interested.

Mr. Hartman said it is better to have something that looks like a real bid because it takes these entities a lot of time and money to evaluate these issues. It needs to be a formalized process.

Mr. Heady said that they already have a prequalified list.

Mr. Hartman said this is up to Council. It is his recommendation to have a formalized process with the criteria for award, criteria for evaluation, independent awards, etc. It is fine if Council does not want to do this.

Mr. Heady said that it was not a question of if he wants to do it. It is a question before he says yes to spending money. He is questioning whether or not there is a more cost effective way for him to accomplish something because as Mrs. Turner pointed out, they need to be good stewards of taxpayers' money. He is asking Mr. Hartman why it wouldn't be prudent for the City to first notify the only potential buyers that they have this entitlement that they would like to offer for sale and is there any interest.

Mr. Fletcher said the point is that they need to define the entitlement. It needs to be in a formalized document in what they are offering. That is where GAI comes in. They can present it to these people.

Mrs. Carroll asked with this RFQ, GAI will not be negotiating the sale to another entity. GAI is simply asking for bids to determine the credit worthiness of anyone interested in them.

Mr. Hartman explained that after the responses come back if Council feels there is room for negotiations, then that would be another step.

Mrs. Carroll questioned and another fee.

Mr. Hartman said it would depend on how Council wants to proceed. If Council wants GAI to assist them in negotiations then the fee would be for their time.

Mayor Kramer said FMPA would then have to approve it.

Mr. Hartman answered no. The City Council would have to first approve it and then it would go through FMPA. That is the reason they want it to go through a criteria process.

Mrs. Carroll felt that the compensation listed on the proposal seemed quite vague.

Mr. Hartman explained that they would be billing hourly up to those limits.

Mrs. Carroll could not fathom sending out ten (10) letters and getting responses.

Mr. Hartman said it is not a letter, it is a bid package.

Mrs. Turner felt that it would helpful if they came back with the man hours per tasks involved.

Mr. Hartman said that would cause a delay in the process. He said that they were asked to move quickly on this.

Mrs. Carroll said at the meeting held two weeks ago with FPL, Mr. Hartman mentioned that FMPA has yet to give him an estimate of the costs for FMPA to go through their due diligence. She asked Mr. Hartman if he has received those costs.

Mr. Hartman said that he was suppose to get those costs last Friday and as he said earlier in today's meeting, he is now suppose to get them this week.

Mrs. Carroll asked is there a ballpark figure of what FMPA will charge the City for looking at this information and going through their various counsels, etc.

Mr. Hartman said that he had a feeling of what it would cost. He said FMPA has four different attorneys and most of them don't render opinions for less than \$10,000. He said their engineer review could be \$25,000 to \$30,000, their staff time could be \$10 to \$15,000, etc. He said that when they add everything together, it could easily cost \$100,000.

Mrs. Carroll asked out of the ten (10) or so members of the FMPA that Mr. Heady mentioned, could one of them be OUC.

Mr. Hartman answered yes.

Mrs. Carroll said one of the things that theoretically could be on the table would be a negotiation with OUC like a tradeoff where OUC would take the entitlements and they would relieve the City of any fines that may occur do to breaking the contract with them.

Mr. Hartman said that is the reason they put in the RFQ a special circumstance with OUC that they have that ability that no one else in bidding would have.

Mrs. Carroll said that Mr. Hartman stated earlier that he would not be negotiating for the City.

Mr. Hartman said they would look at the numbers that OUC puts in the bid.

Mr. Fletcher said that Mr. Hartman is the information collection agency. Once he (Mr. Hartman) has all the information together and evaluates it, he would then present the information to Council and it would then be up to Council to make the decision.

Mr. Hartman said if Council wants negotiations to take place before it comes to Council, they could elect a member of the Council to participate in that effort.

Mr. Falls said they were discussing this today because it was one of the topics that they had during their meeting with FPL and was an important issue to resolve. He noted that action was not necessarily needed today, but waiting for information such as the cost from FMPA for them to do an evaluation would only delay the process. If they realize that if they table this until they receive the information and have a better idea of what the overall costs could be, they could do that. But it would push this further down the road. He said that they all were doing due diligence and have not started negotiations with FPL. The City has been in a disadvantage for the past two years as they have not had a Utilities Director. He said that the City does not have a professional person on staff to do these types of things.

Mr. Fletcher felt it was critical that they make this decision today. He said that they needed to go ahead and do this, but Council needs a labor hour breakdown of the efforts.

Mrs. Turner requested that Council also see a schedule.

Mrs. Carroll said that is her biggest concern as well. She understood that GAI has a substantial amount of business and a substantial amount of City taxpayers' money. She said without a breakdown of where the money is going, Council cannot be fiscally responsible to their citizens. She would appreciate having this document by the end of this week.

Mr. Fletcher said that would go for all projects.

Mayor Kramer asked if he was correct that by having Mr. Hartman doing this work that it would be acceptable to FMPA and the City would bypass that cost to FMPA.

Mr. Hartman answered no. He explained that they would add another step and time to the process. He said the process that he laid out was after the City has agreed to and said that the City is doing it.

Mrs. Carroll asked Mr. Hartman if he has already contacted OUC about the entitlements.

Mr. Hartman said they mentioned it, but did not go into detail. What they were really asking for was the LOI issue of the cost of breaking the purchase power contract early. He said that was an issue when they met with OUC because that is the answer they need.

Mrs. Carroll asked was the question answered.

Mr. Hartman said that their answer would be due at the end of June.

Mrs. Carroll said that Mr. Hartman mentioned that he was not getting answers from FMPA and was not getting very timely answers from OUC. She asked is that a concern.

Mr. Hartman answered no. He said that OUC from day one said they would provide the answers by the end of June and with FMPA they only missed one date so far.

Mr. Heady said even though OUC might be interested, it seemed to him that the Council would want to know what the high bid was before they accept some offer from OUC to trade the City for the penalty that was questionable.

Mr. Hartman said Mr. Heady was on point.

Mr. Fletcher made a motion to authorize GAI to format a request for qualification (RFQ) for potential purchases of Vero Beach power entitlements and obligations.

Mrs. Carroll asked to amend the motion to add that it is required to have a breakdown of all costs involved by Friday.

Mr. Fletcher amended the motion. Mrs. Carroll seconded the motion.

Mr. Heady said they were putting a deadline as of Friday. He asked that they change the deadline and state that the consulting contract would not be accepted until the City Manager sees the breakdown before he signs it.

Mrs. Carroll said if the breakdown comes in at a lower cost, the City would appreciate it because the numbers seem quite big.

Mr. Heady said the breakdown is an hourly breakdown. What they have is a maximum number.

Mrs. Carroll said that she wants an estimate on what it would take to do this.

The motion passed 4-1, with Mrs. Turner voting no.

Mr. Heady asked that when a motion fails, could the City Clerk identify the descending individual.

D) Change in the “Electric Service – Fuel Cost”

Mr. John Lee, Customer Service Manager, said that the most talked about line on their electric bill is the second line, which they changed the name to electric service – fuel cost. He explained that when people see fuel cost they think it is a surcharge, but it is capital cost. It is a fuel cost to run the Plants and the transmission costs for getting electricity from outside the City's system into the City's system. He said that when they put together a projection of what their fuel costs would be for the next year, it is dependent on all types of variable. He said it seems that they are leaking funds faster than they anticipated so they looked at why. He said that there were a few outages in the major generating units that lasted longer than they anticipated so the costs went up. They asked OUC for projections on what it looked like for the rest of the year and although they don't have anything solid from OUC, they are not favorable. This means that the City cannot afford to keep giving back money at the rate they are giving it. They are proposing that effective July 1, 2011 and after, to change the electric service fuel cost portion from \$56.00 per 1,000 kWh to \$60.00 per 1,000 kWh, which is what it was on January 1st of this year. He said that they would be looking at this every month as they move forward. He said that this would be about a 3.7% increase in the bottom line of the bill. From an average standpoint, the City is below the average of every municipal in the State if they combine them and they are below the average of the investor owned utilities. He noted that they are not better than FPL.

Mr. Fletcher said that would be \$4.00 to the total bill.

Mr. Lee said that is correct. He said that the total bill would go from \$109.14 per 1,000 kWh to \$113.14. He said that it is not possible to continue to lower prices and not lose money in the process.

Mr. Fletcher asked is it correct that the average kWh produced, the cost of that for the fuel is about 50%.

Mr. Lee said it would be 50% to 60% depending on the time of year.

Mrs. Turner thanked Mr. Lee for looking at the operations and coming forward to Council with this. She asked Mr. Lee to explain how the shortfall in the utility tax revenue relates to electric rates.

Mr. Lee said when they were charging \$158.82, \$83.31 was subject to the 10% utility tax. When the rates are high and they are getting 10% they are getting a lot more money. As the rates went down, the amount of money going into the General Fund in the form of utility tax was dropping steadily. When the City dropped to \$109.00, they impacted the income of the revenue source of the General Fund. He said the good thing about this is that the fuel portion is not subject to the 10% utility tax.

Mrs. Turner said but in the County it is.

Mr. Lee said subject to the 6% County fee. He again stated that they would be monitoring this every month to see what direction they are going.

Mrs. Turner felt that they needed to consider the utility revenue shortfall and start calculating that in.

Mr. Lee said it is a revenue source for the General Fund.

Mr. Lee reported that FPL gave the City a list of about 300 questions and hired an independent accounting firm who gave the City an additional list of 87 questions. He felt that Mrs. Carroll was astounded when she looked at the size of the list. He said that he spoke with the Project Manager for FPL and at first he asked the City to scrub those questions and to come up with what the City felt was important. He said that after discussing this with the Project Manager, FPL agreed to scrub those questions and to come back with bite size questions every few weeks.

Mrs. Carroll said it seemed like the answers to some of those questions had already been provided in a somewhat modified format. FPL did volunteer to send someone to help the City gather the information.

Mr. Lee said that someone from FPL couldn't help until the City has the information and are ready to make copies.

Mrs. Carroll asked Mr. Lee if he produced a document that shows where the decreases are and how that would affect the transfer to the General Fund this year based on the increases going forward.

Mr. Lee said the transfer to the General Fund is a fixed amount this year, which has been the same fixed amount for the last three or four years. He explained that by fixing it at a certain amount it is not impacted by wild fuel swings.

Mrs. Carroll asked what is impacted by the swings.

Mr. Lee answered tax revenue, capital projects, etc.

Mr. Daige referred to item 7-B), item 19, FPL has requested that the City enter into a confidentiality agreement. He asked would Council discuss that letter of confidentiality as a group in the open and decide if they are going to sign the agreement or would it be discussed in private.

Mr. Coment said whenever FPL gets something drafted; staff would bring it to Council. He said it would basically be a contract.

Mr. Fletcher said the contract would be a public document.

Mr. Coment said that is correct.

Mr. Fletcher said the answer is yes, it would be a public document.

8. CITY ATTORNEY'S MATTERS

A) City Deed to County – Dodgertown land swap

Mr. Coment recalled that Council previously approved certain documents to complete the swap of land at Dodgertown with the County. He said one of the documents needs some modification, which is what is before them.

Mr. Fletcher made a motion to accept the changes. Mrs. Carroll seconded the motion.

Mr. Heady mentioned that some time ago when they discussed this he asked whether there were any financial analysis to show what the cost to the taxpayers would be in respect to this swap. He said that in doing this swap they have also changed the requirement under what the taxpayers are responsible for in terms of the development of the Dodgertown property. Prior to the land swap the taxpayers responsibility was to put up some additional lighting on the practice fields, which had estimates ranging between \$600,000 to \$860,000. This would be the taxpayer's responsibility. This land swap would change the taxpayer's responsibility from the lighting aspect to the design construction building of these practice fields. He asked if there has been any financial analysis given or do they know what the difference is. He then asked do we know what the cost to the taxpayers is with the development of these fields, which has to be done if they approve this change.

Mr. Coment stated that he did not know the numbers. He said that the improvements were under a contract between Minor League Baseball and the County. The County did set aside money for the lighting and they did more recently come to an agreement that Minor League Baseball is allowing the County to not put in some of that lighting in exchange for the cloverleaf fields. What he has been told unofficially is that it is more of a cost coming from the County to make the improvements.

Mr. Heady reminded Mr. Coment that they are also County residents.

Mr. Falls would happy to draft a letter to the County and ask that question.

Mrs. Carroll commented that what they were approving today was simply a few word modifications to the deed.

Mr. Coment told her that was correct. They have already approved the other documents, including this one, but once it was modified he wanted to make sure that Council was in agreement with it.

Mrs. Carroll made it clear that this item was not allowed on the last agenda, which is why it is before them again. She said that this has held up the County and Minor League Baseball because they had to bring it back today.

Mr. Heady told Mrs. Carroll that she was right that this has been before them. He asked her if she knew what the difference of cost this was to the taxpayers.

Mrs. Carroll answered no.

Mayor Kramer had some questions about where the money comes from to fund this.

Mr. Heady explained that the County had the money set aside. He said that when the City and the County originally entered into the relationship with Minor League Baseball, there was an amount of money that was put aside for the development of lighting on the practice fields.

The motion passed 4-1, with Mr. Heady voting no.

B) Extension of Work Agreement

Mr. Coment reported that he had a temporary work agreement to be their Acting City Attorney, which expired on June 9th. This agreement before Council today will extend the agreement. He did not put a specific deadline in this agreement and it will at least get them through budget hearings. He mentioned that he did have an interview for an Attorney's position in Seminole County, but he figured out that his "heart" is here in Vero Beach and he is not actively seeking employment anywhere else.

Mr. Heady made a motion to approve the Extension of Work Agreement. Mr. Fletcher seconded the motion.

Mrs. Turner wondered if there should be some sort of time limit inserted.

Mr. Coment explained that with the first agreement he limited it to four (4) months because he did not ask for any additional compensation and he is not asking for any extra compensation with this extension. The agreement will be open ended until the Council does not wish him to serve in this capacity any longer or unless the agreement is terminated.

Mr. Fletcher felt that they had enough on their plate right now and they should leave this agreement to run open ended.

The motion passed unanimously.

C) Ordinances for Referendum Questions

Mr. Coment reported that there are some issues coming up that may have to be resolved by referendum based on their Charter. He has been in meetings with FPL and their proposed transaction involving the purchase of the Power Plant and the lease of the land. The time schedule that they are looking at is having the referendum Ordinances on the agenda for first reading in July and then the public hearing taking place at their August 16th meeting. Mr. Tom Cloud has already sent in his suggestions on a ballot question and what it basically needs to do is ask the question to the voters on whether or not they want to sell the electric system.

Mrs. Carroll recalled that in the past he has discussed that they needed to go through this method because of the lease of the Power Plant property. However, what he was saying now is a referendum be done to sell the property. She referred to the wording in the City Charter.

Mr. Coment explained that if they want to ask just that question it could be done. But, the most conservative view would be to follow what the case law has said and that is that the voters need to be informed.

Mrs. Carroll asked if both of the components had to be within the seventy-five (75) words.

Mr. Coment answered yes.

Mrs. Turner added that they have a special opportunity this year if in November that they are not prepared that in February there will be another election and they can put the referendum questions on that ballot.

The City Clerk briefly went over the costs of having a municipal election.

Mr. Coment went over the other referendum item, which would be for the water and sewer utility. At this point he has not received any answers back from the County about how they planned on taking possession of the Wastewater Plant and operating it. He does not know at anytime that the City has turned over its property to someone else to operate it without some kind of lease.

Mr. Heady said with both pieces of property what they are looking for from the voters is either to license someone to use those facilities (whether electric or water and sewer) and they need permission from the voters to lease or extend the license to use these facilities and that prevents a future lawsuit.

Mr. Fletcher mentioned that these would be two separate issues. He is in favor of the referendum Ordinance for the electric utility.

Mrs. Turner suggested to Mr. Coment that he bring both Ordinances to the Council and they decide at that time whether they want to move forward or not.

Mr. Heady suggested that Council have the Ordinances far enough in advance so that they could have some input on them.

Mrs. Carroll said by giving input they could be violating the sunshine law.

Mr. Coment will distribute the draft of these Ordinances ahead of time to Council.

Mr. Fletcher made a motion to go forward with the referendum for the electric and for the water and sewer utility. Mrs. Turner seconded the motion and it passed unanimously.

9. CITY COUNCIL MATTERS

A. Old Business

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

Mrs. Turner commented that they covered most of this item this morning. She still did not have the tools to measure the progress of this contract.

Mrs. Carroll addressed some questions that Mr. Daige asked earlier in the meeting. He had asked about “confidentiality” and she went back and looked at her notes and FPL said that confidentiality would only occur with items having to do with trade secrets. She said that it is typical even in PSC filings to seal documents because they are business proposals with private companies.

Mrs. Turner thanked Mrs. Carroll for her summary of the June 8th meeting that took place with FPL. She said that is the most information that they have received on this electrical contract to date.

Mrs. Carroll told Mr. Daige that it was mentioned at the meeting with FPL that they would also like to have closed meetings because there will be discussion on items that could affect their bargaining position with other governmental agencies that they are in the process of negotiating with.

2. Water and Sewer Regionalization – Requested by Vice Mayor Turner

Mrs. Turner mentioned that since the date that they had this contact with GAI there has not been any significant progress made. As far as the time goes, they are about a third of the way through, but they have not received 30% of the work. She has not seen any clear goals or objections on the optimization and the scope is too broad. She felt that they needed to identify what issues or real problems that they see in their utility system. The first task is they have failed to present man hours and schedule project management. She said at this point she has lost confidence in their contractor. She sees an overlap of personnel within GAI. She said maybe they need to pull them in and let them focus on the electric work and give them more time to define this problem and move forward. She made a motion that they provide a thirty (30) day notice of termination of work orders,

appraisal and for the optimization; that they provide notice of termination immediately on those two (2) work orders.

Mrs. Carroll had a question for GAI. She mentioned that last week there were meetings at the Airport and the different subjects were discussed. She asked Mr. Hartman how his invoices would be broken down for these meetings.

Mr. Hartman explained that on his time sheets it will show the time that he spent on the electric matter and the time he spent on the water utility matter.

Mayor Kramer felt by doing this it would slow the process down.

Mr. Fletcher added that if they canceled the contract they would have to go through the bid process again. He said that they just need to “hold the contractors feet to the fire” on the numbers a little bit more.

Mr. Falls went over the process they went through with the City, County, and Indian Shores, in hiring GAI.

Mrs. Turner felt that what they could save in clearly defining the scope would be well worth it.

Mrs. Carroll seconded the motion and it failed 3-2 with Mr. Fletcher voting no, Mayor Kramer no, and Mr. Heady no

3. City Manager Objectives – Requested by Vice Mayor Turner

Mrs. Turner mentioned that there must be some communication problem. She thought that they had all agreed at the last Council meeting that each of them would submit their City Manager objectives to Mrs. Vock and those would be discussed today. She did not see that anyone had submitted their objectives for the new City Manager. She said that they would put this item off until the next meeting, but would each Councilmember provide their objectives to Mrs. Vock so that they could be reviewed prior to the meeting.

Mrs. Carroll asked what the date that Mr. O’Connor will be starting is. She suggested that a workshop be set up immediately after he starts and they could present their lists at that time and could come to a general consensus.

Mr. Fletcher presented his list to Mrs. Vock and said that he has already talked to Mr. O’Connor about what is on the list.

Mrs. Turner felt it was good that Mr. Fletcher had a personal list, but there still needs to be a consensus of the Council in which direction that they want Mr. O’Connor to take.

Mr. Heady agreed with holding a workshop.

Mr. Falls commented that in his conversations with Mr. O'Connor he has been told that he will be starting work for the City on July 25th. He also reported that with Mr. O'Connor's guidance they made an offer to Ms. Cindy Lawson for the position of Finance Director and she has accepted. Ms. Lawson is currently the Finance Director for Islamorada, Florida. She is planning on starting work on July 25th.

The Clerk was instructed to set up a workshop on July 26th at 10:00 a.m. with the new City Manager. She was also asked to put this item back on the agenda, under her matters so that Council could discuss the objectives that they have come up with for the new City Manager.

4. City Policies and Procedures – Requested by Vice Mayor Turner

Mrs. Turner brought up City policies and procedures. She did receive a draft from the Purchasing Department concerning inventory. She wanted added on the purchasing policy a legal review of contracts, purchase orders, work orders, etc. This would include anything that deviates from their standard rules and conditions and it would require that the legal department sign off on it. She also asked that the inventory policy be reviewed by their auditor to make sure that everything is in compliance and it resolves inventory issues that they incurred this year.

Mr. Heady asked if there was a dollar amount/threshold number that she is going to require.

Mrs. Turner explained that the deviation may not be necessarily because of a dollar figure, but because of the terms of the contract.

Mr. John O'Brien, Manager of Purchasing, reported that their policy has always been on any changes within a contract that Risk Management, the Legal Department, and the Purchasing Department be involved. They look at any exceptions as to whether they compromise the integrity of the bid. He said they would formalize this with written documentation and then have the City Manager understand these changes.

Mrs. Turner wanted to see this formalized.

Mr. O'Brien had no problem formalizing this. He just wanted to let Council know the parties that are typically involved in the process. He will draft a memo outlining the process that he follows.

Mr. Fletcher suggested that he work with Mrs. Turner on this.

Mr. O'Brien felt comfortable writing the policy.

5. Council notification of meetings with FPL, GAI, City of IRS and County in regards to WSI and Electric issues – Requested by Councilmember Carroll

Mrs. Carroll requested Council be notified of all the meetings occurring with FPL, GAI, the Town of Indian River Shores and the County in regards to water and sewer regionalization and electric issues. The contact point person should be notified by telephone as soon as all the meetings are set up. The point person should also be told of any meetings taking place with regulatory agencies by staff and consultants as soon as scheduled, also by personal telephone call and backup by written communication/email. She referred back to the minutes from June 7, 2011, where this item was discussed. They heard GAI was in the process of having fact finding meetings going on and no one was being told when the meetings were occurring. She wanted to make sure that the City staff and Charter Officers know when and where these meetings are taking place.

Mr. Falls informed Council that sometimes there are phone/conference calls being made and not actual meetings being held.

Mrs. Carroll made it clear that Council needed to know about meetings taking place among various entities. She became aware after the last Council meeting and this past week that there are some questions within their community from the various entities involved regarding the water and sewer negotiations with the County, Indian River Shores and with the City in terms to who has contracted who, what are the contracts, who is going to pay the \$18 million dollars that Mr. Bolton was basing on GAIs numbers that they came up with a year or two ago, etc. She said that there may be a need to get all the parties together and discuss some of these issues. She said what they have seen from their Utility and Finance Commissions is that they are excited about the documents that Mr. Bolton has put together. Mr. Bolton's numbers are based on the in-flow into the City of \$18 million dollars based on the evaluation that GAI did for the value of the pipes for those areas. She said whether or not either of those entities are prepared to pay those kind of monies vastly influence whether Mr. Bolton's documents are true and whether the numbers are going to work out. She said the reasons that they have those numbers today is because this Council has asked for many months what will happen to water and sewer if the Shores and their South County customers leave. The only documents that they has seen so far has been based on the \$18 million dollars and they don't know if anyone is going to pay that \$18 million dollars. Again, Mrs. Carroll suggested that they all get together and sit down and discuss this.

Mrs. Turner felt that before that is done that the City still needs to do their homework on this. She said looking at the Indian River Shores agreement the County's interpretation of the assets owned differ from those proposed in Mr. Bolton's analysis. Also, in the South County franchise there are assets that belong to the Moorings utility that were not part of Vero Beach's assets. She was not sure that those have been segregated in the GAI asset number.

Mrs. Carroll said what she does not want to do is give another contract to GAI to interpret the assets that they have already valued.

Mr. Falls commented that the City has been pushed to find out all these answers on their own. He said in October 2009 at the Richardson Center there was a joint meeting held between the City, County, and Indian River Shores, and they were looking at this as a communitywide manner to hire one consultant to handle these tasks so they would not be questioned by one side or another. They went through a process and spent a lot of time in picking a consultant. When they were getting ready to start the work, they stopped the work. The City has been pushed out on their own, which is okay because they are going down the right path and getting these answers. He agreed with Mrs. Carroll that they don't know if anyone is going to pay the \$18 million dollars, but they know that is the value. They have to know what the value is before negotiations can begin. At this point the City does not even have a Letter of Intent (LOI) from the County to purchase the utilities. Mr. Bolton has been providing to them the best information that he can with the best data available. Staff has been accused of making up numbers, which is not true.

Mrs. Carroll stated that even though she has been accused in the Press of trying to sell the water and sewer system, that is not how she is looking at it. She is looking at it as what is going to happen in five (5) years if the County pulls their customers out and if the Shores leave. The only spread sheet that she has seen says everything is going to be "fine and dandy" if they get the \$18 million dollars. She wants to see that spreadsheet if they put in \$2 million dollars then how "fine and dandy" are they going to be. If they get nothing, then how "fine and dandy" are they going to be.

Mr. Bolton explained that the \$18 million dollars will be part of Council's negotiations. The \$18 million dollars is what the value is going to be.

Mr. Hartman stated that this was the value as of November 16, 2010. He said that there is a threshold issue here. He said that exclusive service area is the City of Vero Beach. The City and the County have an agreement that states that the Town of Indian River Shores and the South Beach area are a part of the City's exclusive water and wastewater service areas (it is a 1989 agreement). The agreement has no terms and the City would have to release their service areas to the County for the County to purchase the South County area of the assets that they own. He said that with the Town of Indian River Shores there are two (2) franchise agreements. He said that one is for water and the other is for wastewater. Relevant to renewal with the Town of Indian River Shores, he would advise them to give notice by October 27, 2011.

Mrs. Carroll said that is November of this year so they must come to an agreement pretty rapidly.

Mr. Hartman continued by saying that is relevant to renewal and then it puts the onerous on the Town's decision making as to whether they are going to renew or not.

Mrs. Carroll added that is why she would like for them to have this joint meeting because this is only a few months away.

Mr. Hartman stated that even if the franchise is terminated and was not renewed with anyone they (Town of Indian River Shores) would buy wholesale from the City in regards to the present agreements and the present agreements have the City serving that area. The Town of Indian River Shores has gone through a briefing analysis and the various options on whether or not it is cost effective for them to serve themselves. Their finding was that it was not cost effective for them to run it themselves. Unless they change their own finding, the worse case scenario would be wholesale to the Town if the City did not release the service area. It is the City's choice as to whether or not they want to release those two (2) service areas.

Mrs. Carroll made a motion to ask Indian River Shores Town Council and the County Commission to sit down together at a table to hash these issues out.

Mrs. Turner stated that her only hesitation to date was that she was still not satisfied that they have sufficient financial information to make those decisions or to respond.

Mrs. Carroll asked how she would suggest that they receive that information.

Mrs. Turner hoped that would occur with them getting a new in-house Finance Director.

Mr. Falls added that they will be getting their study completed from GAI, which would give them the data that they need. This would enable the City to complete all of their scenarios and performas.

The motion died for lack of a second.

Mr. Heady expressed that part of the reason in making sure that the minutes are correct is if someone should refer to them in the future they need to know what took place at that meeting is accurate. Mr. Heady referred to Mrs. Carroll item (9A-5) and was concerned with a couple of things in it. The first was that the point person needs to be told of the meetings taking place. The Clerk has told them that she will notify the whole Council of any meetings that will be occurring. The other item that gave him some concern in the document was where it states that staff has made it very well known that they are not in favor of either transaction occurring (electric and water and sewer). He does not know of any staff member that has come up to the podium and made a public statement that they are not in favor of either transactions. He said that some time ago, Mr. Fletcher made a motion that it be the policy of this Council that the electric utilities was going to be sold and the motion passed 4-1. He said that if there is a staff member known who is not in favor of this and are putting obstacles in the way then he would like Mrs. Carroll to name the people and tell Council what they have done and what they are doing. This way Council and the City Manager can probably put an end to it. He wanted it on the record that unless there are some clear identification that there is some Councilmember who is out there saying that they don't want this transaction to happen and they are purposely doing something to stop it, this would be much different then having a staff member coming to them and saying that in their opinion this what the utilities are worth. He mentioned that there was a Finance Commission member who recently stood before the

Council and gave a presentation. The difference of opinion on some of these things is a lot different than staff taking a position. He said that it doesn't matter what side of an issue that you are on and one of the things that he would like to see when staff members come up to the podium and address this Council is that they give numbers that are accurate. He went back to the last presentation made a Finance Commission member and then they heard that a member from the public (Mr. Heran) was giving them wrong information. He asked for the public record from Palm Beach County and from Royal Palm as to whether or not the Finance Commission member was accurate in his assessment and the documents that he has seen so far demonstrate that Mr. Heran was correct and that the Finance Commission was giving them very incorrect information. He said that it is important for this Council as they move forward to have public debate and put out their opinions and put out information that they believe to be true. If they find information that is inaccurate (such as the Advisory presentation made to Council) then, as a Councilmember, one of the things that he wants to make sure that he does is to make a decision based on correct information and a decision based on financial analysis.

Mrs. Carroll noted that Mr. Heady asked her a few questions, but she could not remember at this point what the questions were.

Mr. Brian Heady excused himself from the meeting at 3:24 p.m. Before leaving he told Mrs. Carroll that she could answer his questions and he would review the answers when he returns.

Mrs. Carroll did not remember the questions that Mr. Heady asked. She continued by saying that Mr. Heady read part of what she put in her memo, but did not read the rest of the sentence which said "wanted to be notified of the meetings was that the general public who has made their feelings known that they are not in the last election, deserve to have representation at the negotiation table."

6. Status of expenses to consultant, legal subcontractor, meetings with regulatory agencies – Requested by Councilmember Carroll

This item was heard earlier in the meeting.

7. Status of Live Oak and Indian River Drive Improvements and public safety measures – Requested by Councilmember Carroll

Mrs. Carroll said there were a number of questions at the neighborhood meeting that took place last week as to why the signs were put up. She said that someone from the community accused her of favoritism because she had the signs put up in her own back yard. She read from the minutes of the neighborhood meeting that Mr. Falls reported that the project was originally for drainage and improvements and went through a number of different traffic calming policies. She said that she met with Mr. Falls prior to today's meeting regarding neighbors bringing their concerns to her. Mr. Falls told her at that time that he was not in favor of a cul-de-sac, but was in favor of speed tables and possibly an extended turn lane Southbound on A1A. Her comments to Mr. Falls were

that her concern was life safety throughout the area and that they needed to take the baseball park facility and the Park into consideration. She reported that she discussed these issues with Mr. Falls and that her concern was that any closure of Live Oak Road would follow traffic. She read from the minutes of a recent City Council meeting, “onto other streets in the neighborhood,” but she specifically mentioned Conn Way. She said that she has been accused of doing this for her own neighborhood because she lives on Live Oak Road, but her driveway is on Conn Way. She said that she was very concerned with the residual traffic throughout the rest of the neighborhood. She said that she asked for statistics on accidents that have occurred in the neighborhood and she has not yet seen that information. She asked if they put up no thru traffic signs, does the Police Department have the capability of fining people and was told that they could be given a ticket if the Police Officer follows the vehicle throughout the entire neighborhood. She asked if by Friday they could have a date for a public meeting and to begin sending out notices. She said it was obvious that the notices were very successful because they had over 100 people in attendance at the meeting. She said that at one point Mr. Heady made a motion to table the item, which she seconded and the motion passed unanimously. She read from the minutes that she commented that if they move forward with the drainage improvements that would close off Live Oak Road for a period of time and they would let everyone see if the traffic increases on other streets in the neighborhood. She asked Mr. Coment if it would be legal to put up signs and was told yes. She said that later in the meeting Mr. Coment noted that they would probably have problems with FDOT regarding “No Right Turn” signs on A1A and suggested going with a no thru traffic sign, which was put up as well. It was the consensus of the Council to move forward with this matter, but the motion died for lack of a second. She said that she did not see anywhere in the minutes where the Council approved putting up the no left turn sign.

Mr. Falls read from the minutes, “Mr. Heady stated that Mr. Falls understands what the public and the Council wants.” There was a motion and a second and the motion failed. But, it was his understanding that if there was a consensus of the Council that they don’t need a motion. The minutes reflect that the consensus of the Council was to move forward in the matter and that is what he did. If that is not what the Council wanted then it was his mistake. He felt that he was clear in his instructions to Council that they should move slowly, evaluate what they have done, and see the results of it. He said it was the consensus of Council to do that.

Mayor Kramer said that was absolutely correct. He said that in his discussions with Mr. Falls that he was warned about what might happen if they move forward with this. He is happy that they received a lot of involvement from the public.

Mrs. Carroll said that Council didn’t actually take a vote and yet there seemed to be a consensus that they move forward with the signs. She made a motion that the no left hand turn sign be removed and to progress forward with the evaluation of speed tables within the neighborhood. Mrs. Carroll did not have a problem with keeping the no thru traffic signs. Mrs. Turner seconded the motion.

Mr. Heady said that the City Manager seems to want to accept some blame and he would agree that he (Mr. Falls) is to blame for acting in conformance with what Council asked him to do. Mr. Heady felt that Mr. Falls was to blame for having been responsive to the citizens in neighborhood. He said that the consensus clearly was that Mr. Falls understood the long debate, which he thinks that he (Mr. Falls) did. Mr. Heady felt that the signs that went up accomplished exactly what they wanted to accomplish to the extent that they saw what a no left hand turn sign would do. They saw whether or not that would move traffic to other streets and whether or not the no thru traffic signs would decrease the use of Live Oak Road as a thoroughfare or a shortcut. He felt that it did exactly what they expected it to do in terms of giving them some information so that they know how to move forward. He understood the concerns about the no left hand turn sign and he did not have a problem if that sign is removed. He felt that long term, the neighborhood meeting and the input from the neighborhood was heard by Council and by staff. He felt that they were moving along pretty rapidly for government and he appreciated what staff has done and what the citizens in the neighborhood have done in terms of feedback with the Council. He said that they would come to some conclusions and some solutions, but everybody is not going to be happy.

Mayor Kramer wanted to clarify before they vote on the motion that Council would agree to speed tables, but they don't know where they are going to be placed.

Mrs. Turner said that they would continue the evaluation of speed tables.

Mrs. Carroll wanted the public to know that they, as a Council, are listening to the citizens. She said that she has been meeting with Mr. Falls since March on the drainage issue and what would take place. She said that one of the number one priorities of the City in terms of roads that needs work is Live Oak Road between Mockingbird and A1A. She felt that they were moving forward with that issue separate with what is going on with the traffic. She asked when is Live Oak Road expected to be closed.

Mr. Falls reported that the contract would be before Council in July. He noted that they wanted to hear from the citizens to make sure what they authorize would not be in conflict with what they decide to do. He felt that they need to get the drainage work done and then work on solving the traffic issues.

Mrs. Carroll asked are the sidewalks included in the contract.

Mr. Falls said the sidewalks would be pulled out of the contract. He said that he would work with the neighbors to see where they want the sidewalks and they could install the sidewalks in-house.

Mrs. Carroll asked what is the expected time that the one walk area of the road would be closed.

Mr. Falls thought that the entire project was a 120 day contract. He said that if they award the contract in July it should be finished before the holidays.

Mrs. Carroll said that would give them a time period to see if there is an impact with that lack of a connection and if there is increased traffic through the rest of the neighborhood.

The motion passed unanimously.

The Council adjourned for lunch at 12:10 p.m. and reconvened the meeting at 1:30 p.m.

7. Discussion of Status of Finance Department management – Requested by Councilmember Carroll

This item was discussed earlier in the meeting.

Mrs. Turner asked if Jackie Mitts was still on the payroll.

Mr. Falls answered yes.

8. Status of Grand Harbor and continuing electric outages – Requested by Councilmember Carroll

Mrs. Carroll reported that Mr. Tonkel attended their meeting this morning and said that the outages in Grand Harbor had slowed down, but the residents were still experiencing some problems. She asked about the incident report that has been requested.

Mr. Falls said that staff has come up with a draft incident report. They plan to take it before the Utilities Commission and get their comments and then bring it before City Council.

Mrs. Turner asked what value it would be to have the Utility Commission look at an incident report. She didn't know what they could add.

Mr. Falls did not want to bypass them on any utility matters.

Mrs. Turner suggested just sending a copy to the Utilities Commission.

Mr. Falls wanted their (Utility Commission) help in translating some language that would be easier for the public to understand.

Mrs. Carroll recalled that at the last meeting they were told that (2) two out of the (5) five switchgears had been replaced. There was still one (1) that is on order. She asked for an update on this.

Mr. Randall McCamish, Transmission and Distribution Director, reported that they used one of the switchgears in Indian River Shores, but still have some scheduling to replace the worse switchgear. They are looking at this again so they don't have to spend money that they don't have to.

Mrs. Carroll asked if there were any other neighborhoods showing this type of outage history.

Mr. McCamish said not to the extent of Grand Harbor.

Mrs. Carroll wondered how difficult it would be to develop a log of occurring problems.

Mr. McCamish informed Mrs. Carroll that would be part of the sheet that they are coming on (incident report).

Mrs. Carroll asked Mr. McCamish if FPL has asked for any of this data in their due diligence.

Mr. McCamish said that they have asked for everything.

Mr. Daige went back to the comments made by Mr. Heady earlier in the meeting about some conflicting information that was received. He expressed that the citizens must receive accurate information. He would like to see what wrong information was presented. He said that he will make his request in writing.

10. FPL Update – Requested by Councilmember Heady

B. New Business

1. Consideration of Referendum – Requested by Mayor Kramer

Mayor Kramer referred to page 14 of his backup material, which covered the maximum millage levy calculation. He said a lot of this revolves around the issue that they don't have the authority to raise their taxes more than 10% above the roll-back rate. The problem that this brings about is that they are dealing with an awful lot of issues, specifically in the utility side of City business. He said that if they move forward then they will have to either make or find some pretty significant cuts within the City or they will have to go through a referendum and ask the citizens of the City of Vero Beach for permission to raise taxes more than 10%. He said from what he sees either one of the utility sales will trigger a 10% tax or a cut in services, which they will have to let the public know about.

Mrs. Carroll interrupted the Mayor and said or they take dollars from the sell and attribute them back to financial income. However, they do not know what the dollars will be from the sale of the utilities.

Mrs. Turner added and what other streamlining efficiencies they will be able to do in the event that they sale the utilities. She said fleet management alone... Mayor Kramer asked to be able to finish his comments.

Mayor Kramer continued by saying what happens is if they decide they need to get rid of services they will need to notify the public. He said that if you want to call it streamlining or cutting that is fine. But, they need to package into these deals and tell the citizens of Vero Beach if they are going to be getting rid of services. He said that if they are going to ask for a tax increase then they need to be going for a referendum. He said that if they don't go for a referendum then they will have to go for cuts. The problem that they have is if they don't get enough money for their utility systems they won't be able to finance the difference to make up the transfer. He reiterated if they do not get enough money out of their sale of the utilities then they cannot raise taxes enough to make up for it.

Mrs. Turner agreed with the Mayor that in the event they sell the utilities it will be incumbent on them to let the taxpayers know what the impact is going to be on their budget. But, she still feels that it is a bit of a scare tactic and premature prior to them going through a full budget review. She said they will be looking at the number of vehicles they have in the utilities, which correlates to fleet management. She felt that there were many opportunities for reduction within the budget for Council to look at. She reiterated that to be going forward with a scare tactic is a little premature. They need to first get the facts and then they will be presented to the voters.

Mayor Kramer told Mrs. Turner that it was not a scare tactic. He said if you sell the system and you are not prepared and you cannot raise taxes then what areas do you cut. He said \$5.6 million dollars is a lot of money to come up with. They just need to be looking ahead for when it comes time to make a decision.

Mrs. Carroll commented that it seems that Mayor Kramer is insinuating that the City may need to raise taxes by more than 10%. She recalled that Mayor Kramer recently had an article in the newspaper where he wrote that the sale of the water and sewer utilities could raise their taxes by 22% or more. She felt this was a scare tactic when these numbers are not backed up with any documentation other than what was provided by their Water and Sewer Department who does not want the sale to take place. She is very concerned that they don't have the numbers and have not received the numbers. She hears that GAI is working on the numbers, they expect the County to give them numbers, and yet the Mayor is throwing out numbers like 10% and 22%.

Mayor Kramer asked Mrs. Carroll what numbers is she going to trust. He asked her if she would trust the numbers from GAI when they come in.

Mrs. Carroll said that she would look at GAI's numbers, Mr. Bolton's numbers, the County numbers, and staff's numbers and try to make a decision, which is what they do as Councilmembers.

Mayor Kramer wanted to know what numbers would she trust.

Mrs. Carroll told Mayor Kramer that what she would not trust is 22% because he wrote it in the newspaper.

Mayor Kramer stated that those numbers came from Steve Maillet their Finance Director and Rob Bolton their Water and Sewer Director.

Mrs. Carroll believed that was where the numbers came from.

Mayor Kramer said to Mrs. Carroll that she does not trust her own staff on this. He said that is fine.

Mrs. Turner recalled that Mayor Kramer made a statement at the Taxpayer's luncheon that he didn't trust the numbers of staff and he wanted to check them.

Mayor Kramer stated that he always checks the numbers and does his homework and wouldn't stand by the numbers if he didn't believe them.

2. Indian River Shores Franchise Agreement – Requested by Vice Mayor Turner

Mrs. Turner commented that in this matter that staff is setting policy and representing the City without Council approval. She said that the initial Indian River Shores agreement was brought to the former Council in October for review. It contained terms such as waiving a 10% surcharge fee permanently for Indian River Shores. It would include an increase of reuse, as well as them purchasing assets of Indian River Shores. In November after the Election, she requested from staff a financial on Indian River Shores (with Indian River Shores service and without it). She said until yesterday, she had not received any information. However, negotiations had continued with Indian River Shores as late as April without any direction from Council. Staff needs to remember that Council sets the policy. She said proceeding with negotiations without knowing the financial impact from the City is inconceivable. There have been statements made by the Water and Sewer Director that no reuse would be given to Indian River Shores if they did not renew their agreement with the City, which is essentially blackmail. She asked what the City would do with 2 million gallons of reuse water. She has asked the question if they could absorb it within the City and what additional capital infrastructure would be needed to do so. Should they reach an agreement with Indian River Shores, do they have the capacity to increase the reuse from 2 million gallons to 2 ½ million gallons in year 2014 and what is the capital required to do so. They do not have a City opinion on the assets that are in Indian River Shores. She said that in the County study they show any water assets within Indian River Shores revert back to Indian River Shores into the thirty (30) year franchise agreement. Apparently, it is Mr. Bolton's opinion that those assets that were constructed by Vero Beach will remain with Vero Beach. She wanted to see a legal opinion on that. She asked if the numbers given to Council were reviewed by the Finance Director.

Mr. Falls told her that they were numbers given to Council as soon as they were made available. The numbers are under review now by staff.

Mrs. Turner prepared a brief commentary that Council received this morning and this included some brief questions that she hoped would be addressed. She said that if any further negotiations are to go forward that it will not be until they have reviewed the financials.

Mrs. Carroll asked what are the next steps to get these numbers.

Mr. Falls said that the next step to validate the numbers is to get the appraisal from GAI.

Mrs. Turner noticed that this was a line item in their task for GAI. She wanted to know when they will be able to provide some information to Indian River Shores.

Mr. Hartman commented that relative to any negotiations between the City and the Town of Indian River Shores, he has not been representing the City relative to any negotiations on behalf of the City. To give them facts going back to last year they knew that Indian River Shores represented about \$3.3 million dollars worth of revenue to the City. Also, the loss of the 10% surcharge represented about a \$290,000 per year loss. The value of the assets presently at the time in August of 2010 was \$2.59 million dollars and then for the term and conditions associated with that there would be no reversions relative to the assets. Also, there was a waiver of the hydrant rental costs, which was \$50,000 per year. Associated with the sale was the payment of the cost not to exceed \$50,000, which was a one-time fee. He said that he gave all this information to the City last year.

Mrs. Turner said that the bottom line is, is the City better off with Indian River Shores or without them. She said those are the numbers that she wants to see.

Mr. Hartman stated that all he was doing was giving them facts. He is not advocating one way or the other the direction that they should take. That is Council's decision to make because they are the decision makers and he is not. The total revenue being \$3.3 million and dropping down to \$3 million dollars per year from the Town of Indian River Shores does provide a spread for the City. If you look at the overall situation, he said from a financial aspect they would be making about \$600,000 more with Indian River Shores than without them.

Mrs. Carroll requested the Clerk to provide this document to all of the Council.

3. Request HR post for position of City Attorney – Requested by Councilmember Carroll

Mrs. Carroll mentioned that she put this item on the agenda before she knew that Mr. Coment was going to extend his contract. She felt that the following issues are of utmost importance to the City of Vero Beach. There is a concern over the long-term status of the Acting City Attorney, who was currently seeking other employment. She felt that City Council needs to hire a permanent Charter Officer. Her solution would be to request the Interim City Manager have the Human Resource Department post and begin the search for a City Attorney as per the Charter. The current Acting City Attorney is welcome to

apply. Experience in transactional, corporate, and Human Resource law will be looked upon favorably. She said that it has been a long time since Mr. Vitunac left the City and they need to move forward in having someone hired permanently in this position.

Mr. Fletcher agreed with advertising for this position.

Mrs. Carroll made a motion to request that the Human Resource Department post for this position of City Attorney. Mr. Fletcher seconded the motion.

Mrs. Turner will make sure that the Human Resource Director receives the different places that the County posted the job opening when they were searching for a County Attorney.

Mrs. Carroll commented that some of the legal projects that are coming up are removing themselves from the OUC contract, the acquisition with FPL and in the LOI that is currently being discussed that FPL has a list of ten (10) to fifteen (15) attorneys working for them on their behalf. She said as they heard today that Mr. Gray Robinson is not negotiating for the City so it is very important that they have an attorney or someone that can negotiate on their behalf. She expressed the need to fully staff the Attorney's office.

Mrs. Turner wondered if they needed to establish a salary for this position and how were they going to handle the resumes once Human Resources receives them.

Mr. Fletcher felt that they should handle the process like they did for the City Manager.

Mr. Robert Anderson, Human Resource Director, explained that there are salary tables available, which he will provide to Council. He will also give them a copy of the job description and a proposed salary range for them to consider for the new City Attorney.

The motion passed 3-1, with Mayor Kramer voting no.

4. **Elimination of Election Fee – Requested by Councilmember Heady**
5. **Proper uses of Channel 13 – Requested by Councilmember Heady**
6. **Referendum of Sale of Electric – Requested by Councilmember Heady**
7. **Use of Consultants and possible cuts – Requested by Councilmember Heady**
8. **Needed cuts in budget (elimination of employee positions) – Requested by Councilmember Heady**
9. **Live Oak Solution – Requested by Councilmember Heady**
10. **Scan Documents/Note Books – Requested by Councilmember Heady**

These items were not discussed at today's meeting.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

- A. **Mayor Jay Kramer's Matters**
 1. **Correspondence**

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

Mayor Kramer reported that he received about one hundred letters from fourth graders of Beachland Elementary thanking him for speaking to them and some of the students asked him some questions. He also spoke at the Taxpayers luncheon, attended the Hurricane Expo, attended the Muscular Dystrophy lockup event and the Republican barbeque held over the weekend.

B. Vice Mayor Pilar Turner's Matters

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

Mrs. Turner asked for an update with the Go-line bus hub.

Mr. Falls informed her that he was told that an email came in from Karen Diegel today, but he has not had a chance to look at it yet. Mrs. Vock added that she has been asked to set up meetings for each Councilperson to meet one on one with Ms. Diegel.

Mrs. Turner asked the City Manager that they forego trash pickup on holidays because of the triple time that the employees receive. She made that in form of a motion. Mrs. Carroll seconded the motion.

Mayor Kramer mentioned that they don't usually make motions under Individual Councilmembers' Matters.

Mrs. Turner was under the impression that they had dispensed with holiday pickups.

Mr. Falls explained that in the past that when the landfill has been closed on a holiday then there is no trash pickup.

Mrs. Turner said regardless of whether or not the landfill is open she did not feel that they needed to have trash pickup on holidays.

Mr. Falls reported that there will be no trash pickup on July 4th.

Mrs. Turner thanked the Republican Women's Club for providing new flags to the City of Vero Beach.

Mr. Turner thanked Mulligan's for hosting the City beach trash pick up. She also reminded everyone not to forget to vote so that the Heritage Center will receive their grant.

C. Councilmember Tracy Carroll's Matters

- 1. Correspondence**

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

Mrs. Carroll expressed that there were some teenagers who produced a video highlighting the great scenes in Vero Beach. They were given permission to close off Ocean Drive in order for them to produce the video. She said that the video can be seen on Youtube under Lipdub.

Mrs. Carroll met with Mr. David Risinger concerning some invasive plant species within City owned Parks. She gave a copy of the letter to the Recreation Director and then received a note from the Clerk saying that the letter had been forwarded to the City Manager and the T&D Director. She wondered why it went to the T&D Director.

Mr. Falls explained that in Mr. Risinger's letter he mentioned tree trimming, which is the budget that resides in tree maintenance. If Mr. Risinger tells them the areas that he is interested in maybe the City can work at attacking some of these plant species.

Mrs. Carroll thanked him for taking care of this.

Mrs. Carroll reported that there will be another Youth sailing meeting coming up.

Mrs. Carroll attended the Recreation Commission meeting where they talked about banning smoking at City Parks and Beaches. She said that the Recreation Commission will continue discussing this matter at their next meeting.

D. Councilmember Brian Heady's Matters

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

E. Councilmember Craig Fletcher's Matters

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

Mr. Fletcher forwarded a list to each Councilmember of the MPO current projects and explained that there are no plans to six lane Indian River Boulevard. There are plans however to do sidewalks and repaving.

Mr. Fletcher reported that he attended the Treasure Coast Regional Planning Council meeting and he has forwarded a copy of the new census to everyone. He said that it has some interesting numbers in it. The City of Vero Beach was down 14% in their population. There was also someone from FPL at the meeting going over some of their long range plans.

11. ADJOURNMENT

Today's meeting adjourned at 4:07 p.m.

/tv



9 B-10)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 6.21.2011 **Priority** ___ **of** ___

Title: Reduction in work load of staff and paper reduction.

Summary: Discussion for possible action on suggestions from City Clerk on staff time and possible paper use reduction.

Public need or issue addressed: A discussion in the public eye relating to benefits of use of new technology.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None



9B-4)

Addendum to the City Council Meeting Agenda

Author: BTH Council Meeting Date: 6.15.2011 Priority ___ of ___

Title: Elimination of Election fees

Summary: Discussion for possible action

Public need or issue addressed: A discussion in the public eye concerning the fee charged to candidates for election to city office.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None



9.B-8)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 6.21.2011 **Priority** ____ **of** ____

Title: Saving tax dollars and balancing future budgets.

Summary: Discussion for possible action on reducing cost without reducing staff.

Public need or issue addressed: A discussion in the public eye concerning the continued tax burden and income shortages.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None

d(1)-2)



City Council Agenda Item

Meeting of June 21, 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 6/14/11*

DATE: June 14, 2011

SUBJECT: Humiston Park Improvements
Recommendation of Project Acceptance and Final Payment
City of Vero Beach Project No. 2003-22

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

VIA: William B. Messersmith, PE, Assistant City Engineer *WBM
6/14/11*
DEPT: Public Works

FROM: Matthew Mitts, Civil Engineer II *WBM
6/14/11*
DEPT: Public Works

DATE: June 14, 2011

**RE: Humiston Park Improvements
Recommendation of Project Acceptance and Final Payment
City of Vero Beach Project No. 2003-22**

Recommendation:

- Place this item on the City Council's agenda for June 21, 2011;
- Accept the project and approve Final Pay Estimate No. 11 for \$42,550.53.

Funding:

Funding will come from the \$1,000,000 received from Flamevine Properties I, LLC.

Background:

This project was for the improvements to Humiston Park that included a new parking lot, parking and a pedestrian walkway along Ocean Drive, and landscaping within the park. Project funding was from a \$1,000,000 commitment the developers of Ocean Park, Flamevine Properties I, LLC, agreed to as part of their site plan approval.

On April 22, 2008 Council approved the referenced project. Notice to Proceed was issued July 31, 2009 and work began on Monday, July 27, 2009. Flamevine Properties managed a contractor, Palm Coast Development, to complete the park improvements. Ten progress payments have been issued to Flamevine Properties to date for a total of \$895,460.15.



The project has been inspected and we confirm that it was constructed in accordance with the site plan requirements and \$938,010.68 represents the total amount of work completed. Therefore, we recommend final payment in the amount of \$42,550.53.

This action will leave a balance of \$61,988.32 of which \$57,728.31 is proposed for reimbursement to various City Departments for their costs. The remaining \$4,261.01 is proposed to be used for replacement of plant materials damaged by the cold weather.

We have attached a signed original final pay request. By copy of this correspondence (with attachment) to Steve Maillet, Finance Director we are notifying him of this action.

Attachment

cc: Steve Maillet, Finance Director, w/attachment
Stephen W. Mulvey, Flamevine Properties, LLC

WBM:MTM/ntn

V:\LAND_PROJECTS\2003\2003-22 Humiston Park\Docs\Agenda_Acceptance & Final Pay_MFalls_June 062011.docx

Flamevine Properties I, LLC

INVOICE SUMMARY NO.
PROJECT NAME
CONTRACTOR

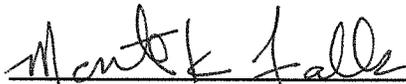
11
Humiston Park Improvements
Palm Coast Florida Commercial Development

Send To: Flamevine Partners

AGENCY: City of Vero Beach, 1053 20th Place, Vero Beach, FL 32960

| | | | |
|---|------------------|----|---|
| Project Work Period: | <u>17-Sep-10</u> | to | <u>31-May-11</u> (Ending date of billing period) |
| (Documentation of project costs attached) TOTAL ESTIMATED PROJECT COST | | | \$ <u>1,000,000.00</u> |
| MAXIMUM PARTICIPATION PER LOC #3092698 | | | \$ <u>1,000,000.00</u> |
| TOTAL ELIGIBLE PROJECT COSTS INCURRED TO DATE | | | \$ <u>938,010.68</u> |
| AMOUNT PREVIOUSLY RELEASED | | | \$ <u>895,460.15</u> |
| AMOUNT TO BE RELEASED PER THIS INVOICE PERIOD | | | \$ <u>42,550.53</u> |
| TOTAL AMOUNT RELEASED | | | \$ <u>938,010.68</u> |
| AMOUNT REMAINING FOR RELEASE | | | \$ <u>61,989.32</u> |

I certify, under penalties of perjury, that the Agency has complied with the provisions of this Agreement:

Signed: 
Monte K. Falls, PE, Public Works Director

Date: 6/14/11

COST SUMMARY

HUMISTON PARK IMPROVEMENTS

Flamevine Properties I, LLC

| INVOICE DATE | INVOICE # | INVOICE AMOUNT | TOTAL TO DATE | TOTAL REMAINING |
|-------------------------|----------------------|---------------------------|--------------------------|----------------------------|
| 10-Aug-09 | 1 | \$ 99,340.00 | \$ 99,340.00 | \$ 900,660.00 |
| 10-Sep-09 | 2 | \$ 77,610.00 | \$ 176,950.00 | \$ 823,050.00 |
| 07-Oct-09 | 3 | \$ 31,245.60 | \$ 208,195.60 | \$ 791,804.40 |
| 28-Oct-09 | 4 | \$ 46,393.40 | \$ 254,589.00 | \$ 745,411.00 |
| 22-Dec-09 | 5 | \$ 160,348.55 | \$ 414,937.55 | \$ 585,062.45 |
| 14-Jan-10 | 6 | \$ 190,559.56 | \$ 605,497.11 | \$ 394,502.89 |
| 09-Feb-10 | 7 | \$ 145,103.73 | \$ 750,600.84 | \$ 249,399.16 |
| 16-Mar-10 | 8 | \$ 16,677.30 | \$ 767,278.14 | \$ 232,721.86 |
| 16-Sep-10 | 9 | \$ 93,042.33 | \$ 860,320.47 | \$ 139,679.53 |
| 26-Oct-10 | 10 | \$ 35,139.68 | \$ 895,460.15 | \$ 104,539.85 |
| 06-Jun-11 | 11 | \$ 42,550.53 | \$ 938,010.68 | \$ 61,989.32 |
| | | \$ 938,010.68 | | |



City Council Agenda Item

Meeting of June 21, 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 *MKFLLS*

DATE: June 14, 2011 *6/14/11*

SUBJECT: Final Payment and Project Acceptance
Force Main from WWTP to WTP and
Reuse Water Main - Royal Palm Pointe to Country Club Drive
COVB Project No. WS07014
Contract No. 1483

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

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

VIA: Robert Bolton, PE, Director *RB.*
DEPT: Water & Sewer

FROM: Scott R. Sanders, PE, Civil Engineer III
DEPT: Public Works *SRS*

DATE: June 14, 2011 *6/14/11*

RE: **Final Payment and Project Acceptance
Force Main from WWTP to WTP and
Reuse Water Main from Royal Palm Pointe to Country Club Drive
COVB Project No. WS07014
Contract No. 1483**

Recommendation:

- Place this item on the June 21, 2011 City Council agenda;
- Accept the project and approve final payment in the amount of \$56,689.37.

Funding:

Funding for this project is from a State Revolving Fund (SRF) Loan No. WW310201.

Background:

This contract was awarded by City Council on September 8, 2009 to SPS Contracting, Inc. of Vero Beach in the amount of \$2,396,841.58. The project consisted of constructing a 24" force main along Indian River Boulevard and the Main Relief Canal from the Wastewater Treatment Plant to the Water Treatment Plant as a route for excess reclaimed water to be pumped to the Deep Injection Well. It also included a pressurized 24" reuse main constructed from the intersection of Indian River Boulevard and Royal Palm Pointe northward, then westward along the Main Relief Canal to the Vero Beach Country Club.



Additional work due to existing conditions and FDOT requirements along with changes in the approach taken to complete various contract elements resulted in change orders totaling \$437,626.74 and a final contract price of \$2,834,468.32.

Work was completed on this project on September 5, 2010. On January 18, 2011 City Council approved the final change order which reconciled as-built quantities and reduced the retainage being held to 2%. Since that time the contractor has worked toward making final payments to their subcontractors and suppliers, as well as clearing up additional contract items required by the funding source.

This project has been inspected and we confirm that it was constructed in accordance with the contract requirements and that \$2,834,468.32 represents the total amount of work completed. Therefore, we recommend final payment in the amount of \$56,689.37.

Upon Council's acceptance of this project, the one-year warranty period will begin.

We have attached one copy of the final pay request and the Contractor's Final Request for Payment affidavit. By copy of this correspondence (with attachments) to Steve Maillet, Finance Director, we are notifying him of this action.

Attachments

SRS:RB/ntn

| | | |
|---|--|---------------------------------|
| PROJECT NAME: Force Main from WWTP to WTP & Reuse Water Main from RPP to Country Club Dr | | Contract Date: 12/11/2009 |
| PERIODIC ESTIMATE FOR PARTIAL PAYMENT | | Notice to Proceed: 01/19/2010 |
| Prepared by: CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS | | Total Contract Time: 270 Days |
| Account Number: 423.9000.536.601382 | | Elapsed Contract Time: 230 Days |
| Project Number: WS07014 /PW #2009-06 | | % of Contract Time: 85.19% |
| Name and Address of Contractor: SPS Contracting, Inc. 9015 Americana Rd, Suite 1, Vero Beach, FL 32966 | | |

PERIODIC ESTIMATE No. 9 & Final FOR PERIOD: September 5, 2010 through June 10, 2011

Entries must be limited to work and costs under the original contract only. (Work and cost data under change orders is to be shown in Part 2 of this form.) Columns (1) through (5) - Data shown is the proposal of the original executed contract. Column (6) is provided by the Consultant or Engineer in agreement with the Contractor. Columns (7) through (9) are calculated from Columns (3) through (5)

| Item No. | DESCRIPTION OF ITEM (2) | CONTRACT | | | | COMPLETED TO DATE | | | | |
|---------------------------------------|---|-----------------|-------|----------------------|------------------------|-------------------|-----------------------------|------------------------|-------------------------|----------------|
| | | Quantity (3) | Units | Cost Per Unit (4) | Total Unit Cost (5) | Quantity (6) | Total Cost Stored Materials | Total Unit Cost (7) | Uncompleted Work (8) | % Comp. (9) |
| Section A - Potable Water Main | | | | | | | | | | |
| A1. | Furnish & Install PVC Water Main (C900 DR-18 CL150 BLUE) (Item to include Trace Wire) | | | | | | | | | |
| (a) | 2-inch (SDR21) | 100 | LF | \$6.00 | | | | | | |
| | Labor | 100 | LF | \$5.61 | \$561.00 | 46 | | \$258.06 | (\$302.94) | 46% |
| | Material | 100 | LF | \$0.39 | \$39.00 | 46 | \$17.94 | | (\$21.06) | 46% |
| (b) | 4-inch | 130 | LF | \$7.50 | | | | | | |
| | Labor | 130 | LF | \$5.78 | \$751.40 | 41 | | \$236.98 | (\$514.42) | 32% |
| | Material | 130 | LF | \$1.72 | \$223.60 | 41 | \$70.52 | | (\$153.08) | 32% |
| (c) | 6-inch | 100 | LF | \$9.35 | \$935.00 | 119 | | \$1,112.65 | \$0.00 | 119% |
| (d) | 8-inch | 620 | LF | \$12.00 | | | | | | |
| | Labor | 620 | LF | \$6.25 | \$3,875.00 | 463 | | \$2,893.75 | (\$981.25) | 75% |
| | Material | 620 | LF | \$5.75 | \$3,565.00 | 463 | \$2,662.25 | | (\$902.75) | 75% |
| (e) | 10-inch | 30 | LF | \$15.40 | \$462.00 | 0 | | \$0.00 | (\$462.00) | 0% |
| | Labor | 30 | LF | | | | | | | |
| | Material | 30 | LF | | | | | | | |
| (f) | 12-inch | 2,640 | LF | \$18.45 | | | | | | |
| | Labor | 2,640 | LF | \$6.13 | \$16,183.20 | 3051 | | \$18,702.63 | \$0.00 | 116% |
| | Material | 2,640 | LF | \$12.32 | \$32,524.80 | 3051 | \$37,588.32 | | \$0.00 | 116% |
| A2. | Furnish & Install Horizontal Directional Boring (HDPE-DR11)(BLUE) | | | | | | | | | |
| (a) | 8-inch | 150 | LF | \$38.40 | | | | | | |
| | Labor | 150 | LF | \$31.37 | \$4,705.50 | 0 | | \$0.00 | (\$4,705.50) | 0% |
| | Material | 150 | LF | \$7.03 | \$1,054.50 | 0 | \$0.00 | | (\$1,054.50) | 0% |
| (b) | 12 inch | 400 | LF | \$69.50 | | | | | | |
| | Labor | 400 | LF | \$55.01 | \$22,004.00 | 0 | | \$0.00 | (\$22,004.00) | 0% |
| | Material | 400 | LF | \$14.49 | \$5,796.00 | 0 | \$0.00 | | (\$5,796.00) | 0% |
| A3. | Remove Existing Water Main (Item to include all existing valves, fittings, service saddles, etc.) | | | | | | | | | |
| (a) | 8" | 30 | L.F. | \$7.00 | \$210.00 | 379 | | \$2,653.00 | \$0.00 | 1263% |
| (b) | 10" | 900 | L.F. | \$7.75 | \$6,975.00 | 542 | | \$4,200.50 | (\$2,774.50) | 60% |
| (c) | 16" | 30 | L.F. | \$12.00 | \$360.00 | 0 | | \$0.00 | (\$360.00) | 0% |
| A4. | Furnish & Install Resilient Seat Gate Valve (Item to include installation of retainer glands, bolts, and gaskets for each side of valve for D.I. or PVC pipe) | | | | | | | | | |
| (a) | 4-inch | 5 | EA. | \$560.00 | \$2,800.00 | 4 | | \$2,240.00 | (\$560.00) | 80% |
| (b) | 6-inch | 7 | EA. | \$690.00 | \$4,830.00 | 11 | | \$7,590.00 | \$0.00 | 157% |
| (c) | 8-inch | 7 | EA. | \$970.00 | \$6,790.00 | 8 | | \$7,760.00 | \$0.00 | 114% |
| (e) | 12-inch | 3 | EA. | \$1,915.00 | \$5,745.00 | 7 | | \$13,405.00 | \$0.00 | 233% |
| A5. | Furnish & Install Tapping Sleeve, Valve, and retainer gland (Item to include Pressure Test) | | | | | | | | | |
| (a) | 6" x 6" | 1 | EA. | \$1,780.00 | \$1,780.00 | 1 | | \$1,780.00 | | 100% |
| (b) | 16" x 8" | 1 | EA. | \$2,683.00 | \$2,683.00 | 0 | | \$0.00 | (\$2,683.00) | 0% |
| (c) | 16" x 10" | 1 | EA. | \$3,500.00 | \$3,500.00 | 0 | | \$0.00 | (\$3,500.00) | 0% |
| A6. | Furnish & Install Fittings (Cement Lined Interior) (Item to include installation of retainer glands, bolts, and gaskets for all sides of fitting for D.I. & PVC pipe) | | | | | | | | | |
| 45 Bend M.J. | | | | | | | | | | |
| (a) | 4-inch | 4 | EA. | \$163.50 | \$654.00 | 0 | | \$0.00 | (\$654.00) | 0% |
| (c) | 8-inch | 6 | EA. | \$251.00 | \$1,506.00 | 14 | | \$3,514.00 | \$0.00 | 233% |
| (d) | 10-inch | 2 | EA. | \$390.50 | \$781.00 | 0 | | \$0.00 | (\$781.00) | 0% |
| (e) | 12-inch | 2 | EA. | \$503.40 | \$1,006.80 | 14 | | \$7,047.60 | \$0.00 | 700% |
| 90 Bend | | | | | | | | | | |
| (b) | 6-inch | 6 | EA. | \$211.00 | \$1,266.00 | 8 | | \$1,688.00 | \$0.00 | 133% |
| Tees | | | | | | | | | | |
| (a) | 8" x 6" | 7 | EA. | \$416.00 | \$2,912.00 | 3 | | \$1,248.00 | (\$1,664.00) | 43% |
| (b) | 12" x 4" | 5 | EA. | \$590.00 | \$2,950.00 | 4 | | \$2,360.00 | (\$590.00) | 80% |
| (c) | 12" x 6" | 1 | EA. | \$647.00 | \$647.00 | 2 | | \$1,294.00 | \$0.00 | 200% |
| (d) | 12" x 8" | 7 | EA. | \$735.00 | \$5,145.00 | 6 | | \$4,410.00 | (\$735.00) | 86% |
| (e) | 12" | 1 | EA. | \$925.00 | \$925.00 | 2 | | \$1,850.00 | \$0.00 | 200% |
| Reducers | | | | | | | | | | |
| (a) | 8" x 6" | 7 | EA. | \$267.00 | \$1,869.00 | 7 | | \$1,869.00 | \$0.00 | 100% |
| (b) | 12" x 8" | 2 | EA. | \$410.00 | \$820.00 | 2 | | \$820.00 | \$0.00 | 100% |
| (c) | 16" x 12" | 1 | EA. | \$970.00 | \$970.00 | 1 | | \$970.00 | \$0.00 | 100% |
| Sleeves (Long Body) | | | | | | | | | | |
| (a) | 6-inch | 7 | EA. | \$242.50 | \$1,697.50 | 7 | | \$1,697.50 | \$0.00 | 100% |
| (b) | 8-inch | 3 | EA. | \$302.70 | \$908.10 | 1 | | \$302.70 | (\$605.40) | 33% |
| (c) | 10-inch | 1 | EA. | \$448.00 | \$448.00 | 0 | | \$0.00 | (\$448.00) | 0% |
| Caps | | | | | | | | | | |
| (a) | 4-inch | 5 | EA. | \$110.00 | \$550.00 | 4 | | \$440.00 | (\$110.00) | 80% |
| A7. | Furnish & Install Megalug Bell Restraints (Series 1500) on New Slip-on Joint PVC Pipe | | | | | | | | | |
| (a) | 6-inch | 1 | EA. | \$85.00 | \$85.00 | 2 | | \$170.00 | \$0.00 | 200% |
| (b) | 8-inch | 22 | EA. | \$100.00 | \$2,200.00 | 12 | | \$1,200.00 | (\$1,000.00) | 55% |
| (c) | 12-inch | 10 | EA. | \$165.00 | \$1,650.00 | 42 | | \$6,930.00 | \$0.00 | 420% |

| PROJECT NAME: Force Main from WWTP to WTP & Reuse Water Main from RPP to Country Club Dr | | | | | | Contract Date: 12/11/2009 | | | | |
|--|--|-----------------|--------------------|----------------------|------------------------|---|-----------------------------|------------------------------|-------------------------|----------------|
| PERIODIC ESTIMATE FOR PARTIAL PAYMENT | | | | | | Notice to Proceed: 01/19/2010 | | | | |
| Prepared by: CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS | | | | | | Total Contract Time: 270 Days | | | | |
| Account Number: 423.9000.536.601362 | | | | | | Elapsed Contract Time: 230 Days | | | | |
| Project Number: WS07014 /PW #2009-06 | | | | | | % of Contract Time: 85.19% | | | | |
| Name and Address of Contractor: SPS Contracting, Inc. | | | | | | | | | | |
| 9015 Americana Rd, Suite 1, Vero Beach, FL 32966 | | | | | | | | | | |
| PERIODIC ESTIMATE No. 9 & Final | | | FOR PERIOD: | | | September 5, 2010 | | through June 10, 2011 | | |
| <p>Entries must be limited to work and costs under the original contract only. (Work and cost data under change orders is to be shown in Part 2 of this form.) Columns (1) through (5) - Data shown is the proposal of the original executed contract.</p> | | | | | | <p>Column (6) is provided by the Consultant or Engineer in agreement with the Contractor. Columns (7) through (9) are calculated from Columns (3) through (6)</p> | | | | |
| Item No. | DESCRIPTION OF ITEM (2) | CONTRACT | | | | COMPLETED TO DATE | | | | |
| | | Quantity (3) | Units | Cost Per Unit (4) | Total Unit Cost (5) | Quantity (6) | Total Cost Stored Materials | Total Unit Cost (7) | Uncompleted Work (8) | % Comp. (9) |
| A8. | Furnish & Install Connections to Existing Water Mains | | | | | | | | | |
| | (a) 2-inch | 5 | EA. | \$50.00 | \$250.00 | 1 | | \$50.00 | (\$200.00) | 20% |
| | (b) 6-inch | 7 | EA. | \$100.00 | \$700.00 | 7 | | \$700.00 | \$0.00 | 100% |
| | (c) 8-inch | 3 | EA. | \$175.00 | \$525.00 | 2 | | \$350.00 | (\$175.00) | 67% |
| | (d) 16-inch | 1 | EA. | \$550.00 | \$550.00 | 1 | | \$550.00 | \$0.00 | 100% |
| A9. | Furnish & Install Fire Hydrant Assembly (Item to include Fire hydrant, Tee, Valve, Anchor Coupling, Restraints and Valve Box) (constructed in conjunction with water main) | 7 | EA. | \$3,150.00 | \$22,050.00 | 7 | | \$22,050.00 | \$0.00 | 100% |
| A10. | Install & Remove Temporary Bacteriological Sample Point & Blowoff Assembly | 7 | EA. | \$490.00 | \$3,430.00 | 20 | | \$9,800.00 | \$0.00 | 286% |
| A11. | Install & Remove Temporary Jumper Connection - 2" for 2"-12" mains | 1 | EA. | \$575.00 | \$575.00 | 1 | | \$575.00 | \$0.00 | 100% |
| | TOTAL SECTION A (Items A1. thru A11.) | | | | \$185,423.40 | | \$40,339.03 | \$134,718.37 | (\$50,705.03) | |

PROJECT NAME: Force Main from WWTP to WTP & Reuse Water Main from RPP to Country Club Dr

PERIODIC ESTIMATE FOR PARTIAL PAYMENT
 Prepared by: CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS
 Account Number: 423.9000.536.601382
 Project Number: WSO7014 /PW #2009-08
 Contract Date: 12/11/2009
 Notice to Proceed: 01/19/2010
 Total Contract Time: 270 Days
 Elapsed Contract Time: 230 Days
 % of Contract Time: 85.19%

Name and Address of Contractor: SPS Contracting, Inc.
 9015 Americana Rd, Suite 1, Vero Beach, FL 32966

PERIODIC ESTIMATE No. 9 & Final FOR PERIOD: September 5, 2010 through June 10, 2011

Entries must be limited to work and costs under the original contract only. (Work and cost data under change orders is to be shown in Part 2 of this form.) Columns (1) through (5) - Data shown is the proposal of the original executed contract. Column (6) is provided by the Consultant or Engineer in agreement with the Contractor. Columns (7) through (9) are calculated from Columns (3) through (6)

| Item No. | DESCRIPTION OF ITEM (2) | CONTRACT | | | | COMPLETED TO DATE | | | |
|---|--|-----------------|-------|----------------------|------------------------|-------------------|------------------------|-------------------------|----------------|
| | | Quantity (3) | Units | Cost Per Unit (4) | Total Unit Cost (5) | Quantity (6) | Total Unit Cost (7) | Uncompleted Work (8) | % Comp. (9) |
| Section B - Restoration | | | | | | | | | |
| B1. | Excavation & Disposal of Existing Pavement | 390 | CY | \$9.50 | \$3,705.00 | 1,710 | \$16,245.00 | \$0.00 | 438% |
| B2. | Furnish & Install Coquina Rock Base Including Prime (6" Depth) | 6,275 | SY | \$8.45 | \$53,023.75 | 4,557 | \$38,506.65 | (\$14,517.10) | 73% |
| B3. | Furnish & Install Coquina Rock Base Including Prime (8" Depth) | 10 | SY | \$18.00 | \$180.00 | 0 | \$0.00 | (\$180.00) | 0% |
| B4. | Furnish & Install Pavement Surface Replacement | | | | | | | | |
| | (a) Temporary Asphalt | 280 | SY | \$7.00 | \$1,960.00 | 0 | \$0.00 | (\$1,960.00) | 0% |
| | (b) S-3 Asphalt (1") | 6,835 | SY | \$6.15 | \$42,035.25 | 9,379 | \$57,680.85 | \$0.00 | 137% |
| | (c) S-3 Asphalt Overlay (1") (4025 sy - Water Main Portion) | 7,376 | SY | \$6.05 | \$44,624.80 | 14,165 | \$85,698.25 | \$0.00 | 192% |
| | (e) Additional S-3 Asphalt | 5 | TN | \$125.00 | \$625.00 | 10 | \$1,250.00 | \$0.00 | 200% |
| | (f) Concrete Sidewalk (4") | 60 | SY | \$27.00 | \$1,620.00 | 1,352 | \$36,504.00 | \$0.00 | 2253% |
| | (g) Concrete Driveway (6") | 1,210 | SY | \$25.00 | \$30,250.00 | 110 | \$2,750.00 | (\$27,500.00) | 9% |
| | (h) Concrete Curb | | | | | | | | |
| | 1. Curb and Gutter (2' Wd)(Type "F") | 530 | LF | \$9.50 | \$5,035.00 | 208 | \$1,976.00 | (\$3,059.00) | 39% |
| | 2. Type "D" Curb | 545 | LF | \$7.25 | \$3,951.25 | 148 | \$1,073.00 | (\$2,878.25) | 27% |
| B5. | Furnish & Install Unpaved Driveway Restoration | 4,960 | SY | \$1.75 | \$8,680.00 | 0 | \$0.00 | (\$8,680.00) | 0% |
| B6. | Furnish & Install Miscellaneous Materials | | | | | | | | |
| | (a) Coarse Sand | 10 | CY | \$8.55 | \$86.50 | 18 | \$155.70 | \$0.00 | 180% |
| | (b) Unclassified Fill | 850 | CY | \$5.95 | \$5,057.50 | 2,000 | \$11,900.00 | \$0.00 | 235% |
| | (c) #57 Rock | 10 | CY | \$28.00 | \$280.00 | 1,334 | \$37,418.70 | \$0.00 | 13340% |
| | (d) Shell Rock | 300 | CY | \$9.95 | \$2,985.00 | 1,432 | \$14,248.40 | \$0.00 | 477% |
| | (e) Extra Concrete | 10 | CY | \$125.00 | \$1,250.00 | 23 | \$2,875.00 | \$0.00 | 230% |
| B7. | Furnish & Install Sod Replacement | | | | | | | | |
| | (a) Bahia | 6,000 | SY | \$1.30 | \$7,800.00 | 18,254 | \$23,730.20 | \$0.00 | 304% |
| | (b) Floratam | 1,000 | SY | \$2.25 | \$2,250.00 | 2,930 | \$6,592.50 | \$0.00 | 293% |
| | (c) Golf grass | 4,500 | SY | \$2.95 | \$13,275.00 | 0 | \$0.00 | (\$13,275.00) | 0% |
| B8. | Furnish & Install Seed and Mulch | 10,000 | SY | \$0.35 | \$3,500.00 | 11,667 | \$4,083.45 | \$0.00 | 117% |
| B9. | Rock Removal | 3,800 | CY | \$7.50 | \$28,500.00 | 546 | \$4,095.00 | (\$24,405.00) | 14% |
| B10. | Unclassified Excavation | 200 | CY | \$1.75 | \$350.00 | 200 | \$350.00 | \$0.00 | 100% |
| B11. | Removal & Replacement of Unsuitable Material | 1,000 | CY | \$7.75 | \$7,750.00 | 7,534 | \$58,388.50 | \$0.00 | 753% |
| B12. | Furnish and Install Pavement Markings | | | | | | | | |
| | (a) Centerline (Double Lines) - WM=1655 | 3,190 | LF | \$1.68 | \$5,359.20 | 3,190 | \$5,359.20 | \$0.00 | 100% |
| | (b) Edge of Road - WM=3091 | 6,531 | LF | \$0.84 | \$5,486.04 | 6,531 | \$5,486.04 | \$0.00 | 100% |
| | (c) Lane Divider | 36 | LF | \$0.84 | \$30.24 | 36 | \$30.24 | \$0.00 | 100% |
| | (d) Stop Bars - WM=6 | 10 | EA | \$78.00 | \$780.00 | 10 | \$780.00 | \$0.00 | 100% |
| | (e) Cross Walk (Individual Line) | 38 | LF | \$2.10 | \$79.80 | 38 | \$79.80 | \$0.00 | 100% |
| | (f) Parking Stalls (Individual Line) | 532 | LF | \$0.95 | \$505.40 | 532 | \$505.40 | \$0.00 | 100% |
| | (g) Turn Arrows | 2 | EA | \$53.00 | \$106.00 | 2 | \$106.00 | \$0.00 | 100% |
| B13. | Landscaping: | | | | | | | | |
| | (a) Hedges on Dolphin Dr., Park Ave., Sallfish Rd., Starfish Dr., Seahorse Ln., Seagull Ave. | 1 | LS | \$2,500.00 | \$2,500.00 | 1 | \$2,500.00 | \$0.00 | 100% |
| | (b) Oleander Hedge on Indian River Blvd | 95 | LF | \$50.00 | \$4,750.00 | 0 | \$0.00 | (\$4,750.00) | 0% |
| | (c) Hedges and Ground Cover at Royal Palm Pointe | 1 | LS | \$2,500.00 | \$2,500.00 | 1 | \$2,500.00 | \$0.00 | 100% |
| | (d) Minor Miscellaneous Irrigation Repair | 1 | LS | \$1,500.00 | \$1,500.00 | 1 | \$1,500.00 | \$0.00 | 100% |
| B14. | 8" Concrete Block Wall and Footing Removal and Replacement | 1 | LS | \$3,500.00 | \$3,500.00 | 0 | \$0.00 | (\$3,500.00) | 0% |
| B15. | Drainage Work | | | | | | | | |
| | (a) Type "E" Catch Basin | 2 | EA | \$1,950.00 | \$3,900.00 | 2 | \$3,900.00 | \$0.00 | 100% |
| | (b) Overflow Structure w/ Weir | 1 | EA | \$2,250.00 | \$2,250.00 | 1 | \$2,250.00 | \$0.00 | 100% |
| | (c) 18" CPP (Smooth Walled) | 38 | LF | \$36.50 | \$1,387.00 | 38 | \$1,387.00 | \$0.00 | 100% |
| | (d) 36" CPP (Smooth Walled) | 136 | LF | \$53.00 | \$7,208.00 | 140 | \$7,420.00 | \$0.00 | 103% |
| | (e) 54" CAP | 35 | LF | \$190.00 | \$6,650.00 | 35 | \$6,650.00 | \$0.00 | 100% |
| B16. | Road Sign Maintenance - Removal and Replacement | 1 | LS | \$3,500.00 | \$3,500.00 | 1 | \$3,500.00 | \$0.00 | 100% |
| B17. | Traffic Loops - Repair (Tarpon Drive) | 1 | LS | \$1,750.00 | \$1,750.00 | 1 | \$1,750.00 | \$0.00 | 100% |
| TOTAL SECTION B (Items B1. thru B17.) | | | | | \$322,516.23 | | \$451,224.88 | \$0.00 | |
| SECTION C: Maintenance of Traffic (M.O.T.) | | | | | | | | | |
| C1. | Furnish & Install Control Devices For: | | | | | | | | |
| | (a) Local Streets | 6 | MO | \$1,110.00 | \$6,660.00 | 7 | \$7,770.00 | \$0.00 | 117% |
| | (b) Collector Streets (F.D.O.T. & I.R.C. Roads) | 6 | MO | \$680.00 | \$4,140.00 | 7 | \$4,830.00 | \$0.00 | 117% |
| TOTAL SECTION C (Item C1) | | | | | \$10,800.00 | | \$12,600.00 | \$0.00 | |
| TOTAL SECTIONS B & C | | | | | \$333,316.23 | | \$463,824.88 | \$0.00 | |

PROJECT NAME: Force Main from WWTP to WTP & Reuse Water Main from RPP to Country Club Dr

PERIODIC ESTIMATE FOR PARTIAL PAYMENT
 Prepared by:
 CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS
 Account Number: 423.9000.536.601382
 Project Number: WS07014 /PW #2009-06

Contract Date: 12/11/2009
 Notice to Proceed: 01/19/2010
 Total Contract Time: 270 Days
 Elapsed Contract Time: 230 Days
 % of Contract Time: 85.19%

Name and Address of Contractor:
 SPS Contracting, Inc.
 9015 Americana Rd, Suite 1, Vero Beach, FL 32966

PERIODIC ESTIMATE No. 9 & Final FOR PERIOD: September 5, 2010 through June 10, 2011

Entries must be limited to work and costs under the original contract only. (Work and cost data under change orders is to be shown in Part 2 of this form.) Columns (1) through (5) - Data shown is the proposal of the original executed contract. Column (6) is provided by the Consultant or Engineer in agreement with the Contractor. Columns (7) through (9) are calculated from Columns (3) through (6)

| Item No. | DESCRIPTION OF ITEM (2) | CONTRACT | | | | COMPLETED TO DATE | | | | |
|---|---|-----------------|-------|----------------------|------------------------|-------------------|-----------------------------|------------------------|-------------------------|-----------------------|
| | | Quantity (3) | Units | Cost Per Unit (4) | Total Unit Cost (5) | Quantity (6) | Total Cost Stored Materials | Total Unit Cost (7) | Uncompleted Work (8) | % Comp. (9) |
| Section D - Sanitary Sewer Force Main | | | | | | | | | | |
| D1. | Furnish & Install 24-inch PVC (C-905 DR 25 CL165 Green) Sanitary Sewer Force Main Pipe | 14,819 | LF | \$45.80 | | | | | | |
| | Labor | 14,819 | LF | \$12.49 | \$185,089.31 | 15,068 | | \$188,199.32 | \$0.00 | 102% |
| | Material | 14,819 | LF | \$33.31 | \$493,620.89 | 15,068 | \$501,915.08 | | \$0.00 | 102% |
| D2. | Furnish & Install Ductile Iron Class 50 Sanitary Sewer Force Main Pipe (Epoxy Lined) | | | | | | | | | |
| (a) | 18-inch | 10 | LF | \$85.80 | \$858.00 | 0 | | \$0.00 | (\$858.00) | 0% |
| (b) | 24-inch | 20 | LF | \$119.95 | \$2,399.00 | 0 | | \$0.00 | (\$2,399.00) | 0% |
| D3. | Furnish & Install 24-inch Horizontal Directional Boring (HDPE - SDR13.5)(Green Stripes) | 320 | LF | \$201.00 | | | | | | |
| | Labor | 320 | | \$156.38 | \$50,041.60 | 380 | | \$59,424.40 | \$0.00 | 119% |
| | Material | 320 | | \$44.62 | \$14,278.40 | 380 | \$16,955.60 | | \$0.00 | 119% |
| D4. | Furnish & Install 24-inch Resilient Seat Gate Valve (Item to include installation of retainer glands, bolts, and gaskets for each side of valve for D.I. or PVC pipe) | 4 | EA | \$13,585.00 | \$54,340.00 | 6 | | \$81,510.00 | \$0.00 | 150% |
| D5. | Furnish & Install 18-inch Butterfly Valve (FLANGED) (Item to include installation of retainer glands, bolts, and gaskets for each side of valve for D.I. or PVC pipe) | 1 | EA | \$3,600.00 | \$3,600.00 | 0 | | \$0.00 | (\$3,600.00) | 0% |
| D6. | Furnish & Install Ductile Iron Fittings (C-153 Compact Fittings) (Cement Lined Interior) (Item to include installation of retainer glands, bolts, and gaskets for all sides of fitting for D.I. & PVC pipe) | | | | | | | | | |
| (a) | 24-inch-11 1/4 Bend (MJ) | 4 | EA | \$1,985.00 | \$7,940.00 | 3 | | \$5,955.00 | (\$1,985.00) | 75% |
| (b) | 24-inch-22 1/2 Bend (MJ) | 7 | EA | \$2,075.00 | \$14,525.00 | 11 | | \$22,825.00 | \$0.00 | 157% |
| (c) | 24-inch-45 Bend (MJ) | 35 | EA | \$2,110.00 | \$73,850.00 | 55 | | \$118,050.00 | \$0.00 | 157% |
| (d) | 24-inch-45 Bend (FLANGED) | 2 | EA | \$2,675.00 | \$5,350.00 | 0 | | \$0.00 | (\$5,350.00) | 0% |
| (e) | 24-inch-90 Bend (MJ) | 9 | EA | \$2,575.00 | \$23,175.00 | 7 | | \$18,025.00 | (\$5,150.00) | 78% |
| (f) | 24-inch-90 Bend (FLANGED) | 1 | EA | \$3,475.00 | \$3,475.00 | 0 | | \$0.00 | (\$3,475.00) | 0% |
| (g) | 18-inch - Tee (FLANGED) | 1 | EA | \$2,235.00 | \$2,235.00 | 0 | | \$0.00 | (\$2,235.00) | 0% |
| (h) | 24"x18" - Reducer (FLANGED) | 1 | EA | \$3,075.00 | \$3,075.00 | 1 | | \$3,075.00 | \$0.00 | 100% |
| D7. | Furnish & Install 24-inch Megalug Bell Restraints (Series 2800) on New Slip-on Joint PVC Pipe | 144 | EA | \$745.00 | \$107,280.00 | 196 | | \$146,020.00 | \$0.00 | 136% |
| D8. | Furnish & Install Dewatering (Force & Gravity Sewer Mains) | | | | | | | | | |
| (a) | Pump & Stone | 1 | LS | \$17,500.00 | \$17,500.00 | 1 | | \$17,500.00 | \$0.00 | 100% |
| (b) | 0'-6" | 8,637 | LF | \$4.25 | \$36,707.25 | 0 | | \$0.00 | (\$36,707.25) | 0% |
| (c) | 6'-12" | 1,385 | LF | \$5.50 | \$7,617.50 | 0 | | \$0.00 | (\$7,617.50) | 0% |
| (d) | 12'-18" | 350 | LF | \$6.50 | \$2,275.00 | 3,291 | | \$21,391.50 | \$0.00 | 940% |
| D9. | Furnish & Install Air Release Valve Assembly | 11 | EA | \$5,900.00 | \$64,900.00 | 2 | | \$11,800.00 | (\$53,100.00) | 18% |
| D10. | Ductile Iron Fittings EPOXY LINING CHARGE | | | | | | | | | |
| (a) | 18-inch | 1 | EA | \$575.00 | \$575.00 | 0 | | \$0.00 | (\$575.00) | 0% |
| (b) | 24-inch | 59 | EA | \$701.00 | \$41,359.00 | 86 | | \$60,286.00 | \$0.00 | 146% |
| SUB-TOTAL SECTION D (Items D1. thru D10.) | | | | | \$1,216,065.95 | | | \$752,061.22 | (\$123,051.75) | 62% |
| ALT. | A. ALTERNATE "A" PAGE R-8 Furnish & Install JACK & BORE 42-INCH STEEL CASING WITH 127 L.F. 24" PVC F.M.(C905 DR25 CL165 GREEN) 16- FEET DEEP AT STA. 357+40 INDIAN RIVER BLVD. | 114 | LF | \$725.00 | \$82,650.00 | 0 | | | (\$82,650.00) | 0% |
| ALT. | B. ALTERNATE "B" PAGE R-8 Furnish & Install DIRECTIONAL BORE 24" H.D.P.E. F.M. (SDR13.5 GREEN STRIPE) 24 FEET DEEP AT STA. 357+40- INDIAN RIVER BLVD. | 0 | LF | | \$0.00 | | | | \$0.00 | |
| ALT. | C. ALTERNATE "C" PAGE R-10 Furnish & Install JACK & BORE 42-INCH STEEL CASING WITH 250 L.F. 24" PVC F.M. (C905 DR25 CL165 GREEN) 11.25 FEET DEEP AT STA. 390+45+/- U.S. 1 (S.R. 5) | 240 | LF | \$581.00 | \$139,440.00 | 240 | | \$139,440.00 | \$0.00 | 100% |
| ALT. | D. ALTERNATE "D" PAGE R-10 Furnish & Install DIRECTIONAL BORE 24" H.D.P.E. F.M. (SDR13.5 GREEN STRIPE) 24 FEET DEEP AT STA. 390+45+/- U.S. 1 (S.R. 5) | 0 | LF | | \$0.00 | | | | \$0.00 | |
| TOTAL SECTION D (Items D1. thru D10. plus Alt. A., Alt. B., Alt. C. and Alt. D.) | | | | | \$1,438,155.95 | | | \$518,870.68 | \$891,501.22 | (\$546,654.73) |

PROJECT NAME: Force Main from WWTP to WTP & Reuse Water Main from RPP to Country Club Dr

PERIODIC ESTIMATE FOR PARTIAL PAYMENT

Prepared by:

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

Account Number: 423.9000.536.601382
Project Number: WS07014 /PW #2009-06

Contract Date: 12/11/2009
Notice to Proceed: 01/19/2010
Total Contract Time: 270 Days
Elapsed Contract Time: 230 Days
% of Contract Time: 85.19%

Name and Address of Contractor: SPS Contracting, Inc.
9015 Americana Rd, Suite 1, Vero Beach, FL 32966

PERIODIC ESTIMATE No. 9 & Final FOR PERIOD: September 5, 2010 through June 10, 2011

Entries must be limited to work and costs under the original contract only. (Work and cost data under change orders is to be shown in Part 2 of this form.) Columns (1) through (5) - Data shown is the proposal of the original executed contract. Column (6) is provided by the Consultant or Engineer in agreement with the Contractor. Columns (7) through (9) are calculated from Columns (3) through (6)

| Item No. (1) | DESCRIPTION OF ITEM (2) | CONTRACT | | | | COMPLETED TO DATE | | | | |
|-------------------------------------|---|-----------------|-------|----------------------|------------------------|-------------------|-----------------------------|------------------------|-------------------------|----------------|
| | | Quantity (3) | Units | Cost Per Unit (4) | Total Unit Cost (5) | Quantity (6) | Total Cost Stored Materials | Total Unit Cost (7) | Uncompleted Work (8) | % Comp. (9) |
| Section E - Reuse Water Main | | | | | | | | | | |
| E1. | Furnish & Install 24-inch PVC Reuse Water Main (C905 DR-18 CL235 PURPLE) (Item to include Trace Wire) | 4,436 | LF | \$57.25 | | | | | | |
| | Labor | 4,436 | LF | \$12.73 | \$56,470.28 | 3,551 | | \$45,204.23 | (\$11,266.05) | 80% |
| | Material | 4,436 | LF | \$44.52 | \$197,490.72 | 3,551 | \$158,090.52 | | (\$39,400.20) | 80% |
| E2. | Remove Existing 24-inch Reuse Water Main (Item to include all existing valves, fittings, service saddles, etc.) | 10 | LF | \$25.00 | \$250.00 | 12 | | \$300.00 | \$0.00 | 120% |
| E3. | Furnish & Install 24-inch Butterfly Valve (Item to include installation of retainer glands, bolts, and gaskets for each side of valve for D.I. or PVC pipe) | 2 | EA | \$4,560.00 | \$9,120.00 | 3 | | \$13,660.00 | \$0.00 | 150% |
| E4. | Furnish & Install Ductile Iron Fittings (C-153 Compact Fittings) (Cement Lined Interior) (Item to include installation of retainer glands, bolts, and gaskets for all sides of fitting for D.I. & PVC pipe) | | | | | | | | | |
| | (a) 24-inch - 11 1/2" Bend (MJ) | 1 | EA | \$1,985.00 | \$1,985.00 | 0 | | \$0.00 | (\$1,985.00) | 0% |
| | (b) 24-inch - 22 1/2" Bend (MJ) | 1 | EA | \$2,075.00 | \$2,075.00 | 4 | | \$8,300.00 | \$0.00 | 400% |
| | (c) 24-inch - 45" Bend (MJ) | 9 | EA | \$2,110.00 | \$18,990.00 | 20 | | \$42,200.00 | \$0.00 | 222% |
| | (d) 24-inch - 90" Bend (MJ) | 2 | EA | \$2,575.00 | \$5,150.00 | 2 | | \$5,150.00 | \$0.00 | 100% |
| | (e) 24-inch Tee (MJ) | 1 | EA | \$3,750.00 | \$3,750.00 | 1 | | \$3,750.00 | \$0.00 | 100% |
| | (f) 24-inch - LB Sleeve (MJ) | 1 | EA | \$1,840.00 | \$1,840.00 | 4 | | \$7,360.00 | \$0.00 | 400% |
| | (g) 24 x 8-inch | 1 | EA | \$2,340.00 | \$2,340.00 | 1 | | \$2,340.00 | \$0.00 | 100% |
| | (h) 8-inch - Cap (MJ) | 1 | EA | \$155.00 | \$155.00 | 1 | | \$155.00 | \$0.00 | 100% |
| | (i) 24-inch - Cap (MJ) | 1 | EA | \$1,115.00 | \$1,115.00 | 1 | | \$1,115.00 | \$0.00 | 100% |
| E5. | Furnish & Install 24-inch Megalug Bell Restraints (Series 2800) on New Slip-on Joint PVC Pipe | 41 | EA | \$745.00 | \$30,545.00 | 54 | | \$40,230.00 | \$0.00 | 132% |
| E6. | Furnish & Install 24-inch Connection to Existing Reuse Water Main | 1 | EA | \$6,250.00 | \$6,250.00 | 1 | | \$6,250.00 | \$0.00 | 100% |
| E7. | Adjust Existing Valve Box | 1 | EA | \$375.00 | \$375.00 | 1 | | \$375.00 | \$0.00 | 100% |
| E8. | Air Release Valve Assembly | 3 | EA | \$6,085.00 | \$18,255.00 | 0 | | \$0.00 | (\$18,255.00) | 0% |
| | SUB-TOTAL SECTION E (Items E1. thru E8.) | | | | \$356,156.00 | | \$158,090.52 | \$176,409.23 | | 50% |
| ALT. E. | ALTERNATE "E" PAGE R-8 Furnish & Install JACK & BORE 114 L.F. 42-INCH STEEL CASING WITH 127 L.F. 24" PVC REUSE W.M. (C905 DR18 CL235 PURPLE) 16 FEET DEEP AT STA. 357+40 INDIAN RIVER BLVD | 114 | LF | \$735.00 | \$83,790.00 | 0 | | | (\$83,790.00) | 0% |
| ALT. F. | ALTERNATE "F" PAGE R-8 - Furnish & Install - DIRECTIONAL BORE 24" H.D.P.E. REUSE W.M. (SDR11 PURPLE STRIPE) 24 FEET DEEP AT STA. 357+40 INDIAN RIVER BLVD | 430 | LF | \$0.00 | \$0.00 | | | | \$0.00 | |
| | TOTAL SECTION D (Items E1. thru E8. plus Alt. E. and Alt. F.) | | | | \$439,946.00 | | \$158,090.52 | \$176,409.23 | | |

PROJECT NAME: Force Main from WWTP to WTP & Reuse Water Main from RPP to Country Club Dr

| PART 2. SCHEDULE OF CONTRACT CHANGE ORDERS List every approved change order issued to date of this request even if no work has been done under one or more such orders. | | | ADDITIONS TO ORIGINAL CONTRACT PRICE | | PROJECT NO. WS07014 |
|--|-------------|--|--|---|---|
| CONTRACT CHANGE ORDER | | DESCRIPTION OF CHANGE ORDER (3) | TOTAL COST OF ITEMS ADDED BY CHANGE ORDER (4) | COST OF CHANGE ORDER ITEMS COMPLETED TO DATE (5) | DEDUCTIONS FROM CONTRACT PRICE AS SHOWN ON CHANGE ORDERS (6) |
| No. (1) | Date (2) | | | | |
| 1 | | 8" Coquina Rock Base, Alternate ARV Types & Indian River Blvd. Crossing. | \$277,881.00 | \$277,881.00 | \$237,975.00 |
| 2 | | Add Landscaping at Tarpon Dr. & Vero Isles Dr. | \$2,391.04 | \$2,391.04 | \$4,750.00 |
| 3 | | Additional Indian River Blvd. Milling & Overlay Required by FDOT | \$24,966.50 | \$24,966.50 | |
| 4 | | Reconcile As-Built Qtys - Original Contract Items | \$505,752.10 | | \$276,114.75 |
| | | Reconcile As-Built Qtys - Change Order No. 1 Items | \$58,476.65 | \$39,776.65 | \$18,700.00 |
| | | Additional Items | \$105,699.20 | \$105,699.20 | |
| TOTALS | | | \$975,166.49 | \$450,714.39 | \$537,539.75 |

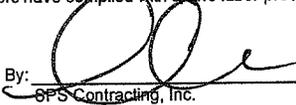
PART 3. ANALYSIS OF CONTRACT AMOUNT TO DATE:

| | |
|---|----------------|
| (a). Original contract amount (column 5 from pages 1 through 5 of this form)..... | \$2,396,841.58 |
| (b). Plus: Additions scheduled in column 4 above..... | \$975,166.49 |
| (c). Less: Deductions scheduled in column 6 above..... | -\$537,539.75 |
| (d). Adjusted contract amount to date..... | \$2,834,468.32 |

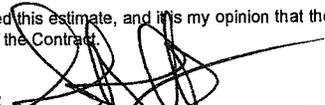
PART 4. ANALYSIS OF WORK PERFORMED:

| | |
|---|----------------|
| (a). Cost of original contract work performed to date (column 7 from pages 1 through 5 of this form)..... | \$2,383,753.93 |
| (b). Extra work performed to date (column 5 above)..... | \$450,714.39 |
| (c). Total cost of work performed to date..... | \$2,834,468.32 |
| (d). Less: Amount retained in accordance with contract terms (show both percent and dollar amount)..... | \$0.00 0% |
| (e). Net amount earned on contract work to date..... | \$2,834,468.32 |
| (f). Add: Materials stored at close of this period (attach detailed schedule and paid invoices)..... | \$0.00 |
| (g). Subtotal of (e) and (f)..... | \$2,834,468.32 |
| (h). Less: amount of previous payments..... | \$2,777,778.95 |
| (i). BALANCE DUE THIS PAYMENT..... | \$56,689.37 |

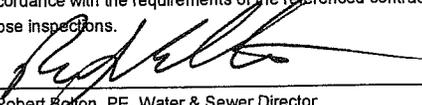
PART 5. CERTIFICATION OF CONTRACTOR:
According to the best of my knowledge and belief, I hereby certify that all items and amounts shown on the face of this PERIODIC ESTIMATE FOR PAYMENT are correct; that all work has been performed and/or material supplied in full accordance with the requirements of the referenced contract, and /or duly authorized deviations, substitutions, alterations, and/or additions, that the foregoing is a true and correct statement of the contract amount up to and including the last day of the period covered by this Periodic Estimate; that no part of the "BALANCE DUE THIS PAYMENT" has been received, and that the undersigned and their subcontractors have complied with all the labor provisions of said contract

By:  Date: 6/13/11
 Name: DENNIS L. Smith Title: VP
 SPS Contracting, Inc.

PART 6. PRE-PAYMENT CERTIFICATION BY PROJECT MANAGER:
I have checked this estimate, and it is my opinion that the statement of work performed and / or material supplied is accurate and the contractor is observing the requirements of the Contract.

Signed:  Date: 6/14/11
 Scott R. Sanders, PE, Civil Engineer III

PART 7. CERTIFICATION BY DIRECTOR:
I certify that I have checked and verified the above and foregoing PERIODIC ESTIMATE FOR PARTIAL PAYMENT; that to my best of my knowledge and belief it is a true and correct statement of the work performed and/or material supplied by the contractor, that all work and/or material included in the PERIODIC ESTIMATE has been inspected by my duly authorized representatives or assistants and based on those inspections the work and/or material has been performed and/or supplied in full accordance with the requirements of the referenced contract, and that partial payment claimed and requested by the contractor is correctly computed on the basis of those inspections.

Signed:  Date: 6/14/11
 Robert Bolton, PE, Water & Sewer Director

**WAIVER AND RELEASE OF LIEN
UPON FINAL PAYMENT**

The undersigned lienor, in consideration of the sum of \$56,689.37 hereby waives and releases its lien and right to claim a lien for labor, services and materials furnished to CITY OF VERO BEACH at the following property:

**S.P.S. JOB #915
CITY OF VERO BEACH
FORCEMAIN FROM WWTP TP WTP
& REUSE MAIN FROM RPP TO COUNTY CLUB DRIVE
VERO BEACH, FLORIDA 32960**

Dated on 23, MAY, 2011

Lienor's Name: S.P.S. CONTRACTING, INC.
Address: P.O. BOX 684
BUENA VISTA, GA 31803

By: Deborah S. Smith

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

Sworn to and subscribed before me by Deborah S. Smith who is personally known to me or who has produced _____ as identification on this 23rd day of MAY, 2011.

Ryan A. Fell
NOTARY PUBLIC

My Commission Expires:



NOTE: This is a statutory form prescribed by 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.

20-4)



City Council Agenda Item Meeting of June 21, 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
6/14/11*

DATE: June 14, 2011

SUBJECT: Disaster Debris Removal Management Contract
Recommendation of One-Year Renewal
RFP #260-06/JV

REQUESTED BY: Interim Assistant Public Works 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

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

FROM: Donald H. Dexter, Interim Assistant Director
DEPT: Public Works

DATE: June 13, 2011

RE: **Disaster Debris Removal Management Contract
Recommendation of One-Year Renewal
RFP #260-06/JV**

ND 4/1/4



Recommendation:

- Place this item on the City Council's agenda for June 21, 2011;
- Renew the contract for one year with Neel-Schaffer, Inc. of Vero Beach, FL.

Funding:

Funding for this contract would initially come from a City account established for the specific event with partial reimbursement from the Federal Emergency Management Agency (FEMA) and the State of Florida. The reimbursement is typically 87.5% of eligible costs but may vary due to regulations put in place by FEMA and the State for a particular event.

Background:

The purpose of this contract is for pre-event planning so that we have a debris removal management contract in place in case of an event that goes beyond the capabilities of our own staff. The contract will not be activated unless such an event takes place.

Neel-Schaffer has agreed to extend the existing contract for one year with a 10% reduction in the previously agreed rates.

On September 8, 2006 a selection committee composed of Monte Falls, Steve Maillet and Don Dexter reviewed the five proposals submitted. The firms were ranked as follows:

1. Neel-Schaffer, Inc.
2. Beck Disaster Recovery, Inc.
3. Shaw Environmental, Inc.
4. American Consulting Engineers of Florida, LLC
5. Disaster Operations and Training, Inc.

On September 19, 2006 the City Council authorized Staff to negotiate with the number one ranked firm. The City staff successfully negotiated an agreement with Neel-Schaffer, Inc (copy attached) to provide debris removal management services if we experience a major disaster. Neel-Schaffer, Inc. brings to the City the expertise to manage a debris clean-up process, which would aid our ability to recover quickly and maximize our reimbursement from FEMA and other Federal or State agencies.

We recommend that the Council approve the contract extension for debris removal management with Neel-Schaffer, Inc.

Attachment

DHD/ntn

June 1, 2011

Donald H. Dexter, Jr.
3405 Airport West Drive
Vero Beach, Florida 32961

RE: Renewal of Debris Removal Management Agreement

Dear Mr. Dexter:

We appreciate the opportunity to provide services to the City of Vero Beach. The current economic conditions in the Vero Beach area and across the country have caused many changes in business. Due to the current conditions and impacts on labor rates, we feel that Neel-Schaffer can provide monitoring services at a lower rate than when we originally contracted with the City of Vero Beach.

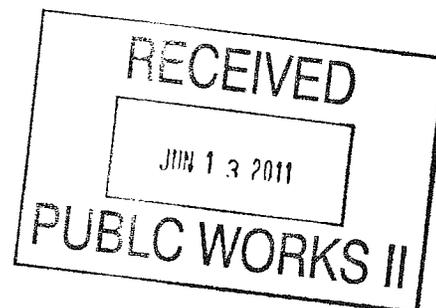
We would like to reduce all hourly rates in our original contract by 10%. We request renewal of the above referenced contract for an additional 12 months with a 10% reduction in current hourly rates and with the same terms and conditions.

If you have any questions, please feel free to me at (817) 201-1912.

Regards,
Neel-Schaffer, Inc.



K. Nelson Lucius, P.E.
Sr. Vice President



**CITY OF VERO BEACH
DISASTER DEBRIS REMOVAL MANAGEMENT**

This AGREEMENT, entered into this 19th day of June, 2007, by and between the CITY OF VERO BEACH, a political subdivision of the State of Florida, hereinafter referred to as the CITY, and NEEL-SCHAFFER, INC. of Vero Beach, Florida, hereinafter referred to as the CONSULTANT.

WITNESSETH

The CITY and the CONSULTANT, in consideration of their mutual covenants, herein agree with respect to the performance of disaster debris removal management and related services by or through the CONSULTANT and the payment for those services by the CITY as set forth below.

The CONSULTANT shall provide project management services for the CITY in all phases of the project described in Section III - Scope of Services; serve as the CITY'S professional representative for the project; and shall provide project management services to the CITY during the performance of the services to be rendered.

SECTION I - PROJECT LIMITS AND DESCRIPTION

Project Management services are to be provided during a declared emergency in which debris removal is required within the corporate limits of Vero Beach. Services will commence upon written authorization by the City of Vero Beach.

*SPW
SJS
7/17/07*

SECTION II - CITY OBLIGATIONS

The CITY agrees to provide (in a timely manner) the following material, data, or services as required in connection with the work to be performed under this Agreement; all of which information the CONSULTANT may use and reasonably rely upon:

- A. Provide the CONSULTANT with a copy of the City's Disaster Debris Management Plan and Debris Removal contract.
- B. Provide the CONSULTANT with all available drawings, right-of-way maps, and other documents in the possession of the CITY pertinent to the project.
- C. The CITY shall provide copies of Right of Entry / Hold Harmless agreements for the CONSULTANT to enter upon private property as required for the CONSULTANT to perform his services.

SECTION III – SCOPE OF SERVICES

A. Basic Services

Debris Monitoring Services will include:

1. **Web Based Load Tracking/Monitoring and Project Mapping:** Maps will be used to document the debris removal progress. Each pass along a roadway will be mapped for Public Information, and FEMA/Office of Emergency Management (OEM) documentation. CONSULTANT will coordinate with CITY GIS/GPS mapping to display the streets and locations where debris was collected. Web based maps will be made available to the CITY each day showing the progress from the previous days work. This mapping tool will also form the basis for identifying the number of debris pick-up passes for each street.
2. **Collection Monitoring of Public Right-of-Way and Public Property Debris/Trees:** CONSULTANT will provide collection monitors with each of the Contractor's loading crews to ensure each load is related to the disaster, and is eligible for Federal reimbursement. The street address will be recorded on each load ticket. The monitor will initiate a multi-part ticket in the field for each load, containing information related to the location of the debris, time, date, truck identification, truck driver, etc. The ticket will then be delivered to the temporary debris reduction site (TDRS) or disposal site with the truck driver for rating.
3. **Private Property Work:** CONSULTANT will assist the CITY to explore the possibility of reimbursement for hazardous trees and limbs removed from private property (Right-of-Entry work).
4. **Pre-Validation of Debris and Trees:** CONSULTANT will work with FEMA/OEM in an effort to pre-validate as much debris/tree trimming as possible. Therefore, FEMA/OEM will have made an eligibility call on the debris prior to removal.
5. **Monitor Hiring and Training:** CONSULTANT will hire, train and supervise and properly equip monitors. Monitors will receive training on safety, eligibility for reimbursement, and disaster specific information. Additionally, CONSULTANT will get FEMA and FDEM involved with the training program so that everyone has the same understanding of the disaster specific guidance for debris removal.
6. **Truck Certification:** CONSULTANT will establish a team of individuals who will inspect and certify vehicles for hauling storm related debris in accordance with FEMA guidelines and attach vehicle placards for identification and tracking. A certification sheet with measurement, photos, and calculations documenting the capacity of the truck is kept for load rating and ticket auditing. Summary books are kept at each TDRS/disposal tower for quality control.

7. **Field Monitoring and Documentation:** NSI will establish scheduling, dispatching and logistical operations of the field monitors. We will provide debris monitors with each removal crew that will document eligibility of debris, damage to public and private property, and observed violations of eligibility. We will carefully document trees that contain hanging limbs, or need to be removed altogether and identify tree stumps/root balls, C&D debris, or other potentially hazardous situations. Land and marine based vehicles, such as cars and boats, will be located using a GPS tracking system for purposes of documenting the removal of eligible debris.

CONSULTANT will work closely with the CITY and with the Federal Emergency Management Agency and the Florida Division of Emergency Management (FDEM) to determine the most effective documentation of the Contractor's work to ensure that debris removal is eligible for Federal funding.

8. **TDRS/Disposal Site Monitoring and Documentation:** CONSULTANT will provide trained monitors at the TDRS and disposal sites to call loads based on the amount of debris in each truck. Monitors will also make sure that the trucks are empty as they leave the site to ensure they return to the loading site empty. Furthermore, monitors will review the truck certification worksheets to make sure the trucks have not been modified to affect their capacity (taller sideboards, for example). Similar systems will be used to verify, track, and document hauling of reduced debris from TDRS sites through final disposal.
9. **Spot Checks and Auditing of Monitors:** CONSULTANT will provide roving monitors, field coordinators, and supervisory personnel to ensure that field monitors are making accurate eligibility calls, keeping good documentation, and are working effectively with the debris removal contractor. Supervisory staff will address daily safety reports and corrective action recommendations, and ensure that all facilities are secured at the end of the day.
10. **Data Management:** CONSULTANT will establish a data management team that reconciles load ticket information on a daily basis. This information can be provided to the CITY, FEMA/OEM, and the Contractor for use and information. Additionally, our staff will work with the Contractor to reconcile invoices, and help process invoices for recommendation to the CITY. Furthermore, CONSULTANT will organize field information for FEMA/OEM documentation including GPS coordinates for tree work, before-and-after project photographs, and debris removal progress.

CONSULTANT will help track invoices for FEMA/OEM reimbursement and provide additional supporting information as necessary, including assisting the CITY with completing, tracking, and reconciling FEMA, FHWA, and HUD required forms. This may include, but is not limited to, the timely completion and submittal of reimbursement requests, preparation and submittal of any and all necessary cost substantiations and preparing replies to any and all agency requests, inquiries or potential denials.

11. **Press Releases and Public Information:** CONSULTANT will prepare information for the CITY for press releases as requested. Maps, project updates, and contact data will be readily available for Public Information. Information associated with the recovery phase will not be released to the public without review and approval by the CITY.
12. **Safety Meetings and Monitor Updates:** CONSULTANT will hold daily meetings with debris monitors and staff for project updates and for safety issues. If important information becomes available, our staff may meet more frequently.
13. **Weekly Coordination Meetings with Contractor(s):** CONSULTANT will initiate a weekly meeting with the debris removal contractor to help expedite the work, and to discuss any issues that may arise during the week. It is important that the monitor and contractor are coordinating with each other to ensure a successful project.
14. **Status Reports:** CONSULTANT will provide detailed status reports to the CITY for use and information. Relevant project statistics and cumulative statistics will be shown in a straight forward manner for officials to provide information to the media or to their constituents.

B. Additional Disaster Related Services (Not including Disaster Debris Removal Management Services covered under Basic Services, above)

1. The CONSULTANT will, if authorized by the CITY, provide Preparedness, Response, additional Recovery, and Mitigation services.
2. Preparedness services will include:

Environmental Planning: If authorized by the CITY, CONSULTANT will assist the CITY in the development and execution of pre-event recovery contracts and in identifying, securing and entering into agreement on debris staging areas. CONSULTANT will collect environmental baseline data, in accordance with Local, State, and Federal requirements, from the designated emergency debris management sites prior to opening these sites.

3. Response services will include:

Preliminary Damage Assessment: If authorized by the CITY, CONSULTANT will provide personnel who have extensive experience in damage assessment to assist the CITY in collecting data to support disaster declaration requests. CONSULTANT staff will direct various engineer and other professional resources to meet the specific needs of the CITY's damage assessment team.

4. Additional Recovery services (Not including Disaster Debris Removal Management services) will include:

- a. **Development of Project Worksheet:** If authorized by the CITY, CONSULTANT will establish a relationship with the Public Assistance Coordinator (PAC) responsible for writing the project worksheet for the project. CONSULTANT will provide estimated debris quantities and cost estimates to assist the PAC in developing the Project Worksheet and any versions required for FEMA "Category A and B" work. CONSULTANT will provide assistance to the CITY in identifying eligible damage to public facilities under the remaining FEMA Category assignments.
 - b. **Environmental Services:** If authorized by the CITY, CONSULTANT will provide technical and permitting assistance associated with the need to locate additional temporary debris reduction site (TDRS). CONSULTANT will perform the necessary environmental data collection process and apply for required permits per Local, State and Federal requirements for the designated emergency debris management sites. CONSULTANT will assist the CITY in the environmental restoration and remediation of debris staging sites associated with the disaster.
5. Mitigation services will include:
- Mitigation Planning and Grant Application:** If authorized by the CITY, CONSULTANT will assist the CITY in identifying Hazard Mitigation opportunities and maximizing the benefits to the public. CONSULTANT will complete mitigation assessments, including Cost-Benefit modeling, and prepare applications for Public Assistance (PA), 404 and 406 Mitigation programs.
6. Compensation to the CONSULTANT for Additional Disaster Related Services (Not including Disaster Debris Removal Management Services covered under Basic Services) listed above will be based upon CONSULTANTS standard rates (attached as Exhibit A).

SECTION IV - COMPENSATION

The CITY agrees to pay and the CONSULTANT agrees to accept for services rendered pursuant to this Agreement fees in accordance with the following:

Assumption: 30 Days, 6 Monitors, 2 Supervisors, 2 Funding/Accounting

| Professional Personnel | Hours | Rate | Amount |
|------------------------------|-------|----------|---------------------|
| Project Manager | 200 | \$105.00 | \$21,000.00 |
| Operations Manager | 40 | \$105.00 | \$4,200.00 |
| Controller | 40 | \$70.00 | \$2,800.00 |
| Accounting and Funding | 120 | \$70.00 | \$8,400.00 |
| Office Assistant | 120 | \$50.00 | \$6,000.00 |
| Supervisor (Tower & Debris) | 720 | \$70.00 | \$50,400.00 |
| Roving Monitor | 360 | \$70.00 | \$25,200.00 |
| Monitor (Tower & Debris) | 2160 | \$50.00 | \$108,000.00 |
| Subtotal Direct Labor | | | \$226,000.00 |

| Direct Cost | Units | Rate | Amount |
|------------------------------|-------|------------|-------------------|
| Mileage | 3,500 | \$0.37 | \$1,295.00 |
| Reproduction/Copies | | \$200.00 | \$200.00 |
| Phone | | \$500.00 | \$500.00 |
| Lodging | | \$1,000.00 | \$1,000.00 |
| Mailings | | \$100.00 | \$100.00 |
| Subtotal Direct Costs | | | \$3,095.00 |

Estimated Total Fee: \$229,095.00

B. Additional Services Fee:

The CITY agrees to pay for additional services that are outside or beyond the lump-sum scope of services identified above in accordance with the approved hourly rate schedule. In the event additional services are provided beyond the time of completion outlined above, the rate schedule shall be subject to reasonable increase in accordance with the Consumer Price Index.

*YPOW
7/23/07
SJK
7/17/07*

SECTION V - PARTIAL PAYMENTS

The CITY shall make monthly partial payments to the CONSULTANT based upon a percent complete of lump sum components and actual effort on hourly components as identified in this Agreement. Payments will be made within forty-five (45) days of invoice receipt. Payment shall be made pursuant to the Florida Prompt Payment Act, Florida Statute 218.70 et seq.

SECTION VI - RIGHT OF DECISIONS

All services shall be performed by the CONSULTANT to the satisfaction of the Director of the Public Works Department and/or City Debris Manager who shall decide all questions, difficulties, and disputes of whatever nature which may arise under or by reason of this Agreement and according to the prosecution and fulfillment of the service hereunder; and the character, quality, amount and value thereof, and the Director's decision upon all claims questions and disputes shall be final, conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable.

Adjustments of compensation and contract time because of any major changes in the work that might become necessary or be deemed desirable as the work progresses shall be reviewed by the Director of the Public Works Department and/or City Debris Manager. In the event that the CONSULTANT does not concur in the judgment of the Director of the Public Works Department as to any decisions made by him he shall present his written objections to the City Manager; and the Public Works Director and the CONSULTANT shall abide by the decision of the City Manager, unless the decision is clearly arbitrary or unreasonable.

SECTION VII - OWNERSHIP AND REUSE OF DOCUMENTS

A. Ownership

All reports, tracings, plans, specifications, field books, survey information, maps, contract documents, and other data developed by the CONSULTANT for the purpose of this Agreement shall become the property of the CITY and shall be made available by the CONSULTANT at any time upon request of the CITY. When all work contemplated under this Agreement is complete, all of the above data shall be delivered to the Director of the Public Works Department.

B. Reuse of Documents

All documents including but not limited to drawings and specifications prepared by the CONSULTANT pursuant to this Agreement are related exclusively to the services described herein. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of this project or on any other project. Any such utilization or adaptation will entitle the CONSULTANT to further compensation at rates to be agreed upon by the CITY and the CONSULTANT. The CONSULTANT shall not be held liable for

any reuse of the Documents and shall not be held liable for any modifications made to the documents by others.

SECTION VIII - NOTICES

Any notices, reports or other written communications from the CONSULTANT to the CITY shall be considered delivered when posted by certified mail or delivered in person to the Director of the Public Works Department. Any notices, reports or other communications from the CITY to the CONSULTANT shall be considered delivered when posted by certified mail to the CONSULTANT at the last address left on file with the CITY or delivered in person to said CONSULTANT or his authorized representative. In person deliveries shall be evident by signed receipts.

SECTION IX - TERMINATION

The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. The City may, for public convenience, terminate this contract at any time provided 90 days written notice is given to the CONSULTANT. In the event of any terminations, the CONSULTANT will be paid for all services rendered to the date of termination, all expenses subject to reimbursement hereunder, and other reasonable expenses incurred by the CONSULTANT as a result of such termination.

SECTION X - AUDIT RIGHTS

The CITY reserves the right to audit the records of the CONSULTANT related to this Agreement at any time during the prosecution of the work included herein and for a period of one year after final payment is made.

SECTION XI - SUBLETTING

The CONSULTANT shall not sublet, assign, or transfer any work under this Agreement without the written consent of the CITY. When applicable and upon receipt of such consent in writing, the CONSULTANT shall cause the names of the engineering and surveying firms responsible for the major portions of each separate specialty of the work to be inserted on the reports or other data.

SECTION XII - WARRANTY

The CONSULTANT warrants that he has not employed or retained any company or person other than bona fide employees working solely for the CONSULTANT or subconsultant to solicit or secure this contract, and that he has not paid or agreed to pay any company or person other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage fee, gifts or any other considerations, contingent upon or resulting from the award or making of this contract. For breach violation of this warranty, the CITY shall have the right to annul this contract without liability.

SECTION XIII - DURATION OF AGREEMENT

This Agreement shall remain in full force and effect for a period of four years after the date of execution hereof or until completion of all project phases as specified by the Public Works Director, whichever occurs first, or unless otherwise terminated by mutual consent of the parties hereto or pursuant to Section XII of this AGREEMENT.

SECTION XIV - INSURANCE AND INDEMNIFICATION

During the performance of the work covered by this AGREEMENT, the CONSULTANT shall provide the CITY with evidence that the CONSULTANT has obtained and maintains the insurance listed below:

A. General:

Before starting and until acceptance of the work by the City, the contractor shall procure and maintain insurance of the types and to the limits specified below.

The contractor shall require each of his subcontractors to procure and maintain, until completion of that subcontractor's work, insurance of types and to the limits specified below. It shall be the responsibility of the contractor to ensure that all his subcontractors comply with all of the insurance requirements contained herein relating to such subcontractors. The City reserves the right to request proof of subcontractor's insurance from the contractor.

B. Coverage:

Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements:

1. Workers' Compensation - Coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. Companies with three (3) or fewer employees shall be required to have workers' compensation coverage meeting the minimum requirements of this section. In addition, the policy must include Employer's Liability with a limit of \$100,000 each accident or disease. If any

operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen and Harbor Workers Act and Jones Act.

2. Commercial General Liability - Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include:
 - a) Minimum limits of \$500,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
 - b) Premises and Operations.
 - c) Independent Contractors.
 - d) Products and Completed Operations.
 - e) Coverage on an occurrence basis.

3. Business Auto Policy - Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Services Office and must include:
 - a) Minimum Limits of \$500,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
 - b) Owned Vehicles.
 - c) Hired and Non-Owned Vehicles.

Certificate of Insurance - Certificates of all insurance required from the contractor shall be filed with the City and shall be subject to its approval for adequacy and protection. Certificates from the insurance carrier, stating the types of coverage provided, limits of liability and expiration dates, shall be filed with the City before operations are commenced. The City of Vero Beach shall be identified as an additional insured for general and automobile liability coverages required above. The required certificates of insurance shall not only name the types of policies provided, but shall also refer specifically to this contract and section and the above paragraphs in accordance with which such insurance is being furnished, and shall state that such insurance is as required by such paragraphs of this contract. If the initial insurance expires prior to the completion of the work, renewal certificates shall be furnished thirty (30) days prior to the date of expiration.

SECTION XV - ENTIRETY OF AGREEMENT

This writing embodies the entire AGREEMENT and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

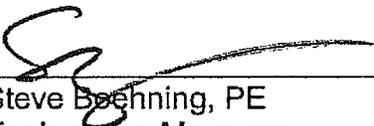
No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.

This AGREEMENT, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida.

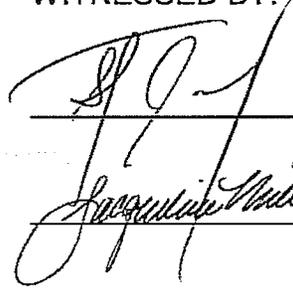
IN WITNESS WHEREOF the parties hereto have executed these presents this _____ day of _____, 20____.

NEEL-SCHAFFER, INC.

1201 19TH PLACE, SUITE A-100
VERO BEACH, FL 32960

By: 
Steve Boehning, PE
Engineering Manager

WITNESSED BY:



Jacqueline Miller

[AFFIX CORPORATE SEAL HERE]

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, on behalf of the corporation. They are circle one personally known to me OR produced [describe ID shown] as identification, and circle one did OR did not take an oath.

NOTARY PUBLIC

Sign: _____
Print: _____
State of Florida at Large
My Commission No: _____
My Commission Expires: _____

ATTEST:

CITY OF VERO BEACH, FLORIDA

Sign: Tammy K. Vock
Print: Tammy K. Vock
Title: City Clerk

Sign: Thomas P. White
Print: THOMAS P. WHITE
Title: Mayor

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 25th day of June, 2007, by Thomas P. White, as Mayor, and attested by Tammy K. Vock, as City Clerk, of the City of Vero Beach, Florida. They are personally known to me and did not take an oath.

NOTARY PUBLIC



Sherri Philo
My Commission DD361680
Expires December 03, 2008

Sign: Sherri Philo
Print: Sherri Philo
State of Florida at Large
My Commission No: _____
My Commission Expires: _____

Approved as to technical requirements:

Approved as conforming to municipal policy:

[Signature]

Monte K. Falls, PE
Public Works Director

[Signature]

James M. Gabbard, City Manager

Approved as to form and legal sufficiency:

[Signature] Ass't. City Atty.
for Charles Vitunac, City Attorney

Exhibit A
Neel-Schaffer, Inc. 2006
Staff Types/Billing Rates

| | Title | Billing Rate/Hour |
|--------|----------------------------------|----------------------|
| ENG 1 | Engineer/Architect | \$60 |
| ENG2 | Staff Engineer/Architect | \$66 |
| ENG3 | Project Engineer/Architect | \$78 |
| ENG4 | Senior Project/Architect | \$95 |
| ENG5 | Project Manager/Architect | \$120 |
| ENG6 | Senior Project Manager/Architect | \$135 |
| ENG7 | Project Director | \$155 |
| ENG8 | Officer | \$165 |
| ENG9 | Division Director | \$175 |
| ENG10 | Principal | \$190 |
| | | |
| DESGN1 | Designer | \$55 |
| DESGN2 | Designer | \$60 |
| DESGN3 | Project Designer | \$70 |
| DESGN4 | Senior Project Designer | \$80 |
| DESGN5 | CADD Manager | \$95 |
| | | |
| TECH1 | Technician | \$55 |
| TECH2 | Technician | \$60 |
| TECH3 | Project Technician | \$70 |
| TECH4 | Senior Project Technician | \$80 |
| TECH5 | Technician Manager | \$95 |
| | | |
| SURV1 | Project Surveyor/Technician | \$75 |
| SURV2 | Professional Land Surveyor | \$80 |
| SURV3 | Survey Project Manager | \$90 |
| SURV4 | Senior Survey Project Manager | \$100 |
| CREW2 | Field Survey Crew (2 Man) | \$95 |
| CREW3 | Field Survey Crew (3 Man) | \$120 |
| CREW4 | Field Survey Crew (4 Man) | \$138 |
| CREW5 | Field Survey Crew (Specialty) | \$160 |
| | | |
| MKT1 | Marketing Assistant | \$54 |
| MKT2 | Marketing Director | \$100 |
| | | |
| ADM1 | Receptionist | \$33 |
| ADM2 | Administrative Assistant | \$40 |
| ADM3 | Administrative Assistant | \$45 |
| ADM4 | Administrative Assistant | \$50 |
| ADM5 | Administrative Supervisor | \$55 |
| | | |
| FIN1 | Finance Assistant | \$40 |
| FIN2 | Finance Assistant | \$48 |
| FIN3 | Finance Manager | \$60 |
| | | |
| ISM1 | Information Systems Manager | \$75 |

(1) Rates effective through June 30, 2007

20-5)



City Council Agenda Item Meeting of June 21, 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 6/14/11*

DATE: June 14, 2011

SUBJECT: **Solid Waste Franchise Agreement – B&F Waste Solutions, LLC dba Anytime Waste Systems, LLC**

REQUESTED BY: Interim Assistant Public Works 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

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

FROM: Donald H. Dexter, Jr., Interim Assistant Director
DEPT: Public Works *DHDX/14/11*

DATE: June 14, 2011

RE: **Solid Waste Franchise Agreement**

Recommendation:

- Place this item on the agenda of the June 21, 2011 City Council meeting;
- Award a solid waste franchise agreement to B & F Waste Solutions, LLC dba Anytime Waste Systems, LLC.

Funding:

No funding is required for this item.

Background:

The City of Vero Beach allows sanitation service providers to offer roll-off container service within the city limits via non-exclusive franchise agreements (Section 66.14 of the municipal code). To date we have granted thirteen franchises.

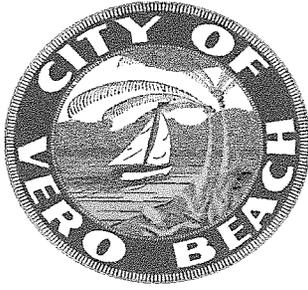
The attached agreement has been executed by B & F Waste Solutions, LLC dba Anytime Waste Systems, LLC and they have provided the necessary certificates of insurance.

cc: Wayne Coment, Acting City Attorney
Steve Maillet, Finance Director
Beatrice Sartor, B&F Waste Solutions, LLC dba Anytime Waste Systems, LLC.

Attachment

DHD/mb





CITY OF VERO BEACH
AGENDA ROUTING SLIP

Date: June 14, 2011

For City Council Meeting on June 21, 2011

- Originated by: City Council, motion adopted on: _____
 (Check one) Council Member _____
 City Manager
 City Attorney
 City Clerk
 Public Works Department *WJG 6/14/11*

Person to Contact: Lonnie G. Scott, Asst. Director, Solid Waste

Telephone Number: 978-5300

Brief Description: Franchise Agreement for B&F Waste Solutions, LLC dba Anytime Waste Systems

| | | <u>Initial/Date</u> | |
|---|----|-------------------------------|--------------------------|
| <u>Route for Signature to:</u> (Fill in Departments which should review this item.) | 1. | <u>City Attorney's Office</u> | Dept. <u>WJC 6/14/11</u> |
| | 2. | <u>City Manager's Office</u> | Dept. <u>MKF 6/14/11</u> |
| | 3. | _____ | Dept. _____ |
| | 4. | _____ | Dept. _____ |
| | 5. | _____ | Dept. _____ |
| | 6. | _____ | Dept. _____ |
| | 7. | _____ | Dept. _____ |

- Return Completed City Attorney's Office
 Agenda Item and City Manager's Office
 Slip to (check one):

cc: Tammy K. Vock, City Clerk

EXHIBIT "A"
FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement") is hereby made and entered into this _____ day of _____, 20____, by and between the City of Vero Beach, Florida, a municipal corporation organized under the laws of the State of Florida ("City"); and

B & F Waste Solutions; LLC dba Anytime Waste Systems, LLC.
(full legal name of services provider) (i.e.: corporation; partnership; LLC; etc., and state)

whose business address is **4901 Bethel Creek Drive, Unit F, Vero Beach, FL 32963** ("Franchisee").

WITNESSETH:

For and in consideration of the granting to Franchisee of a non-exclusive franchise to provide roll-off container solid waste collection and disposal services within the City of Vero Beach, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Franchisee mutually agree and promise as follows:

SECTION I. GRANT OF FRANCHISE AND TERM.

- (A) Grant of Non-Exclusive Franchise. Pursuant to Section 66-14 of the Code of Ordinances of the City of Vero Beach, the City hereby grants a non-exclusive right, privilege and franchise to Franchisee to provide roll-off container solid waste collection and disposal services from property located within the corporate limits of the City of Vero Beach, Florida ("Franchise Area") in accordance with the terms of this Agreement, and the laws of the City of Vero Beach, Indian River County, the State of Florida and the United States of America.
- (B) Term. The term of this Agreement shall be for a period of five (5) years, beginning on the date this Agreement is executed by the City Council of the City of Vero Beach.

SECTION II. DEFINITIONS.

- (A) General. To the extent that any definition contained herein conflicts with any similar definition contained in any federal, state, or local law, the definition contained herein shall prevail. However, nothing contained herein shall be interpreted to require the Franchisee to undertake any conduct that is prohibited by Applicable Law. Whenever the context may require, any pronoun which is used in this Agreement shall include the corresponding masculine, feminine and neutral forms and the singular shall include the plural and vice versa.

- (B) "Applicable Law" shall mean any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued enforced or amended by a governmental body during the term of this Agreement, and relate in any manner to the performance of the City or Franchisee under this agreement.
- (C) "Collect and Collection" shall mean the process whereby solid waste is picked up and removed from the location where it is generated, and then transported to a state-approved landfill, transfer station, materials recycling facility or other disposal or processing facility.
- (D) "Container," see "Roll-off Container" below.
- (E) "De Minimus Amount" shall mean the amount of solid waste that lawfully may be included in a container of recovered materials or construction or demolition debris. A de minimus amount of solid waste is 10%, by volume or weight, whichever is more restrictive, as determined by measurement or visual inspection by the Director.
- (F) "Director" shall mean the Director of Public Works of the City of Vero Beach, or the Director's designee. Also referred to as the Director of Solid Waste Management, or Solid Waste Management Director.
- (G) "Franchise Area" shall mean all property located within the corporate limits of the City of Vero Beach.
- (H) "Roll-off Container" shall mean either open-top/scow-type container capable of accepting bulk construction or other non-putrescible materials; or enclosed containers, such as the kind used with compaction devices, of ten (10) cubic yards capacity or larger. A roll-off container must be capable of being serviced by mechanical equipment.
- (I) "Solid Waste" shall include garbage, yard trash, refuse, debris, special waste, ash, sludge, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from domestic, commercial, industrial, mining, agricultural, or governmental operations.

SECTION III. FRANCHISEE'S AUTHORITY; GENERAL PERFORMANCE AND OBLIGATIONS OF FRANCHISEE.

- (A) Authorized independent collector. The Franchisee is hereby authorized to provide roll-off container solid waste collection and disposal service within the city limits of the City of Vero Beach, Florida. The Franchisee shall be an independent collector and shall provide, at its own expense, all labor, insurance, supervision, machinery and equipment, plant building, trucks and any other tools, equipment, accessories and

- things necessary to maintain the standard of collection and disposal set forth herein and in Ordinance No. 2003-32.
- (B) **Protection of Adjacent Property and Utilities.** The Franchisee shall conduct its work with due care and in such a manner as to avoid damage to adjacent private or public property, including utilities, and shall immediately repair or pay for any damage incurred through its operations.
 - (C) **Spillage.** The Franchisee shall not litter or cause any spillage to occur upon the premises wherein the collection shall occur or on any rights of way or public property. During hauling, all solid waste shall be contained, tied, covered, or enclosed so that leaking, spilling or blowing of waste are prevented. The Franchisee shall promptly clean up all spillage. It shall be the responsibility of the Franchisee to make sure that the size of container and frequency of collection is adequate for the amount of waste material deposited in the container.
 - (D) **Disposal Site.** The Franchisee shall dispose of waste only at landfills approved by the appropriate local, state and federal governmental agencies. The City reserves the right to approve or disapprove sites, taking into account costs, routes within the City and the rules and regulations of the governmental body having jurisdiction over said sites or facilities.
 - (E) **Office.** The Franchisee shall establish and maintain an office. The Franchisee shall maintain sufficient telephones with local telephone numbers where service inquiries and complaints can be received by the Franchisee. The Franchisee's office shall be staffed with trained, responsible persons on duty during collection hours. The Franchisee shall use either a telephone answering service or answering machine to receive service inquiries and complaints during those times when the office is closed. The Franchisee also shall develop a system, subject to the Director's approval, for receiving emergency calls from the public at anytime, and for communicating with the City regarding emergency matters.
 - (F) **Complaints.** All complaints shall be resolved by the Franchisee.
 - (G) **Permits and Licenses.** The Franchisee shall obtain, at its sole expense, any and all permits and licenses required by applicable law in connection with this agreement, and Franchisee shall maintain the same in full force and effect throughout the term of this agreement. Any revocation of Franchisee's licenses or permits shall be reported to the City within three (3) calendar days.
 - (H) **Unauthorized Collectors.** The Franchisee agrees to defend the City in the protection of the right of the Franchisee to protect against encroachment by unauthorized collectors within the service area.
 - (I) **Hours.** No collection activities shall begin before 6:00 a.m. or continue later than 7:00 p.m. All collections shall be made as quietly as possible with a minimum of noise

and disturbance to the customers and the public. The Franchisee shall modify its collection schedule upon request of the City.

- (J) Title to Waste. Title to all waste shall be vested in the Franchisee upon being loaded for transport in containers as defined herein.
- (K) Prohibitions on biological, biomedical and hazardous waste. The Franchisee shall not collect biological, biomedical, or hazardous waste of any kind. Franchisee shall not collect any solid waste that the Franchisee reasonably believes is biological, biomedical, or hazardous waste. The Franchisee shall immediately notify the Director if any customer, person or entity delivers or attempts to deliver such material to the Franchisee, or places such waste in any container of Franchisee. The City shall have the right to inspect the solid waste collected by the Franchisee at any time.

SECTION IV. VEHICLES AND EQUIPMENT.

- (A) Vehicles and equipment. Franchisee shall provide an adequate number of vehicles and equipment, approved by the City, for collection services and back up in the event of any breakdowns. Equipment shall be kept in good repair, appearance, and in a safe and sanitary condition at all times. Vehicles used by the Franchisee in the performance of this Agreement shall be clearly identified on each side with the Franchisee's name and local telephone number.
- (B) Location of containers. Collection containers or receptacles shall be placed at locations that are mutually acceptable to the Franchisee and the customer, and in compliance with the City's land-use ordinances. Containers shall be located on private property. City property may be used for the siting of containers only with the written approval by City. If a dispute should arise between a customer and the Franchisee regarding the location of the collection site, the parties shall consult with the Director who will then designate the location.

SECTION V. FRANCHISEE PERSONNEL.

The Franchisee shall assign a qualified person or persons to be in charge of the Franchisee's operations in the City. The Franchisee shall provide the City with a written list containing the names and telephone numbers, including emergency telephone numbers, of the Franchisee's operations manager and other key personnel.

- (A) All of the Franchisee's employees shall be properly trained and qualified to perform the tasks assigned to them. The Franchisee shall provide routine training in operating and safety procedures.
- (B) Each driver of the Franchisee's vehicles shall at all times carry a valid Florida driver's license for the type of vehicle that is being driven.

- (C) The Franchisee's employees shall treat all customers in a polite and courteous manner. All personnel of Franchisee shall refrain from belligerent behavior and profanity. The Franchisee shall promptly take appropriate action to correct and such behavior or language.
- (D) Franchise personnel shall not request tips or payment of any kind from customers. Invoices for services rendered by the Franchisee shall be sent to the customer at an agreed upon billing address.
- (E) No person shall be denied employment by the Franchisee for reasons of race, creed or religion. The Franchisee shall comply with all applicable laws relating to wages, hours, overtime, disability and all other matters relating to the employment and protection of employees, now or hereafter in effect.

SECTION VI. COLLECTION CONTRACTS.

- (A) Franchisee may contract to provide services with any person, organization, firm or entity ("entities") within the City if such entities have requested the service.
- (B) Franchisee agrees to provide the Solid Waste Division with the location of its containers and the names, addresses, and number of pick-ups made.
- (C) If the Director orders removal of a container and the subject container remains in service more than forty-eight (48) hours after telephone or written notice by the City to the Franchisee to remove the container; then, in either or both cases, the Franchisee shall pay the City fifty dollars (\$50.00), per day, until the container is removed.

SECTION VII. SOURCE SEPARATION.

Source separation is encouraged.

SECTION VIII. RATES; BILLING.

- (A) Rates. The collection service rates may be negotiated between the Franchisee and the customer.
- (B) Billing. Billing for collection services and collection of amounts due Franchisee shall be the sole responsibility of the Franchisee.

SECTION IX. FRANCHISE FEE.

- (A) The Franchisee shall pay to the City a franchise fee equal to six percent (6%) of Franchisee's monthly gross receipts attributable to services provided under this Agreement. This franchise fee payment shall be made on or before the fifteenth (15th) day of each month for all service fees collected by the Franchisee during the immediately preceding month.

- (B) The leasing or sale of compactors is not intended to be regulated by this Franchise Agreement. The leasing or sale of compactors is not subject to Franchise Fees. Collection and disposal services from compactors, however, shall be subject to Franchise Fees and shall be considered roll-off container solid waste collection and disposal service for purposes of this Agreement.

SECTION X. BOOKS, RECORDS, REPORTS; PUBLIC RECORDS.

- (A) Franchise records. The Franchisee shall keep records of wastes collected and charges therefore. The City shall have the right to review those records, which in any way pertain to the payments due it as well as the billing of all customers by the Franchisee during this Agreement. During the term of this Agreement, the Franchisee shall make its City franchise records and related materials (including, but not limited to, dump tickets, customer invoices, transaction files) available to the City at all reasonable times. Failure to furnish the City with the requested materials or to maintain complete and accurate City franchise and all other related books and records, or to make such books and records available to the City, shall be considered material breach of this Agreement, and the City shall be entitled to terminate this franchise and to collect any damages resulting therefrom. Franchisee must keep all franchise and other related books and records on file for not less than three (3) years from the date of termination of the franchise, by either party, or the termination of the franchise term, whichever is later.
- (B) Annual Report. Beginning at the fiscal year-end after this Agreement is signed by both City and Franchisee, the Franchisee shall furnish the Director with an original and one copy of an annual report on or before the forty-fifth (45th) day following the Franchisee's fiscal year-end. The report date shall be submitted to the Director on the date of the Franchisee's acceptance of this Agreement. The report shall include an income statement showing the gross revenue received by the Franchisee from the collection of solid waste materials and other services provided by the Franchisee under this agreement. The report shall provide all information needed by the City to comply with the reporting requirements established by state and federal law.
- (C) Public Records. The Franchisee shall allow public access to all documents, papers, letters, and other material that is subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Franchisee in conjunction with this Agreement. The Franchisee shall immediately inform City of any and all public records requests made to Franchisee and coordinate with City the Franchisee's compliance with such request.

SECTION XI. COMPLIANCE WITH LAWS.

The Franchisee and its employees shall observe and comply with all present and future federal, state, and local laws, rules, regulations, requirements, ordinances, orders and mandatory guidelines that may pertain or apply to the services rendered hereto.

SECTION XII. INDEMNITY.

The Franchisee shall indemnify and hold harmless City, its departments, elected officials, officers, employees and agents, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees and costs through trial and appeal, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of Franchisee, and/or persons and entities employed or utilized by Franchisee, in the performance of or arising out of this Agreement, or arising out of the violation of any law or regulation by Franchisee or persons or entities employed or utilized by Franchisee. Should the City be sued therefrom, the Franchisee shall be notified of and have the duty to defend such suits; provided, however, that the City has the sole option to defend such suits itself, or to hire independent counsel, and thereafter to tax all such defense costs and fees to the Franchisee. The Franchisee specifically agrees to pay any such judgment rendered against the City in any such case, and to reimburse the City, in full, for all costs and fees.

SECTION XIII. INSURANCE.

(A) General

Before starting and until acceptance of the work by the City, the Contractor shall procure and maintain insurance of the types and to the limits specified below.

The contractor shall require each of his subcontractors to procure and maintain, until completion of that subcontractor's work, insurance of types and to the limits specified below. It shall be the responsibility of the contractor to ensure that all his subcontractors comply with all of the insurance requirements contained herein relating to such subcontractors. The City reserves the right to request proof of subcontractor's insurance from the contractor.

(B) Coverage

Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements:

- (1) **Workers' Compensation** - Coverage to apply for all employees for Statutory Limits in compliance with the applicable state and federal laws. Companies with three (3) or fewer employees shall be required to have workers' compensation coverage meeting the minimum requirements of this section. In addition, the policy must include:
 - (a) **Employer's Liability** with a limit of \$100,000 each accident and disease.

- (b) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the City with thirty (30) days notice of cancellation and/or restriction.
 - (c) If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.
- (2) **Commercial General Liability** - Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include:
- (a) Minimum limits of \$1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
 - (b) Premises and Operations.
 - (c) Independent Contractors.
 - (d) Products and Completed Operations - Contractors shall maintain in force until at least three years after completion of all services required under the contract, coverage for products and completed operations, including Broad Form Property Damage.
 - (e) Broad Form Contractual Coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement.
 - (f) Additional Insured - The City is to be specifically included as an additional insured for the liability of the City resulting from operations performed by or on behalf of the Contractor in performance of this Contract and for liability of the City for acts or omissions of the City in connection with the general supervision of such operations. Contractor's insurance including that applicable to the City as an additional insured shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute with contractor's insurance. Contractor's insurance shall contain a severability of interest provision, providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.
 - (g) Notice of cancellation and/or Restriction - The policy must be endorsed to provide the City with thirty (30) days notice of cancellation and/or restriction.
 - (h) Coverage on an occurrence basis.

- (3) **Business Auto Policy** - Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Services Office and must include:
- (a) Minimum Limits of \$1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
 - (b) Owned Vehicles.
 - (c) Hired and Non-Owned Vehicles.
 - (d) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the City with thirty (30) days notice of cancellation and/or restriction.
 - (e) Additional Insured - The City is to be specifically included as an additional insured. Contractor's insurance including that applicable to the City as an additional insured shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute with Contractor's insurance. Contractor's insurance shall contain a severability of interest provision, providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Named Insured in the same manner as if separate policies had been issued to each.

(C) Certificates of Insurance

Certificates of insurance evidencing the insurance coverage specified in the previous paragraphs shall be filed with the City before operations are begun. The required certificates of insurance not only shall name the types of policies provided, but also shall refer specifically to this contract and section and the above paragraphs in accordance with which insurance is being furnished, and shall state that such insurance is as required by such paragraphs of this contract.

If the initial insurance expires prior to the completion of the work, renewal certificates of insurance and required copies of policies shall be furnished thirty (30) days prior to the date of their expiration.

SECTION XIV. DEFAULT; TERMINATION; REMEDIES.

- (A) **Default.** In the event that the Franchisee defaults in the performance of any obligations to be performed by it hereunder or fails to comply with federal, state and local laws, regulations, ordinances or resolutions, the City may, in its sole discretion, after thirty (30) days written notice to the Franchisee, terminate this Agreement.

- (B) Date of termination for default. Termination shall be effective upon the date specified in City's written notice to Franchisee and upon such date this Agreement shall be deemed immediately terminated and upon such termination all liability of the City under this Agreement shall cease. The Franchisee shall reimburse the City for all direct and indirect costs of providing interim collection service.
- (C) Remedies. All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other, or of any other remedy available to the City, at law or in equity. The prevailing party in any litigation arising hereunder shall reimburse the other party for its costs and attorney's fees resulting from such litigation, through trial and appeal.

SECTION XV. GENERAL PROVISIONS.

- (A) Survival. Except as otherwise expressly provided herein, each obligation in this Agreement to be performed by Franchisee shall survive the termination or expirations of this Agreement.
- (B) Waiver. The failure of the City at any time to require performance by the Franchisee of any provision hereof shall in no way affect the right of the City thereafter to enforce the same. No waiver by the City of any breach of any provision hereof shall be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.
- (C) Governing law and venue. This Agreement shall be governed by and interpreted pursuant to the laws of the State of Florida. The venue for any and all legal action necessary to interpret or enforce this Agreement shall be in Indian River County, Florida.
- (D) Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being deemed void, at the option of the City, should a provision which is of the essence of the Agreement, at the option of the City, be determined to be void.
- (E) Modification of the Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto and supercedes all prior and contemporaneous agreements and understandings, representations and warranties, matters, whether oral or written, relating to such matters and this Agreement shall not

be considered modified, altered, changed, or amended in any respect unless in writing and signed by the parties hereto. Such modification shall be in the form of an Amendment executed by both parties.

- (F) Independence of parties. It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing the relationship of co-partners or joint venturers between the parties hereto, or as constituting the Franchisee as the agent, representative, or employee of the City for any purpose whatsoever. The Franchisee is to be and shall remain an independent contractor with respect to all services performed under this Agreement.
- (G) Resolution of disputes. Any and all disputes or disagreements arising out of this Agreement shall be subject to the decision of the Director, with the right of the Franchisee to appeal pursuant to Section 2-202 of the Code of Ordinances of the City of Vero Beach.
- (H) Representations of the Franchisee. The Franchisee represents that: (a) it is a corporation duly organized under the laws of the State of Florida; (b) this Agreement has been duly authorized, executed, and delivered in the State of Florida; and (c) it has the required power and authority to perform this Agreement.
- (I) Notices. All dealings, contacts, notices, and payments between the Franchisee and the City shall be directed by the Franchisee to the Director and by the City to the Franchisee's Project Manager, each of whom shall be designated and identified to the other party, in writing, upon execution of this Agreement. Any notice, demand, communication, or request required or permitted under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

As to the City:

Name: Monte K. Falls, P.E.

Title: Director, Public Works

Street Address: 3405 Airport West Drive, Vero Beach, FL 32960

Mailing Address: PO Box 1389, Vero Beach, FL 32961-1389

Telephone: (772) 978-5300

Facsimile: (772) 770-5836

As to Franchisee:

Name: **Beatrice Sartor**

Title: **Manager Member**

Street Address: **4901 Bethel Creek Drive, Unit F, Vero Beach, FL 32963**

Mailing Address: **same as above**

Telephone: **(772) 559-4525**

Facsimile: **(772) 257-5651**

Except as otherwise provided in this Agreement, all notices, certificates, reports, requests, demands, materials and any other communications hereunder or pursuant to this Agreement shall be in writing and deemed to have been duly given: (i) upon delivery (personally, by courier service such as FedEx or by other messenger) to the address of the appropriate party's designated representative; or (ii) upon receipt as evidenced by the appropriate form of the United States Postal Service after mailing by United States registered or certified mail, return receipt requested, postage prepaid to such address; or (iii) upon mailing if such registered or certified mail is refused by the recipient or returned unclaimed to the sender.

- (J) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy and all of which shall constitute one and the same instrument.
- (K) Headings. Captions and headings in this Agreement are for ease of reference only and shall not constitute a part of this Agreement nor affect its meaning, construction, or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year above written.

WITNESS:

FRANCHISEE (insert name):
a B&F Waste Solutions; LLC dba
Anytime Waste Systems, LLC
(corporation; partnership; LLC; etc and state)

Sign: Melinda Blades
Print: Melinda Blades

By: Beatrice Sartor
Print: Beatrice Sartor
Title: Manager Member

Sign: _____
Print: _____

ATTEST:

CITY OF VERO BEACH, FLORIDA

Sign: _____
Print: Tammy K. Vock
Title: City Clerk

Sign: _____
Print: Jay Kramer
Title: Mayor

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

Acting Wayne R. Cornett
City Attorney

Monte K. Felle
City Manager

Approved as to technical requirements:

Muel Duth
Director, Public Works Department

THIS DOCUMENT PREPARED IN
THE OFFICE OF THE CITY ATTORNEY
PO BOX 1389
VERO BEACH, FL 32961-1389

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year above written.

WITNESS:

Sign: Melinda Blades
Print: Melinda Blades

FRANCHISEE (insert name):
a B & F Waste Solutions, LLC dba
Anytime Waste Systems, LLC
(corporation; partnership; LLC; etc and state)

By: Fernando Sartor
Print: Fernando Sartor
Title: MGRM

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/19/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | |
|---|--|
| PRODUCER Euclid Insurance Agencies, LLC 4450 W Eau Gallie Blvd., #164 Melbourne, FL 32934 800 407-4077 | CONTACT NAME: Tara Carney PHONE (A/C, Ho, Ext): 800 407-4077 FAX (A/C, No): 321-752-7980 E-MAIL ADDRESS: tcarney@euclidinsurance.com |
| | INSURER(S) AFFORDING COVERAGE INSURER A: Hudson Insurance Company NAC #: 25054 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F: |
| INSURED B&F Waste Solutions, LLC dba Any Time Waste Systems 4901 Bethel Creek Drive F Vero Beach, FL 32963-1276 | |

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL SUBR INSR UNKID | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|----------------------|---------------|-------------------------|-------------------------|--|
| A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC | | HAS00035700 | 01/17/2011 | 01/17/2012 | EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$100,000 MED EXP - Any one person \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/CP AGG \$2,000,000 \$ |
| A | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ | | HAS00035700 | 01/17/2011 | 01/17/2012 | COMBINED SINGLE LIMIT (Per accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | | N/A | | | IWC STAT. LICBY LIMIT <input type="checkbox"/> OTH. IED <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101. Additional Remarks Schedule, if more space is required)
 CITY OF VERO BEACH IS NAMED AS ADDITIONAL INSURED WITH RESPECTS TO THE AUTO & GENERAL LIABILITY ONLY.

| | |
|--|--|
| CERTIFICATE HOLDER CITY OF VERO BEACH PUBLIC WORKS 3405 AIRPORT WEST DRIVE VERO BEACH, FL 32960 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
| | AUTHORIZED REPRESENTATIVE  |



City Council Agenda Item

June 21, 2011

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

FROM: Monte K. Falls, Interim City Manager

*MK Falls
6/14/11*

DATE: June 14, 2011

SUBJECT: **Monthly Capital Projects' Status Reports**

REQUESTED BY: Public Works Department

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

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

Request Council review and possible action.

No action required. (Information only)

Country Club Drive Sidewalk

Prepared By:

PROJECT NO. 2007-04

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

Constructed by COVB Staff

For Period 4/25/11 through 6/10/11

Project Description and Background: This project was one of four sidewalk projects which were incorporated into a 5-year capital project for sidewalk improvements approved by Council in the 2007/2008 fiscal budget. The entire project, which goes from 30th Street to Royal Palm Place, was designed and is being constructed by Public Works staff.

Funding: The project is funded under account number 304.9900.541.608005, New Sidewalk Construction, and the estimated cost is \$60,000.

Project History and Current Status:

Construction was authorized to begin by the City Council at their April 19, 2011 meeting.

Construction began on Monday, April 25, 2011.

The project is substantially complete. Some sodding and punch list items remain.

This is an in-house project being constructed by COVB Public Works Department Crews

| | | | |
|------------------------|-------------|--------------------------|-----|
| ORIGINAL BUDGET AMOUNT | \$60,000.00 | Percent of Work Complete | 98% |
| | | | |



04-May-11

Workers prepare forms for a section of sidewalk along the Vero Beach Country Club golf course frontage on Country Club Drive.



18-May-11

Newly completed sidewalk connection to the Main Relief Canal pedestrian bridge along Country Club Drive.

26th Avenue Drainage Improvements from 14th Street to 16th Street

Prepared By:
CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS
Constructed by COVB Staff

PROJECT NO. 2010-03

For Period 6/6/11 through 6/10/11

Project Description and 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).

Funding: The project is funded under account number 304.9900.541.610003 and the estimated cost is \$175,000.

Project History and Current Status:

Construction was authorized to begin by the City Council at their May 3, 2011 meeting.

Construction began on Monday, June 6, 2011.

Thus far the pipe connections into the 16th Street ditch have been completed and work is progressing southward.

This is an in-house project being constructed by COVB Public Works Department Crews

| | | | |
|------------------------|--------------|--------------------------|----|
| ORIGINAL BUDGET AMOUNT | \$175,000.00 | Percent of Work Complete | 5% |
| | | | |



07-Jun-11

The existing 15" metal pipe has been replaced by 24" pipe in the outfall to the 16th Street ditch.



4-17)

DEPARTMENTAL CORRESPONDENCE

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

FROM: David R. Gay, PSM, Chief Surveyor *DM*
DEPT: Public Works

DATE: June 7, 2011

RE: **Release of Easement Application #2011-RE-0385
Block 4, Royal Park Plat No. 3
2363 DeSoto Avenue**

The referenced application has been received for consideration by the City and was routed for review by various City departments, as well as outside utilities. All responses (copies attached) were favorable for the requested release of easement. Therefore, we do not object to releasing the easements on the north 3 feet of Lot 5 and the south 3 feet of Lot 4, Block 4, Royal Park Plat No. 3.

Please contact us if you have any questions.

Attachments

DRG/ntn

T:\REVIEWS\Release of Easement\2011-RE-0385 2363 Desoto Ave\Recommendation Memo_MFalls_Jun 07 2011.docx

RESOLUTION NO. 2011 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, RELEASING FROM ALL CITY EASEMENTS THE NORTH 3 FEET OF LOT 5 AND THE SOUTH 3 FEET OF LOT 4, BLOCK 4, ROYAL PARK PLAT NO. 3.

WHEREAS, pursuant to Section 2-373 of the Vero Beach Code of Ordinances, City Council is authorized to abandon and/or release utility easements; and

WHEREAS, the City of Vero Beach has easements over, across, and under the property described hereinbelow and depicted in the sketch attached to this Resolution as Exhibit "A;" and

WHEREAS, the property owners have requested the release of the City-held easements which encumber their property; and

WHEREAS, the Public Works and Engineering Department of the City of Vero Beach has determined that the existing easements are no longer needed by the City and that the release would be in the public interest,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

1. As recommended by the Public Works and Engineering Department of the City of Vero Beach, Florida, the City Council of the City of Vero Beach, Florida, does hereby abandon all right, title, and interest that it may have in the following easements, being more particularly bounded as shown and described in Exhibit "A" attached hereto and incorporated herein by this reference, as follows:

SEE ATTACHED EXHIBIT "A" (SHEET 1 OF 2) – Legal Description of Easement Property

SEE ATTACHED EXHIBIT "A" (SHEET 2 OF 2) – Sketch of Easement Property Description

2. The release of these side lot easements does not constitute a release of nor affect the five-foot rear easements across said Lots 4 and 5.

3. This Resolution shall become effective upon final adoption by the City Council.

This Resolution was heard on the _____ day of _____, 2011, at which time it was moved for adoption by Councilmember _____, seconded by Councilmember _____, and adopted by the following vote:

Mayor Jay Kramer

Yes No

Vice Mayor Pilar E. Turner

Yes No

Councilmember Brian T. Heady

Yes No

Councilmember A. Craig Fletcher

Yes No

Councilmember Tracy M. Carroll

Yes No

ATTEST:

CITY OF VERO BEACH, FLORIDA:

Sign: _____
Print: Tammy K. Vock
Title: City Clerk

Sign: _____
Print: Jay Kramer
Title: Mayor

**STATE OF FLORIDA
COUNTY OF INDIAN RIVER**

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Jay Kramer, as Mayor, and attested by Tammy K. Vock, as City Clerk of the City of Vero Beach, Florida. They are personally **known to me** and **did not** take an oath.

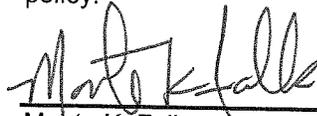
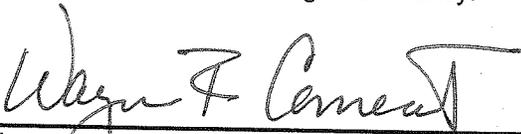
NOTARY PUBLIC

[NOTARY SEAL]

Sign: _____
Print: _____
State of Florida at Large
My Commission Number: _____
My Commission Expires: _____

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:



David R. Gay
Chief Surveyor

This document was prepared in
The Office of the City Attorney
Post Office Box 1389
Vero Beach, Florida 32961-1389

EXHIBIT "A"
PROPERTY DESCRIPTION
RELEASE OF EASEMENT #2011-RE-0385
PARCEL #33-39-01-00005-0040-00004.0,

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Block 4, Royal Park Plat No. 3, as Recorded in Plat Book 4, Page 88, of the Public Records of St. Lucie County, Florida, now Indian River County, Florida and being more particularly bounded and described as follows:

The North 3 feet of Lot 5 and the South 3 feet of Lot 4, of said Block 4;

Containing 930 square feet more or less.

Note: The release of these side lot easements does not constitute a release of nor affect the 5 foot rear easement across said Lots 4 and 5.


David R. Gay, PSM #5973


ROYAL PARK PLAT No. 3
 PBS 4, PG 88

BLOCK 4
 LOT 3

DE SOTO AVENUE

SCALE 1"=30'

LOT 4
 DE SOTO AVENUE

PARCEL # 33-38-10-0005-0040-0004.0

LOT 16

LOT 15

LOT 14

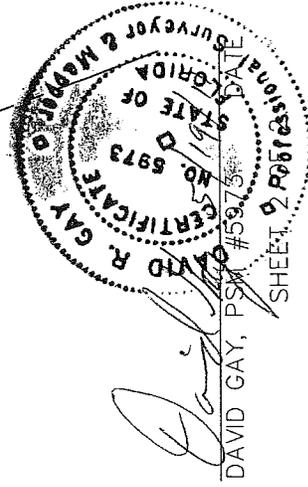
SUBJECT RELEASE OF EASEMENT

N. PORTION OF LOT 5

S. PORTION OF LOT 5

LOT 9

THIS SKETCH IS NOT A SURVEY



DAVID R. GAY, PSM #5973
 STATE OF FLORIDA
 PROFESSIONAL SURVEYOR & MAPPER
 SHEET 2 OF 2

| | | | | | |
|----------------------------|--|-----------------------------|---------|--------------|---------------|
| CITY OF VERO BEACH | | EXHIBIT "A" | | REV. NO. | AUTHORIZED BY |
| DEPARTMENT OF PUBLIC WORKS | | RELEASE OF EASEMENT | | 2011-RE-0385 | DATE |
| SURVEY DIVISION | | BLOCK 4, ROYAL PARK PLAT #3 | | 05/2011 | DATE |
| | | DRWN BY | CHKD BY | BMM | DESCRIPTION |
| | | | | DG | |

ORDINANCE NO. 2011 - _____

A ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING SECTION 58-106 OF CHAPTER 58 "PERSONNEL AND RETIREMENT," ARTICLE II, DIVISION 4 OF THE CODE OF ORDINANCES OF THE CITY OF VERO BEACH TO PROVIDE FOR ENHANCED INVESTMENT OPPORTUNITIES; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the current financial environment makes it desirable to provide enhanced investment opportunities for the assets of the City of Vero Beach Police Officers' Retirement Fund; and

WHEREAS, an amendment to the City code is necessary to permit such enhanced investment opportunities; and

WHEREAS, the trustees of the City of Vero Beach Police Officers' Retirement Fund have requested and approved the amendment provided herein as being in the best interests of the participants and beneficiaries and improving the administration of the plan; and

WHEREAS, the City Council has received and reviewed an actuarial impact statement related to this change and attached as such; and

WHEREAS, the City Council deems it to be in the public interest to provide this change to the pension plan for its police officer employees;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:

Section 1. Incorporation of "Whereas" clauses.

The foregoing whereas clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. Technical Amendments.

The code sections below are amended as follows, all deletions are depicted by ~~striking over the language~~ and all additions are depicted by underlining.

Section 3. Amendment of Section 58-106.

Section 58-106 of Chapter 58, Article II, Division 4 of the Code of Ordinances of the City of Vero Beach is hereby amended as follows:

Sec. 58-106. Investment of funds—Objective.

~~It shall be the objective of the police officers' retirement trust fund to maximize, through active professional management, the total return on investments for all assets, securities, and other holdings consistent with safety of principal and need for liquidity. In pursuit of this objective, the assets of the fund will be invested primarily in publicly traded instruments of investment grade or higher. Consistent with this objective is the mandate that the fund shall be capable of providing retirement benefits to participants in accordance with the plan benefits as stated in F.S. ch. 185 and this Code.~~

- (a) It shall be the objective of the municipal police officers' retirement fund that it be managed, administered, operated, and funded in such a manner as to maximize the protection of the fund while achieving the actuarial required objective return. In pursuit of this objective, the assets of the fund will be invested primarily, but not exclusively, in publicly traded instruments generally considered to be of investment grade or higher, as described in F.S. § 185.07(1). Consistent with this objective is the mandate that the fund will be capable of providing retirement benefits to participants in accordance with the plan benefits as stated in F.S. ch. 185 and this Code.
- (b) *Investment guidelines.* The board's investments shall be governed by the investment policy statement and guidelines, which shall be periodically reviewed by the board. The board shall have the authority to invest in all lawful investments, as permitted by Chapter 185 and Section 215.47, Florida Statutes.

Section 4. Repeal of conflicting ordinances.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

Section 6. Codification.

Authority is granted to codify provisions of this ordinance in the Code of City Ordinances.

Section 7. Effective date.

This ordinance shall take effect upon adoption.

This ordinance was read for the first time on the ____ day of _____ 2011, and was advertised in the *Vero Beach Press Journal* on the ____ day of _____ 2011, for a public hearing to be held on the ____ day of _____ 2011, at which time it was moved for adoption by Councilmember _____, seconded by Councilmember _____ and adopted by the following vote:

| | |
|---------------------------------|-------|
| Mayor Jay Kramer | _____ |
| Vice Mayor Pilar E. Turner | _____ |
| Councilmember Brian T. Heady | _____ |
| Councilmember Tracy M. Carroll | _____ |
| Councilmember A. Craig Fletcher | _____ |

ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Vock
City Clerk

Jay Kramer
Mayor

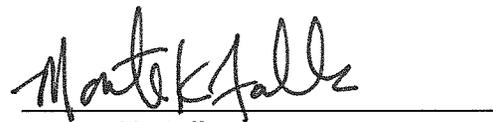
(CITY SEAL)

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:



Stephen J. Maillet
Finance Director



Robert Anderson
Human Resources Director



May 24, 2011

Board of Trustees
City of Vero Beach Police Officers' Retirement Fund
c/o Heather McCarty
1053 – 20th Place
Vero Beach, FL 32961-1389

Re: Statement of No Impact – Investment of Funds

Dear Trustees:

This letter is being written to provide a statement of no impact with regard to the attached ordinance for the City of Vero Beach Police Officers' Retirement Fund (the Plan) which allows for investments as defined by Florida Statutes Chapter 185 and Section 215.47.

Summary of Changes

| Section | Amendment |
|--|--|
| 58-106. Investment of Funds – Objective. | Language found under Section 58-106 is removed. Subsections (a) and (b) are added to clarify permissible investments and to define the investment policy statement and guidelines. |

Actuarial Impact

The liability of the Plan is not anticipated to be materially affected by this amendment to Plan provisions as the investment portfolio will continue to target a return greater than or equal to the assumed rate adopted by the Board of Trustees.

Sincerely,

Chad M. Little, ASA, EA
Partner, Consulting Actuary



May 24, 2011

Board of Trustees
City of Vero Beach Police Officers' Retirement Fund
c/o Heather McCarty
1053 – 20th Place
Vero Beach, FL 32961-1389

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Dear Trustees:

This letter is being written to provide a statement of no impact with regard to the attached ordinance for the City of Vero Beach Police Officers' Retirement Fund (the Plan) which allows for investments as defined by Florida Statutes Chapter 185 and Section 215.47.

Summary of Changes

| Section | Amendment |
|--|--|
| 58-106. Investment of Funds – Objective. | Language found under Section 58-106 is removed. Subsections (a) and (b) are added to clarify permissible investments and to define the investment policy statement and guidelines. |

Actuarial Impact

The liability of the Plan is not anticipated to be materially affected by this amendment to Plan provisions as the investment portfolio will continue to target a return greater than or equal to the assumed rate adopted by the Board of Trustees.

Sincerely,

Chad M. Little, ASA, EA
Partner, Consulting Actuary

ORDINANCE NO. 2011 - _____

A ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING SECTION 58-101 OF CHAPTER 58 "PERSONNEL AND RETIREMENT," ARTICLE II, DIVISION 4 OF THE CODE OF ORDINANCES OF THE CITY OF VERO BEACH TO PROVIDE CLARIFICATION THAT AN OPTIONAL BENEFIT SELECTED BY A POLICE OFFICER SHALL ONLY BE REDUCED ON THE DEATH OF THE POLICE OFFICER; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it has become apparent a clarification is required concerning the intent and impact of the selection of an optional retirement benefit by a participant concerning the on going benefit provided to a joint annuitant; and

WHEREAS, an amendment to the City code is necessary to permit such clarification; and

WHEREAS, the trustees of the City of Vero Beach Police Officers' Retirement Fund have requested and approved the amendments provided herein as being in the best interests of the participants and beneficiaries and improving the administration of the plan, and

WHEREAS, the City Council has received and reviewed an actuarial impact statement related to this change and attached as such; and

WHEREAS, the City Council deems it to be in the public interest to provide this change to the pension plan for its police officer employees;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF VERO BEACH, FLORIDA, THAT:**

Section 1. Incorporation of "Whereas" clauses.

The foregoing whereas clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. Technical Amendments.

The code sections below are amended as follows, all deletions are depicted by ~~striking over the language~~ and all additions are depicted by underlining.

Section 3. Amendment of Section 58-101.

Section 58-101 of Chapter 58, Article II, Division 4 of the Code of Ordinances of the City of Vero Beach is hereby amended as follows:

Sec. 58-101. Normal and early retirement.

- (a) Any police officer who has completed at least 25 years of credited service as a police officer with the city police department, or has attained the age of 55 or older and who, at such time, has completed at least ten years of credited service as a police officer with the city police department, and for such period has been a member of the retirement fund, is eligible for normal retirement benefits. Provided, however, that should the officer continue in service beyond the date just described, he shall continue to contribute to the fund and receive credit for service up to the date he actually retires. Provided further, however, if a police officer elects an early retirement, the reduction in annuity for age will be calculated at a rate of 2.5 percent per year from the early retirement date to the date the member would have reached normal retirement had he not terminated employment.
- (b) Optional forms of retirement income. In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in (a), a police officer, upon written request to the board of trustees and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

- (1) A retirement income payable to the police officer for his or her lifetime only.
- (2) A retirement income of a modified monthly amount, payable to the police officer during the joint lifetime of the police officer and a joint annuitant designated by the police officer, and following the death of the police officer, 100 percent, 75 percent, 66 2/3 percent, or 50 percent of such monthly amount payable, as selected by the police officer, to the joint annuitant for the lifetime of the joint annuitant.

Section 4. Repeal of conflicting ordinances.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 6. Codification.

Authority is granted to codify provisions of this ordinance in the Code of City Ordinances.

Section 7. Effective date.

This ordinance shall take effect upon final adoption.

This ordinance was read for the first time on the ____ day of _____ 2011, and was advertised in the *Vero Beach Press Journal* on the ____ day of _____ 2011, for a public hearing to be held on the ____ day of _____ 2011, at which time it was moved for adoption by Councilmember _____, seconded by Councilmember _____ and adopted by the following vote:

Mayor Jay Kramer _____
Vice Mayor Pilar E. Turner _____
Councilmember Brian T. Heady _____
Councilmember Tracy M. Carroll _____
Councilmember A. Craig Fletcher _____

ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Vock
City Clerk

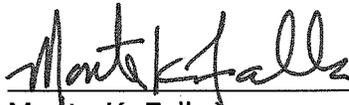
Jay Kramer
Mayor

(CITY SEAL)

Approved as to form and
legal sufficiency:

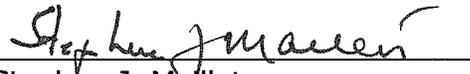
Approved as conforming to
municipal policy:


Wayne R. Coment
Acting City Attorney


Monte K. Falls
Interim City Manager

Approved as to technical requirements:

Approved as to technical requirements:


Stephen J. Mallet
Finance Director


Robert Anderson
Human Resources Director



May 24, 2011

Board of Trustees
City of Vero Beach Police Officers' Retirement Fund
c/o Heather McCarty
1053 – 20th Place
Vero Beach, FL 32961-1389

Re: Statement of No Impact – Optional Forms of Retirement Income

Dear Trustees:

This letter is being written to provide a statement of no impact with regard to the attached ordinance for the City of Vero Beach Police Officers' Retirement Fund (the Plan) which provides for additional optional forms of retirement income.

Summary of Changes

The normal form of payment continues to be the 10-year certain and life annuity. This is a monthly pension payable for the lifetime of the member with the guarantee that if the member dies within ten years of the date of DROP or retirement the designated beneficiary receives a monthly payment equal to the monthly payment received by the member for the remainder of the ten years.

Prior to this Plan amendment, members have been offered the following optional forms of retirement income which are converted from the normal form of payment based on the Plan's definition of actuarial equivalence:

- Life Only
- 100%, 75%, 66 2/3% and 50% Joint and Last Survivor Annuity

A Joint and Last Survivor Annuity is a monthly pension payable as long as both the member and beneficiary live. Upon the death of either the member or the beneficiary, the one that survives the other receives a monthly payment for life which is a percentage of the monthly payment while both were alive.

This amendment adds language as Section 58-101(b) which provides for additional optional forms of retirement income called Joint and Survivor Annuities (100%, 75%, 66 2/3%, and 50%). The Joint and Survivor Annuity is different from the Joint and Last Survivor Annuity. Joint and Survivor Annuities are again converted from the normal form of payment based on the Plan's definition of actuarial equivalence. The monthly benefit payable to the member is unchanged for the member's life. In other words, if the beneficiary predeceases the member, the monthly benefit payable to the member is unchanged. However, if the member predeceases the beneficiary a percentage of the benefit which was in payment to the member becomes payable to the beneficiary.

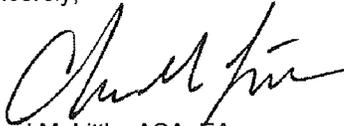
After this Plan amendment is adopted, we understand that the optional forms of retirement income are available:

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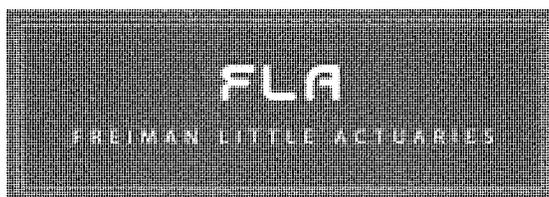
Actuarial Impact

The optional forms of retirement income are actuarially equivalent to the normal form of benefit based on the Plan's definition of actuarial equivalence. Because the value of the benefit under any optional form of retirement income is actuarially equivalent to the normal form, the impact of providing for additional optional forms of retirement income is deemed immaterial.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad Little". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chad M. Little, ASA, EA
Partner, Consulting Actuary



May 24, 2011

Board of Trustees
City of Vero Beach Police Officers' Retirement Fund
c/o Heather McCarty
1053 – 20th Place
Vero Beach, FL 32961-1389

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Chad M. Little, ASA, EA
Partner, Consulting Actuary



City Council Agenda Item

Meeting of June 21, 2010

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

FROM: Monte K. Falls, Interim City Manager *MK Falls 6/15/11*

DATE: June 15, 2011

SUBJECT: GAI Status Report on Water and Sewer Utility

REQUESTED BY: Interim City Manager

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)

June 14, 2011
GAI Project No.: A100855.04
A100855.05

Mr. Monte Falls, Acting City Manager
City of Vero Beach
1053 20th Place
Vero Beach, FL 32960-5359



Re: Status Update on Work Order No. 1531-C-2 to Appraise City of Vero Beach Water, Wastewater, and Non-Potable Use Systems and Work Order No. 1531-C-3 Preparation of a Water, Wastewater, and Reuse Systems Operational and Financial Optimization Study

Dear Mr. Falls:

This letter serves as a status update by GAI Consultants, Inc. (GAI) on the above referenced projects for work performed through June 14, 2011. GAI will be available to present this Status Report at the June 21, 2011 City Council Meeting.

As you are aware, the City recently authorized work on both the Water, Wastewater, and Non-Potable Use Systems Appraisal as well as the Water, Wastewater, and Reuse Systems Operational and Financial Optimization Studies. The following is a list of accomplishments on those projects to-date:

Work Order No. 1531-C-2 to Appraise City of Vero Beach Water, Wastewater, and Non-Potable Use Systems

- Data Request sent to City on June 3, 2011. Call held with Robert Bolton on the same day to discuss data needed as well as contacts and project protocol.
- File transfer site established for City to upload data as it becomes available.
- GAI is working with City staff to refine data. Financial data has been downloaded from City Website.
- GAI staff participated in field inspections of the City's water, wastewater, and non-potable assets on June 6, 7, 8, and 9, 2011.
- GAI project team began work on system wide income approach analysis and comparable sales analysis.
- GAI updated costs tables from previous appraisal work for City to be included in system wide cost approach analysis.
- Property deeds received and forwarded to proposed land appraiser.
- Meeting with City Staff to be scheduled by the end of June 2011.

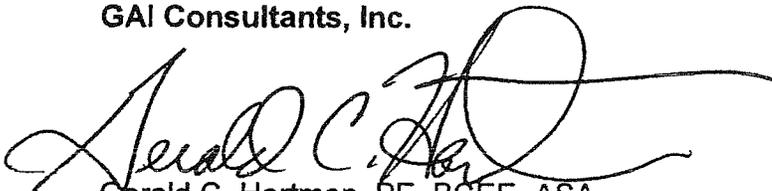
Work Order No. 1531-C-3 Preparation of a Water, Wastewater, and Reuse Systems Operational and Financial Optimization Study

- Discussions on operations on-going.
- Data Request sent to City on June 3, 2011. Call held with Robert Bolton on the same day to discuss data needed as well as contacts and project protocol.
- File transfer site established for City to upload data as it becomes available.
- GAI is working with City staff to evaluate/clarify data. Financial data has been downloaded from City website.
- GAI staff participated in field inspections of the City's water, wastewater, and non-potable assets on June 6, 7, 8, and 9, 2011.
- Data analysis of existing information including DMRs, MORS, etc. for operational optimizations in process.
- Model work for financial optimizations started.
- County's rates and charge practices being documented for comparison.
- Meeting with City Staff to be scheduled by the end of June 2011.
- Refinement options initial discussions.

We appreciate the opportunity to be of service on these projects. If you have any questions, comments, or need additional information, please contact me.

Very truly yours,

GAI Consultants, Inc.



Gerald C. Hartman, PE, BCEE, ASA
Vice President

cc: Robert Bolton, Utilities Director
Tara Hollis, GAI
Tony Isaacs, GAI

7-13)



City Council Agenda Item
Meeting of June 21, 2010



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

FROM: Monte K. Falls, Interim City Manager *MK Falls 6/15/11*

DATE: June 15, 2011



SUBJECT: **GAI Status Report on Electric Utility**

REQUESTED BY: Interim City Manager



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)





June 14, 2011
GAI Project No.: A100855.03

Mr. Monte Falls, Acting City Manager
City of Vero Beach
1053 20th Place
Vero Beach, FL 32960-5359

**Re: Status Update on Work Order No. 1531-C-1 Electric System Valuation, FPL,
Proposal Evaluation and Technical Assistance for City Response**

Dear Mr. Falls:

This letter serves as a status update by GAI Consultants, Inc. (GAI) on the above referenced project for work performed through June 14, 2011. GAI will be available to present this Status Report at the June 21, 2011 City Council Meeting.

On April 25, 2011 the City of Vero Beach (City) approved the above project. The following is a list of accomplishments on that project to-date:

Work Order No. 1531-C-1 for Electric System Valuation, FPL, Proposal Evaluation and Technical Assistance for City Response

- At the start of the project, the City provided data that had been provided to FPL. GAI staff, GrayRobinson, and PowerServices staff have reviewed and catalogued that data.
- GAI and GrayRobinson reviewed the Letter of Intent (LOI) originally prepared by FPL and provided comments to the City.
- On April 28, 2011 representatives from GAI and GrayRobinson met with representatives from Orlando Utilities Commission (OUC) regarding contract terms and what could be done to help regarding the sale of the City electric system. OUC will provide responses to GAI and GrayRobinson in June 2011.
- On May 9, 2011, a conference call was held with City staff to discuss project to-date including the LOI, FMPA/OUC power entitlements, etc.
- Based on the data initially provided, GAI prepared a second data request and sent to the City on May 16, 2011.
- The valuation report meeting was held on Friday, May 20, 2011, which included GAI, PowerServices, and GrayRobinson. This meeting was used to coordinate activities being performed by each firm. At that meeting deliverables were discussed and internal deadlines were established for the preparation of the draft and final reports for the City.

- Representatives of GAI, GrayRobinson, and PowerServices met with FMPA on May 25, 2011 to discuss power entitlements. FMPA discussed an approval process to transfer the City obligations. FMPA will provide an approximate cost for that process to GAI in June. They mentioned the process typically takes approximately 6 months to complete once initiated.
- A GAI representative was on-site in Vero on June 3, 2011 to copy data needed for the analysis because of time restrictions of City staff.
- Field inspections and assessments were performed on the system by GAI and PowerServices representatives the week of June 6, 2011 (5 days).
- On June 8, 2011, representatives from the City, GAI, GrayRobinson and FPL met for a status update and continued discussions. A letter summarizing that meeting was prepared by GAI and sent to the City attorney on June 9, 2011.
- GrayRobinson established a "data room" as requested by FPL. This will be continually updated as additional data becomes available.
- PowerServices is proceeding with reviewing and making notations on the current asset list including condition of the various assets. Once complete, they will be providing detailed cost information that will be used by GAI to complete the cost approach.
- GAI is proceeding with the income approach. Detailed budget information has been provided from the City and is in the process of being analyzed. A model has been created and GAI is working on developing the proforma projections necessary for the detailed income approach analysis.
- GAI is also working on the comparable sales approach. In addition to comparable sales information already on hand, GAI is working to augment those sales with additional system sales that have occurred recently throughout the eastern U.S.
- The City, FPL, and GAI met with the City of Vero Beach Municipal Airport on June 14, 2011 at the Airport.
- The City, FPL and GAI met with Fort Pierce Utility Authority (FPUA) representatives on June 14, 2011 at FPUA to discuss the tie-in agreement.

Issues

The tangible personal property and real estate value aspects are progressing well. Major issues include the following:

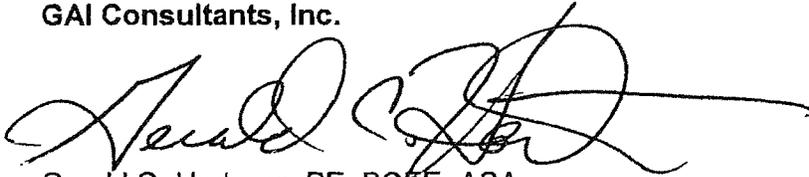
1. FPL to clarify LOI general statements more specifically, due June 30, 2011.
2. Referendum process.
3. FPL to provide basis for "up to \$100 million" offer in one week.

3. FPL to provide basis for "up to \$100 million" offer in one week.
4. FPL to delineate assets to be acquired specifically (June 23, 2011).
5. FPL to work with Airport for lease of T&D complex, two (2) substations, and transmission/distribution easements.
6. RFQ for FMPA Entitlements and Obligations to be expedited.
7. FPL to decide on preparation of the three (3) proposed purchase and sale agreements under the 5/5/92 "Tie-In Agreement" terms and conditions within one (1) week. Proposed Exhibits:
 - a. Accounting and Basis of Payment
 - b. Facilities As-Builts
 - c. Land Rights
8. FPL to respond to "maybe" option within one week.
9. Other City Items:
 - a. FPUA approvals
 - b. OUC negotiations and resolutions
 - c. FMPA approval process
 - d. Indian River Farms easements resolution
 - e. Various real estate issues
 - f. Federal grant disposition approvals
 - g. City staff providing FPL due diligence
 - h. FPL request of GAI to provide due diligence support
 - i. Assistance in accounting/rate base/original cost study.
 - j. Agreement negotiations
 - k. Transactional documentation
 - l. Public Workshops and Hearings
 - m. Environmental Issues (EA) and liability

We appreciate the opportunity to be of service on this project. If you have any questions, comments, or need additional information, please contact me.

Very truly yours,

GAI Consultants, Inc.

A handwritten signature in black ink, appearing to read "Gerald C. Hartman". The signature is fluid and cursive, with a large initial "G" and "H".

Gerald C. Hartman, PE, BCEE, ASA
Vice President

cc: Tara Hollis, GAI
Tony Isaacs, GAI



June 9, 2011
GAI Project No.: A100855.03

Wayne R. Coment, Esquire
Acting City Attorney
City of Vero Beach
1053 20th Place
Vero Beach, Florida 32960-5359

Thomas A. Cloud, Esquire
GrayRobinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801



Re: Summary of Meeting with Florida Power & Light and City of Vero Beach on June 8, 2011

Dear Mr. Coment and Mr. Cloud:

As you are aware, on June 8, 2011, representatives from GAI Consultants, Inc. (GAI) participated in a meeting with representatives from Florida Power & Light (FPL), the City of Vero Beach (the City), and GrayRobinson, P.A. (GrayRobinson). Pursuant to the request of the meeting attendees, GAI has prepared this summary. The following presents a summary of the items discussed and agreed to at this meeting:

1. The Letter of Intent (LOI) was reaffirmed by FPL and City. Clarifications to be discussed at future call.
2. A referendum relative to the potential lease of the power plant site is necessary. (GrayRobinson with work with the City to prepare).
3. GAI and GrayRobinson will prepare a status report of the monthly activities of the City relative to this project and FPL will do the same and give to the City Manager.
4. FPL will complete its due diligence by September 1, 2011.
5. GAI will complete its Appraisal Report by September 20, 2011.
6. City, GAI, GrayRobinson, and FPL will have team meetings every two weeks via conference call. The first four (4) meetings have been scheduled.
7. A status report of progress to-date will be presented monthly at the City Council Meeting.
8. FPL agreed it will hire 100% of the City electric system employees and will fund 100% of the pension requirements of the electric system employees (which includes both current and retired employees).
9. City will provide temporary customer services for up to six (6) months post-closing.

10. FPL will separately buy the FPUA/City tie-in agreement at the contract original cost less depreciation versus fair market value, in addition to the \$100 million LOI offer for system.
11. No Separation of the City Electric System assets is necessary.
12. City Pole Attachments for cable and telephone are not included in the LOI. FPL will have to pay to obtain these attachments in addition to the LOI amount. Microwave tower attachments on smoke stacks, etc. with joint access to tenant and FPL are also not included in the LOI, however, there is an option for FPL to purchase these leases in addition the LOI amount.
13. City Streetlights are to be purchased by FPL and will be charged according to the FPL tariffs once acquired. That purchase is in addition to the LOI amount.
14. City will provide a list of current streetlights and revenue to FPL within one (1) week.
15. FPL will identify the list of assets to be acquired within the LOI within two (2) weeks. GAI will provide the list of assets being appraised in the valuation within two (2) weeks.
16. FPL is not buying the fiber optics attachments but can lease strands from City.
17. OUC committed to provide answers regarding its agreement by the end of June.
18. LOI clarifications will be offline between City Staff/City Attorney, GrayRobinson, GAI, and FPL Staff and Legal Counsel.
19. FPL has requested that the City enter into a Confidentiality Agreement. Such agreement will be developed by FPL and provided to the City for consideration.
20. City will hold a Public Hearing on approval of the Purchase and Sale Agreement along the outline of Chapter 180, Florida Statutes.
21. Request for Qualifications (RFQ) package for potential purchase of FMPA/City Power Entitlements and obligations. City and its Consultants to perform, solicit, and evaluate/negotiate. A proposal for this work will be given to the City by June 13, 2011 for the City Council Agenda for the June 21, 2011 meeting.
22. FPL agreed to handle all FPSC and rate base issues at FPL cost.
23. GrayRobinson will respond to FPL's request for a Data Room and classification and easy recovery system.
24. City invites FPL to all outside meetings including:
 - a. FPUA – 6/14/11

- b. Vero Beach Municipal Airport – 6/14/11
- c. Others to be scheduled.

25. FPL and City Primary Points of Contact are:

- a. FPL
 - i. Legal – Alex Rubio (Commercial Transactions), Patrick Bryan (Regulatory)
 - ii. Electric Due Diligence – Ryan Fair
- b. City
 - i. Legal – Wayne Coment (with Thomas Cloud of GrayRobinson assisting)
 - ii. Electric Due Diligence – Monte Falls (with City Staff or GAI assisting)

Note: specific responsibilities for FPL – 15 printed and 1 general area passed out for Due Diligence. For Legal, 9 Attorneys and 2 leads identified.

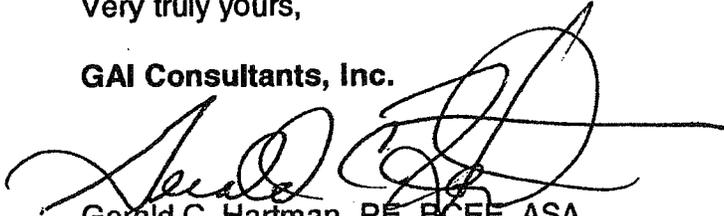
26. Next two (2) weeks action items:

- a. Issue resolution meetings (FPUA and City of Vero Beach Municipal Airport)
- b. LOI Clarification Call
- c. RFQ for City Council consideration
- d. FPL-assets to be acquired
- e. Basis of FPL Offer
- f. Response on “City all costs paid option for power station operations until FPL can construct transmission”
- g. Inspections
- h. Additional Data Transfer
- i. Continuing Due Diligence

Please forward this summary to FPL with any comments you may have. If you have any questions, comments, or need additional information, please do not hesitate to contact Tara Hollis or me at 407.423.8398.

Very truly yours,

GAI Consultants, Inc.

A handwritten signature in black ink, appearing to read 'Gerald C. Hartman', written over a horizontal line.

Gerald C. Hartman, PE, BCEE, ASA
Vice President

Cc: Tara L. Hollis, CPA, MBA

7-C)



City Council Agenda Item Meeting of June 21, 2010

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

FROM: Monte K. Falls, Interim City Manager *MK Falls 6/15*

DATE: June 15, 2011

SUBJECT: Request For Qualifications for Potential Purchase of Vero Beach Power Entitlements and Obligations

REQUESTED BY: Interim City Manager

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)

MEMORANDUM

TO: The Honorable Mayor Jay Kramer, Vice Mayor Pilar Turner, Councilmember Brian Heady, Councilmember Craig Fletcher and Councilmember Tracy Carroll

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

DATE: June 15, 2011

SUBJECT: Request For Qualifications for Potential Purchase of Vero Beach Power Entitlements and Obligations

Recommendation:

- Place this item on the agenda of the June 21, 2011 meeting of the City Council;
- Accept the Proposal from GAI Consultants for Professional Services to Prepare, Solicit, and Evaluate Request For Qualifications (RFQ) for Potential Purchase of FMPA/OUC/City of Vero Beach Power Entitlements and Obligations for an amount not to exceed \$35,000.

Funding:

Funding will come from the Electric Utility Non-Departmental Account.

Background:

One of the responsibilities of the City of Vero Beach involving the potential purchase of the City of Vero Beach Electric Utility by Florida Power and Light involves the investigation into the possibilities for a sale or assignment of the contracts the City has with the Florida Municipal Power Agency ("FMPA") and the Orlando Utilities Commission ("OUC"). These are the contracts that would be transferable only to members of the FMPA. The goal would be to transfer the entitlements together with the obligations under those contracts.

In order to maximize the potential value of the FMPA and OUC contracts for the City of Vero Beach, or at least lessen the obligations of the City, we need to first determine which FMPA members may be interested in taking over the contracts and the ability of any such entities to assume the contracts. In order to investigate the potential for disposition of the subject contracts, a public notice issued to qualifying utilities instituting a Request For Qualifications ("RFQ") process would be most appropriate and should accomplish the following: (1) determine interest in the acquisition/assumption of the six contracts involved; (2) determine those utilities that qualify; (3) obtain letters of interest from interested qualifying utilities; and (4) make recommendations to the Council on the best way to dispose of the contracts consistent with the requirements of the contracts.

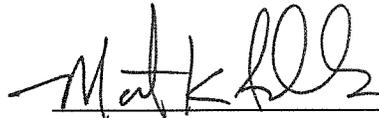
The Honorable Mayor and Members of the City Council

Page 2

June 15, 2011

The foregoing RFQ process would likely need to include conducting a public workshop with the qualifying utilities expressing interest. After evaluation, the City would publish notice soliciting more specific "letters of interest" from those utilities found by the City to be qualified to assume the contracts, such as meeting a certain minimum investment grade on their corporate/municipal debt.

If approved, this proposal would be authorized as an independent work order under the Master Agreement approved by City Council on May 17, 2011 and entered into on June 10, 2011.



Monte K. Falls, P.E.

MKF:jav
Attachment

xc: Wayne Coment
Gerald Hartman

June 13, 2011
GAI Project No.: A100855.06

Mr. Monte Falls, Acting City Manager
City of Vero Beach
1053 20th Place
Vero Beach, FL 32960-5359

Re: Proposal for Professional Services to Prepare, Solicit, and Evaluate Request for Qualifications (RFQ) for Potential Purchase of FMPA/OUC/City of Vero Beach Power Entitlements and Obligations

Dear Mr. Falls:

This letter constitutes GAI Consultants, Inc. (GAI) proposal to serve the City of Vero Beach (City) regarding preparing, soliciting, and evaluating an RFQ relative to the Potential Purchase of FMPA/OUC/City of Vero Beach Power Entitlements and Obligations. GAI has previously entered into a Professional Services Master Agreement with the City and understands this project will be issued as a Work Authorization under this Agreement. As GAI is an 800-person firm, assignment of this work will not impede our work that is currently in process with the City.

As the City moves forward with the potential purchase of the City Electric System by Florida Power & Light (FPL), it must investigate the possibilities for a sale or assignment of the contracts the City has with the Florida Municipal Power Agency (FMPA) and the Orlando Utilities Commission (OUC). These contracts are transferable only to members of the FMPA. The goal would be to transfer the entitlements together with the obligations under those contracts.

In order to maximize the potential value of the FMPA and OUC contracts and lessen the obligations of the City, it needs to be determined which FMPA members may be interested in taking over the contracts and the ability of any such entities to assume the contracts. In order to investigate the potential for disposition of the subject contracts, a public notice issued to qualifying utilities instituting an RFQ process would be most appropriate and should accomplish the following:

- (1) determine interest in the acquisition/assumption of the six contracts involved;
- (2) determine those utilities that qualify;
- (3) obtain letters of interest from interested qualifying utilities; and
- (4) make recommendations to the Council on the best way to dispose of the contracts consistent with the requirements of the contracts.

SCOPE OF SERVICES

The GAI Team for this project is to be comprised of members from both GAI and GrayRobinson, P.A. The GAI Team shall perform the following tasks in conjunction with the RFQ for Potential Purchase of FMPA/OUC/City Power Entitlements and Obligations:

- A. The GAI Team will work with the City's staff, including Purchasing, to prepare the detailed Scope and Requirements of the RFQ Package.
- B. The GAI Team will assist the City to solicit responses to the RFQ Package.
- C. The GAI Team will coordinate with City staff to conduct a public workshop with the qualifying utilities expressing interest.
- D. The GAI Team will assist the City in evaluating the RFQ submittals.
- E. After evaluation, the City will publish notice soliciting more specific "letters of interest" from those utilities found by the City to be qualified to assume the contracts. The GAI Team will assist the City to evaluate these utilities.

SCHEDULE

It is anticipated that preparation of the RFQ packet will be complete within two (2) weeks of receipt of notice-to-proceed. Solicitation of responses to the RFQ package will take approximately four (4) weeks. Evaluation of the responses to the RFQ package are anticipated to be complete within two (2) weeks of receipt and opening of RFQ responses. The GAI team can also provide specific negotiation assistance as an additional service with the timing to be negotiated with the City as and when requested.

COMPENSATION

The compensation for this assignment, as detailed in the above **Scope of Services** is proposed on a not-to-exceed limit as follows and will be billed hourly in accordance with the rates previously adopted by the City. Negotiation Assistance with specific utilities will be provided as an additional service and will be scoped separately from this work authorization.

| <u>Team Member</u> | <u>Not-To-Exceed Limit</u> |
|--------------------|----------------------------|
| GAI | \$ 25,000.00 |
| GrayRobinson | \$ 10,000.00 |
| Total | \$ 35,000.00 |

TERMS AND CONDITIONS

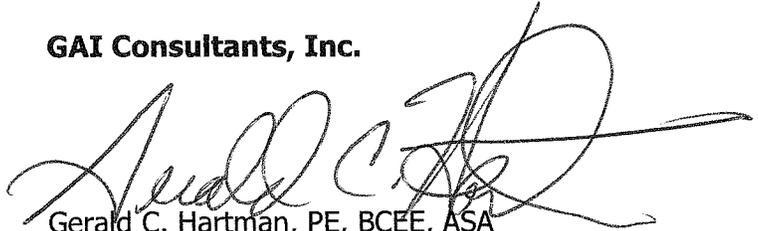
The terms and conditions contained in our Professional Services Master Agreement with the City continue to apply.

CLOSING

We look forward to providing the utility consulting services you desire. If the above is acceptable to the City, please execute one copy of this agreement and return it to our office. The receipt of a signed work authorization from the City shall constitute GAI's notice to proceed with the work.

Very truly yours,

GAI Consultants, Inc.


Gerald C. Hartman, PE, BCEE, ASA
Vice President



Witness



Witness

Accepted by:
City of Vero Beach, Florida

Witness

Authorized Signature

Witness

Date

7-D)



City Council Agenda Item Meeting of June 21, 2010

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

FROM: Monte K. Falls, Interim City Manager

MKF 6/14/11

DATE: June 13, 2011

SUBJECT: Change in the "Electric Service – Fuel Cost"

REQUESTED BY: Customer Service Manager

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)

**CITY OF VERO BEACH
DEPARTMENTAL CORRESPONDENCE**

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

FROM: John T. Lee, Customer Service Manager JTL 6/13/2011
DEPT: Customer Service

DATE: June 13, 2011

RE: A change in the “Electric Service – Fuel Cost”

Recommendation:

- This is an informational item and Council action is not required.

Background:

The second line on most electric bills is “Electric Service – Fuel Cost”, which represents the cost for the generation, transmission and fuel necessary to provide electric service. The following items represent the monthly costs that are used to determine the “Electric Service –Fuel Cost”.

- Monthly Invoice for St. Lucie Nuclear Generation
- Monthly Invoice for Stanton One Coal Generation
- Monthly Invoice for Stanton Two Coal Generation
- Monthly Invoice for OUC Supplemental Generation
- Monthly Invoice for FPL Transmission Services

The total generation costs for the first four month of 2011 have exceeded the projections, therefore, a change in the “Electric Service – Fuel Cost” is necessary. The current rate is \$56.00 per 1,000 kWh and the new rate is \$60.00 per 1,000 kWh. This change in the rate will result in an increase of approximately 3.7 % for the average residential bill. The new rate will be effective for all electric meter readings taken on or after July 1, 2011

Attachments

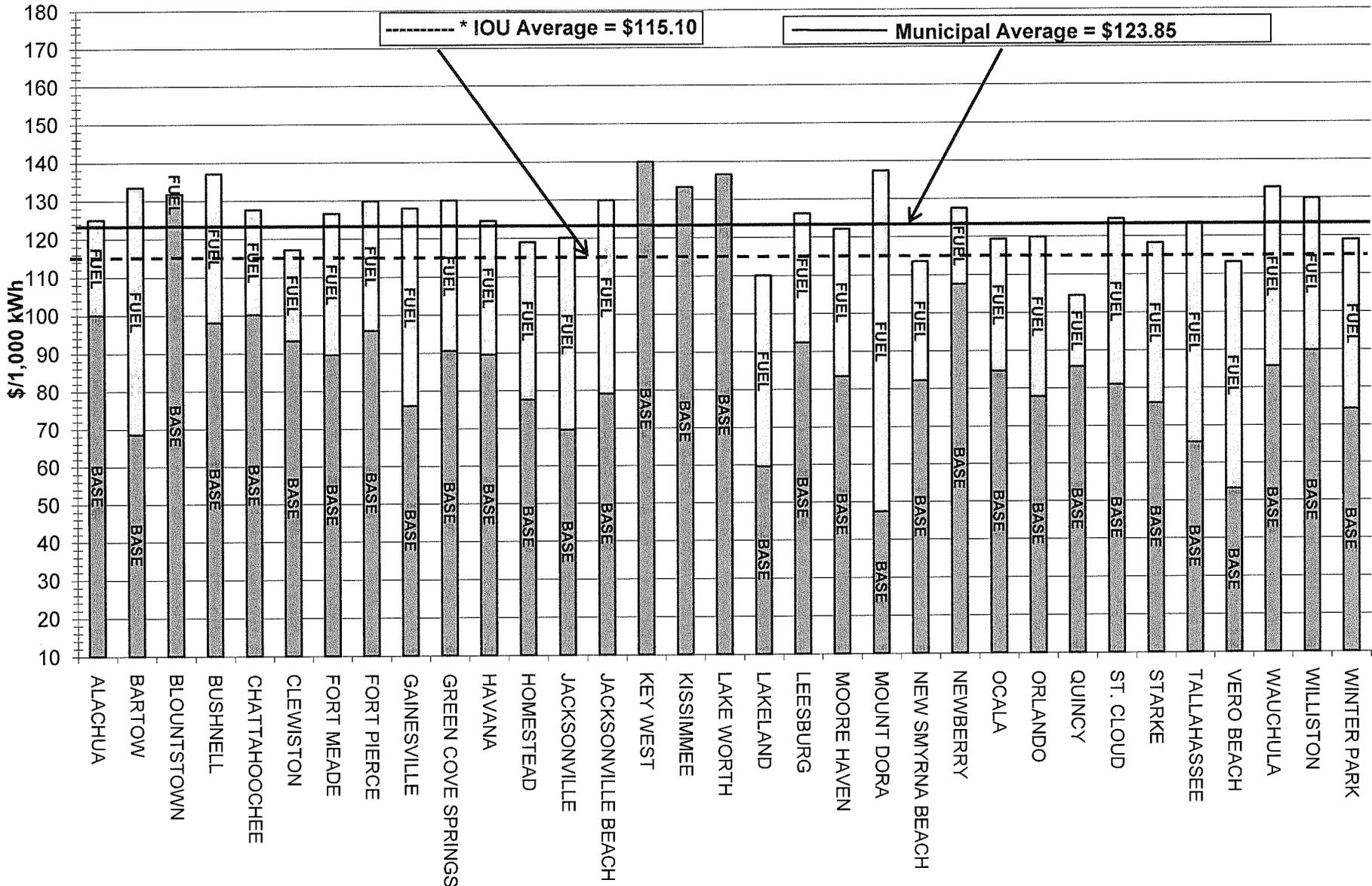


Electric Rate Comparison

Residential Account - 1,000 kilowatt hours

| Bill Date | Electric Service Metered kWh | Electric Service Fuel Costs | Total Bill |
|-----------|---------------------------------|--------------------------------|------------|
| Dec-09 | \$83.31 | \$75.51 | \$158.82 |
| Jan-10 | \$51.95 | \$74.00 | \$125.95 |
| Mar-10 | \$51.95 | \$71.50 | \$123.45 |
| Apr-10 | \$51.95 | \$69.50 | \$121.45 |
| Oct-10 | \$53.14 | \$64.00 | \$117.14 |
| Jan-11 | \$53.14 | \$60.00 | \$113.14 |
| May-11 | \$53.14 | \$56.00 | \$109.14 |
| Jul-11 | \$53.14 | \$60.00 | \$113.14 |

Residential Bill Comparison, April 2011



* Includes average 6% franchise fee.

8-A)



OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: Mayor Kramer and Councilmembers
From: Wayne R. Coment, Acting City Attorney *WRC*
Subject: City Deed to County — Dodgertown land swap
Date: June 2, 2011

We received today from the Indian River County Attorney the closing documents for the Dodgertown land swap between the City of Vero Beach and Indian River County.

The City's deed to the County that the City Council reviewed and approved on May 3, 2011 has required modification to remove language that was inadvertently included regarding a Declaration of Covenants, etc. that was not to be applicable to the property the City is transferring to the County. Therefore, attached you will find a copy of the corrected City Deed which removes that language. In addition, the date of June 1, 2011 was selected and has been inserted as the effective date on the City Deed and the other closing documents for uniformity.

We request the Council add this matter to your Tuesday, June 7, 2011 Meeting Agenda to approve the modification to the City Deed nunc pro tunc as of the original approval on May 3, 2011 and authorize the Mayor to execute same together with the other closing documents previously approved.

Attachment (1)

COPY

**CITY DEED
VERO BEACH, FLORIDA**

THIS DEED, made as of this 1st day of June, 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]**

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: May 3, 2011

Wayne Coment, Acting 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: May 3, 2011

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;

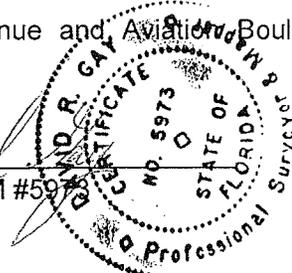
Thence South 18°15'41" East along said East line of Parcel 3A for a distance of 386.49 feet to the Southeast corner of said Parcel 3A;

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


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

8-B)



OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: Mayor Kramer, Vice-Mayor Turner, and Councilmembers

From: Wayne R. Coment, Assistant/Acting City Attorney *wrc*

Subject: Extension of Work Agreement

Date: June 15, 2011

Attached for your consideration is a proposed agreement extending the period of time for my serving the Council as acting city attorney. The proposed agreement extends the current arrangement until the Council no longer desires that I serve in that capacity as previously provided or until the agreement is otherwise terminated. Extending the time of service will allow Council to complete the 2011-2012 budget process and also come to a decision on how to proceed concerning staffing of the City Attorney's office. Please let me know should you have any questions or concerns.

EXTENSION OF WORK AGREEMENT
BETWEEN CITY OF VERO BEACH AND WAYNE R. COMENT

WHEREAS, the City Council of the City of Vero Beach and Wayne R. Coment previously entered into that certain "Work Agreement between the City of Vero Beach and Wayne R. Coment" effective February 10, 2011 (hereinafter "Work Agreement"); and

WHEREAS, the Work Agreement provided for Mr. Coment to serve in the capacity of acting City Attorney for the City Council for a period of up to 120 days, which period of time expired June 9, 2011; and

WHEREAS, the City Council desires to extend the period of time for Mr. Coment to serve in the capacity of acting City Attorney and Mr. Coment is in agreement to do so;

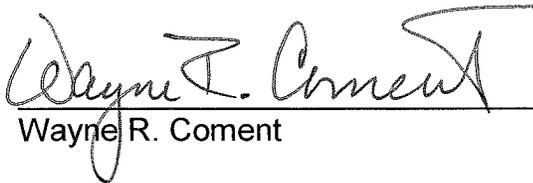
THEREFORE, in consideration of the foregoing "Whereas" clauses which are incorporated herein and the terms and conditions specified below, the City Council of the City of Vero Beach and Wayne R. Coment agree as follows:

1. The period of time for Mr. Coment to serve as acting City Attorney is extended effective June 9, 2011 and will continue until such time that the City Council no longer desires for him to serve in such capacity or until the Work Agreement is otherwise terminated.
2. The terms of the Work Agreement shall remain in effect in all other respects.

Approved by City Council on _____ and executed by the parties as follows:

Jay Kramer, Mayor

Date



Wayne R. Coment



Date

WORK AGREEMENT BETWEEN THE CITY OF
VERO BEACH AND WAYNE R. COMENT

The City Council of the City of Vero Beach and Mr. Wayne R Coment agree to the following terms, conditions, and understandings in consideration of Mr. Coment temporarily serving the City in the capacity of acting city attorney effective the 10th day of February 2011:

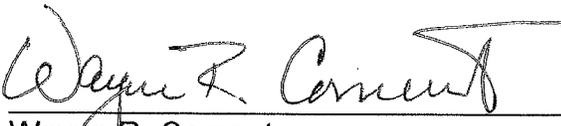
1. As acting city attorney, Mr. Coment will perform the duties and responsibilities as outlined in the attached city attorney job description and the Charter of the City with the understanding and acknowledgment by the City Council that the current reduction in personnel in the office of the city attorney means that the need is likely to arise for the engagement of outside legal counsel on some matters, especially in regard to litigation, administrative actions, or specialized areas of law. Should such need arise the City Council will be consulted for action prior to any such engagement unless time constraints or pleading requirements dictate a response in such matters is necessary to protect the interests of the City before Council can meet to take official action. Any such early engagement will then be brought to the City Council for consideration and action. Only limited preliminary review and consultation on a Councilmember proposal or request (i.e. ordinance, resolution, formal legal opinion, etc.) and informal consultation with any Councilmember regarding other matters or legal interpretation or application of a statute, code provision, or the like will be undertaken absent City Council approval and guidance. Consistent with the Charter and Code of the City, any Councilmember request or direction requiring more substantial work or expenditure of time or resources by the acting city attorney or other city attorney personnel will require direction and instruction on such requested work by the City Council as a body. Further, any conflicting or competing requests or direction from Councilmembers on any matter will be brought to the Council for resolution and direction on whether or how to proceed with the requested work.
2. Mr. Coment will serve in the capacity of acting city attorney for a period of time up to 120 calendar days, unless such period is extended by mutual agreement, or until such earlier date that the City Council no longer desires for him to serve in such capacity. Upon expiration of the above-specified time period or such earlier date determined by the City Council or such later agreed date, Mr. Coment will return to his position and duties as assistant city attorney with no loss in salary, benefits, or seniority.
3. In consideration of the duties and time demands of serving in the capacity of acting city attorney, Mr. Coment will not lose any annual leave or other benefits he would have otherwise accrued but could not utilize to avoid loss of such annual leave or other benefits.

Approved by City Council on February 15, 2011 and executed as follows:



Jay Kramer, Mayor

2-15-11
Date



Wayne R. Coment

2/14/11
Date



CITY OF VERO BEACH EXEMPT JOB DESCRIPTION

| | | | |
|------------------------|----------------------|------------------------|--------------|
| Job Title: | City Attorney | | |
| Dept./Division: | City Attorney | Reports to: | City Council |
| Job Code: | 1031 | Effective Date: | October 2006 |

PRIMARY FUNCTION:

Under administrative direction, plans, directs and provides legal counsel and related services to the Mayor, City Council, Charter Officers, departments and various boards and commissions of the City of Vero Beach; ~~and ensures that citizens do not speak for more than four minutes and thirty seconds during public comment portion of council meetings.~~

PRINCIPAL RESPONSIBILITIES:

The following duties have been provided as examples of the essential types of work performed by positions within this job classification. Management reserves the right to add, modify, change or rescind work assignments as needed.

- Advises the Mayor, City Council, Charter Officers, department heads, boards and commissions relative to legal matters affecting the city; prepares or directs the preparation of legal opinions, draft ordinances, resolutions, contracts, deeds, leases and other legal documents; attends city council and related meetings.
- Prepares civil cases for trial; investigates claims and complaints by or against the city; works with other legal specialists hired by the city for special and/or complex cases; provides guidance to and reviews the work of city attorneys; enforces and makes recommendations regarding city policies and procedures.
- Responds to and resolves sensitive and complex inquiries and complaints including litigation, requests of the City Manager and elected officials for information and interpretation.
- Manages the City Attorney's office, establishes work priorities, monitors work progress, develops and monitors departmental operating and capital improvement budgets, approves purchases and expenditures.
- Develops and shapes an appropriate organization structure to support current and future department objectives.
- Provides administrative direction and supervises professional and support employees. Assigns, schedules, guides and monitors work. Appraises employee performance and reviews subordinate supervisors' appraisals. Identifies and resolves staff differences, conflicts and deficiencies. Interviews applicants and recommends hiring, discipline, termination, promotion or other employee status changes. Enforces personnel rules and regulations and work behavior standards firmly and impartially.

KNOWLEDGE, ABILITIES AND SKILLS:

Managerial/technical/professional:

- Comprehensive knowledge of federal, state and local laws, regulations, rules and ordinances related to the full range of City government operations and legal issues.
- Considerable knowledge of budgeting, fiscal administration, management and long-range planning policies, practices and procedures.
- Considerable knowledge of principles and practices of legal research, analysis, preparation of ordinances, resolutions, contracts and other legal documents.
- Knowledge of computer hardware and software pertinent to the practice of law.
- Ability to use of various office machines including phone, fax, copiers, calculators and in operating personal computers and Microsoft office applications.

CITY OF VERO BEACH

| | |
|---------------------------------|-----------------------|
| Job Title: City Attorney | Job Code: 1031 |
|---------------------------------|-----------------------|

KNOWLEDGE, ABILITIES AND SKILLS (Continued):

Problem Solving:

- Skill in analyzing problems, identifying alternative solutions, projecting consequences of proposed actions, and implementing recommendations in support of goals.
- Skill in researching complex legal issues, and in researching, evaluating, and using new methods and techniques for operational improvements.
- Ability to interpret oral, written, technical information and data dealing with complex variables to identify, analyze and solve management problems of considerable difficulty.

Human Resource Management:

- Knowledge of supervisory techniques, and pertinent federal, state and local human resource management rules.
- Skill in planning, organizing, assigning and coordinating the activities of professional and support staff.

Communication:

- Skill in dealing constructively with conflict and responding with tact, composure and courtesy when dealing with individuals who may be experiencing significant stress.
- Skill in applying appropriate public relations techniques as situations warrant and in forming cooperative relationships with others whom do not have a direct reporting relationship.
- Ability to establish and maintain effective working relationships with City officials, department directors, regulatory agencies, employees and the general public.
- Ability to express ideas clearly when providing oral and written reports and recommendations on administrative, financial, and technical issues.

OTHER JOB CHARACTERISTICS:

- May work extended hours including nights and weekends as a Charter Officer reporting to the City Council.

MINIMUM REQUIREMENTS:

Education/Experience: Possession of a Juris Doctorate, member of the Florida Bar with seven (7) years of litigation practice or comparable public sector administrative law experience including two (2) years supervisory experience; or an equivalent combination of training and experience.

Licenses/Certification: Possession of a valid Florida Driver's License.

SIGNATURES/APPROVALS:

| | | | |
|-----------------------------|-------------|----------------------------------|-------------|
| | <u>Date</u> | | <u>Date</u> |
| H/R Analyst: _____ | | Department Director: _____ | |
| Immediate Supervisor: _____ | | Director, Human Resources: _____ | |

CHARTER OF THE CITY OF VERO BEACH

Section 3.06. City attorney--Powers and duties.

The city attorney shall be a member of the Florida Bar and shall be the legal advisor to the City of Vero Beach. The city attorney or his designee shall attend all city council meetings and perform such professional duties as may be required of him by law or by the council. The city attorney when necessary shall appoint, suspend, demote, or dismiss any employee in the office of the city attorney in accordance with law and the personnel rules of the city. The city attorney shall prepare an annual budget for the operation of the office of the city attorney and shall submit this budget to the city manager for inclusion in the annual city budget in accordance with uniform city procedures.

8-C)



OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: Mayor Kramer, Vice-Mayor Turner, and Councilmembers

From: Wayne R. Coment, Assistant/Acting City Attorney *wrc*

Subject: Ordinances for Referendum Questions

Date: June 15, 2011

As you are aware, the City Council is currently proceeding with its due diligence regarding potential sale of the Municipal Electric Utility and the Municipal Water & Sewer Utility. Included in each of those transactions as currently proposed by the respective purchasers are the sale of certain City assets and the leasing of others.

For the electric utility FP&L proposes purchase of the municipal power plant and lease of the land. For the water and sewer utility Indian River County's (IRC) proposal includes taking possession of the municipal waste water treatment plant at least temporarily. I previously queried IRC as to the vehicle by which IRC proposes to take possession of the property but to date I have not received a response. It is therefore presumed that IRC would lease the facility from the City as would typically be done when another entity takes possession of your real property. Section 5.05 of the City Charter requires approval by a vote of the electors of the City for both of these transactions as proposed.

Unless the City Council desires to have a special municipal election, the next opportunity to place the necessary questions on the ballot will be this year's November election. The deadline for submittal of ballot materials to the IRC Supervisor of Elections for the November election is September 9, 2011. The City Council currently has regular meetings scheduled for July 19, August 16, and September 6. Of course the Council could also schedule special call meetings before the deadline.

In light of the foregoing time constraints, we would recommend the ordinances with the ballot questions and explanatory statements be prepared for first reading on July 19 and at that time schedule public hearings on the ordinances for August 16. This leaves September 6 as a fallback if necessary. The Council's direction regarding the foregoing matters is respectfully requested and will be greatly appreciated.

Addendum to the City Council Meeting Agenda

— New Business

✓ Old Business

9A-1)

Council Meeting Date: June 21, 2011

Author: Pilar Turner

Priority 1 of 34

Title: GAI Electrical Consulting Contract

Summary of your points for discussion: Progress report on evaluation of FPL offer and GAI expenditures to date. Timeline of activities to be performed.

All agenda Additions – Public need or issue addressed: Complete our due diligence to move forward on negotiations under the LOI. Contract awarded on April 5, no data received to date . We are now 11 weeks into project!

Statement of the proposed solution to the public need or issue: Provide citizens monthly reports. Control costs and maintain a schedule.

New Business Only - Relevant City Charter, code references, legal: None

Backup - additional attached documentation includes:

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue: Award of contract to GAI on April 5. Requested contract updates at council meetings on May 3, May 17, and June 7. No data to date.

Table 1
Schedule of Activities
City of Vero Beach Electric System – Phase I

60 days on June 21

| Description | Time Period |
|--|------------------|
| 1. Authorization by City | Start |
| 2. Appraisal of Electric System Complete and Five (5) Asset Packages | 132 days |
| 3. Briefings on Findings | 45 days |
| | 75 days |
| | 105 days |
| 4. Review Of FPL Offer and Supporting Documents with Customer and General Fund Impact Analysis | To be determined |
| 5. Assistance with Counter Offer to FPL | To be determined |

4 1/2 mos!

ON June 21st we will be 60 working days INTO CONTRACT.

Why did we not have a 45 day briefing?

Addendum to the City Council Meeting Agenda New Business Old Business

9A-2)

Author: Pilar Turner

Council Meeting Date: June 21, 2011

Priority 2 of 34

Title: Water and Sewer Regionalization

Summary of your points for discussion: Progress on evaluation and negotiation with the County. Update on GAI contract expenditures and progress. Timeline of activities to be performed. We are now 40 days into a 100 day contract workscope with nothing to evaluate!

All agenda Additions – Public need or issue addressed: Evaluate offer to regionalize water and sewer. Maintain control and review of consultant.

Statement of the proposed solution to the public need or issue: Perform our due diligence. Require monthly progress reports on GAI.

New Business Only - Relevant City Charter, code references, legal: None

Backup - additional attached documentation includes: Memo on questions for county.

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue: April 29 Joint meeting with County vote to move forward with discussions. Requested update at Council meetings May 17, and June 7.

MEMORANDUM



TO: Monte Falls
Interim City Manager

FROM: Pilar Turner
Vice Mayor *PT*

DATE: June 9, 2011

SUBJECT: GAI Water and Sewer Contract

As the designated "point person" for Water and Sewer by the City Council, I would like to attend the meetings held with GAI to discuss this contract. We are thirty (30) days into a 100 day work scope without any data received by Council.

Please advise when the next meeting is scheduled.

PT/tv

XC: Mayor Jay Kramer and
City Councilmembers

*VICE Mayor Turner -
TO DATE GAI HAS GATHERED DATA AND
DONE FIELD INSPECTIONS OF OUR W&S
FACILITIES. THEY WILL BE MAKING A
STATUS REPORT AT OUR JUNE 21, 2011
CITY COUNCIL MEETING. BY COPY OF
THIS CORRESPONDENCE TO ROB BOLTON
I AM INSTRUCTING HIM TO ADVISE
YOU IN ADVANCE OF ALL GAI
VISITS AND MEETINGS.*

*Monte
6/10/11*

*cc: Mayor
Council
ROB BOLTON*



Addendum to the City Council Meeting Agenda

New Business Old Business

9A-3)

Author: Pilar Turner

Council Meeting Date: June 21, 2011

Priority 3 of 4

Title: City Manager Objectives

Summary of your points for discussion: Request all Council members to prepare a ranked list of objectives for our new city manager.

All agenda Additions – Public need or issue addressed: Establish priorities for City Staff.

Statement of the proposed solution to the public need or issue: Assemble all objectives for discussion at next council meeting.

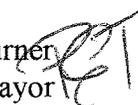
New Business Only - Relevant City Charter, code references, legal: None

Backup - additional attached documentation includes: Individual Council members objectives for City Manager

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue: Council agreed at June 7 meeting to submit their response with agenda items for June 21 meeting.

MEMORANDUM

TO: Mayor Jay Kramer and
City Councilmembers

FROM: Pilar Turner 
Vice-Mayor

DATE: June 15, 2011

SUBJECT: City Manager Objectives

1. Hire a Finance Director.
2. Conclude the sale of Vero Beach Electric Utility to FPL for the benefit of the City and ratepayers. Direct, monitor, and control activities and costs of the GAI consultant. Provide monthly updates to Council.
3. Prepare a strategic plan for Water & Sewer Utility evaluating the regionalization of services.
4. Review all aspects of City government to streamline, improve efficiency, and reduce costs.
5. Maintain and operate the City within the approved budget. Hold quarterly reviews of the City performance versus budget with City Council providing a description of variances +/- 20% or \$10,000.00 or more and proposed remedies.
6. Support all Staff requests with financial analysis.
7. Implement annual employee performance appraisals.
8. Manage the City personnel policy to eliminate substantiated lawsuits.
9. Revisit the 2007 Vision Plan. Establish an implementation schedule.

PT/rh

Addendum to the City Council Meeting Agenda New Business Old Business

9A-4)

Author: Pilar Turner
Priority 4 of 4

Council Meeting Date: June 21, 2011

Title: City Policies and Procedures

Summary of your points for discussion: Staff submittal of procurement, inventory, and legal review procedures.

All agenda Additions - Public need or issue addressed: Eliminate subjectivity in procurement awards. Address inventory shortcomings highlighted by last auditor report. Establish legal dept. review of documents to protect City interests.

Statement of the proposed solution to the public need or issue: Prepare policies and procedures

New Business Only - Relevant City Charter, code references, legal: None

Backup - additional attached documentation includes: None

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue: Council discussions on April 19 and May 17.

9A-5)

Addendum to the City Council Meeting Agenda New Business Old Business

Author: Tracy Carroll **Council Meeting Date:** June 21, 2011 **Priority** ____ **of** ____

Title: Council notification of meetings with FPL, GAI, City of IRS and County in regards to WSI and Electric issues

Summary of your points for discussion: Notification of Council appointees of scheduled meetings

All agenda Additions - Public need or issue addressed: Council requested notification of all meetings. As representatives of the City customers of utilities, we have a vested interest in safeguarding the interests of the residents in these negotiations. Staff has made it very well known that they are not in favor of either transaction occurring and the public, who made their feelings known in the last election, deserve to have representation at the negotiation table.

Statement of the proposed solution to the public need or issue: Contact point person via telephone as soon as all meetings are set up. Point person should also be told of any meetings taking place with regulatory agencies by staff and consultants as soon as scheduled, also by personal telephone call and backup by written communication/ email.

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

Minutes from 6/7/2011

- Mrs. Turner wanted to know what they could tell the public on what progress is being made in evaluating the FPL offer.
- Mr. Falls hoped to have some answers after tomorrow's meeting.
- Mrs. Carroll referred to the meeting that GAI had with OUC. She asked if there was any staff present when that meeting took place. Mr. Falls answered no. Mrs. Carroll had some concerns about why the City Manager or the City Attorney were not in attendance at that meeting.
- Mr. Coment explained that they just learned about their initial contact and will talk to GAI about this tomorrow. However, he knows that there will be future meetings with both entities.
- Mrs. Turner expressed that Council (along with staff) needs to have a time line and the issues that GAI is involved in.
- Mrs. Carroll commented that she did not know about the FPL meeting scheduled for tomorrow until the Press called her about it.
- Mr. Fletcher wanted to make sure that Mrs. Carroll knows about all those meetings. She is the point person for the Council.
- Mrs. Carroll added how important it is to have a representative from the City attend these meetings.
- Mrs. Turner hoped that at their next meeting they will be provided with account expenditures to date, a time line and the issues that GAI is involved in.

Addendum to the City Council Meeting Agenda

9A-6)
__ New Business __X__ Old Business

Author: Tracy Carroll **Council Meeting Date:** June 21, 2011

Priority ___ of ___

Title: Status of expenses to consultant, legal subcontractor, meetings with regulatory agencies

Summary of your points for discussion: Monthly invoices were to be provided by contract. Council mandated that these be presented by the City Manager when the contract was approved April 5. Council has yet to be presented with an invoice over two months later.

All agenda Additions - Public need or issue addressed: City residents deserve to have a Council approve of the expenditures coming from their tax dollars and electricity bill transfers to the general fund. City residents have not written a blank check to consultants.

Statement of the proposed solution to the public need or issue: Monthly invoices presented to Council on the first meeting delineated all expenditures occurring in the past month from all consultants, all extra charges. All extra expenditures above the contract need prior approval from Council.

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

Minutes from 6/7/2011

Mrs. Turner would like to see a progress report on the evaluation of the FPL offer and GAI expenditures to date. Mr. Falls stated that he would be providing that to Council at their next meeting. He said to date he has only received one invoice from GAI. Mrs. Carroll asked how much was the invoice for. Mr. Falls told her it was for the amount agreed upon, which was \$4,000. He expressed that they have not received May's invoice yet. Mrs. Turner wanted to know about their progress and what activities have they done since last month. Mr. Falls recalled that GAI has met with OUC. They talked about some possibilities that OUC may be able to do. This involves how the penalty clause may or may not be assessed if certain other things happen and if OUC could be a partner to part of the deal. Mrs. Turner wanted to know what they could tell the public on what progress is being made in evaluating the FPL offer. Mr. Falls hoped to have some answers after tomorrow's meeting. Mrs. Carroll referred to the meeting that GAI had with OUC. She asked if there was any staff present when that meeting took place. Mr. Falls answered no. Mrs. Carroll had some concerns about why the City Manager or the City Attorney were not in attendance at that meeting. Mr. Coment explained that they just learned about their initial contact and will talk to GAI about this tomorrow. However, he knows that there will be future meetings with both entities. Mrs. Turner expressed that Council (along with staff) needs to have a time line and the issues that GAI is involved in. Mrs. Carroll commented that she did not know about the FPL meeting scheduled for tomorrow until the Press called her about it. Mr. Fletcher wanted to make sure that Mrs. Carroll knows about all those meetings. She is the point person for the Council. Mrs. Carroll added how important it is to have a representative from the City attend these meetings. Mrs. Turner hoped that at their next meeting they will be provided with account expenditures to date, a time line and the issues that GAI is involved in.

Minutes from May 3, 2011 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.

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.

Addendum to the City Council Meeting Agenda

9A-7)
__ New Business Old Business

Author: Tracy Carroll Council Meeting Date: June 21, 2011

Priority ____ of ____

Title: Status of Live Oak and Indian River Dr. improvements and public safety measures

Summary of your points for discussion: Neighborhoods and the families residing within should expect their City to provide public safety. If the neighborhood feels the residents are at risk, they have the right to petition for increased measures from their city. Many residents have utilized the methods of letters to the City and speaking at Council meetings and a neighborhood Public meeting was held June 14.

All agenda Additions - Public need or issue addressed: At least one person has been killed on the roadway within the area, pets have been run over, landscaping has been lost, and families are worried that their children are in peril as a result of speeding and cut-through drivers.

Statement of the proposed solution to the public need or issue: What is the steps staff is planning to take to meet the concerns of the residents? How will the proposed improvements to Live Oak have safety of the neighborhood incorporated into them?

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

Minutes of 6/7 Council meeting and 6/13 Neighborhood meeting

Addendum to the City Council Meeting Agenda

Author: Tracy Carroll

Council Meeting Date: June 21, 2011

Priority ___ of ___

Title: Discussion of Status of Finance Department management

Summary of your points for discussion: Finance Department has existed for over one year without leadership. Council has demanded repeatedly that the acting City Manager make this a priority. Council has asked that private sector candidates be looked at. The candidates selected by the HR department were not adequate, as referenced by no one yet in the position. Should a private consultant be utilized for this role?

All agenda Additions - Public need or issue addressed:

The City needs to have continuity in the Finance Department.

The position required a CPA – there are 33,000 licensed CPA’s in the state.

The HR director has told me that Mr. Maillet would like someone with a CGFO – of which there are approx 200 in the state, all in public employee. The requirements include 3 years of governmental work, effectively denying any applicant from the private sector.

Statement of the proposed solution to the public need or issue: Begin again the posting and receipt of applications so they are ready for review of the City Manager when he starts the position.

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

Feb 1, discussions at each meeting

1. Mr. Maillet tendered his resignation from the Director of Finance on March 2, 2010 to take effect 3/30/10. Posted by HR on 3/15/10. # of people interviewed for this position 5 – one offered but too little money. Mr. Maillet “put his resignation on hold” 7/2/10

2. Jackie Mitz, with only an AA degree, resigned the role of Asst. Finance Director to take early retirement effective 8/31/10

The job was posted as a Comptroller, with responsibility only over Accounting, on 9/7/10. No one was found or hired. The job was reposted as Asst. Finance Director 11/1/10.

May 17 meeting:

Mr. Falls reported that he has been trying to hire a new Finance Director to take Steve Maillet’s place. They received around 60 applications and narrowed their search down to five applicants and out of the five they pulled three applicants. An offer was made to one of the applicants who declined. Offers were also made to the other top two applicants and they also have all declined. They will now readvertise the position and will be ready to review the applications with Mr. O’Connor.

Mrs. Turner made a motion to utilize an outside firm to help in hiring a Finance Director.

Mr. Falls went over the reasons that the three applicants declined the offers. He said that one of the applicants said after doing some further research that it was not a right fit for him, another applicant was offered a better position at the place he is currently employed and the third applicant could not take the job because of unexpected illness in the family.

Mrs. Carroll suggested reviewing the applications that they have instead of starting the whole process again.

Mr. Falls wanted to get some more applications to have some indication on who is out there.

Mrs. Turner reiterated her motion to hire an outside consultant to find a new Finance Director.

Mayor Kramer suggested holding off doing that until the new City Manager was in place.

Mr. Fletcher agreed with Mayor Kramer’s comments. He said that he (Mr. O’Connor) might have better luck. The City Manager has requested the issue be put on hold until a new City Manager starts.

4H-9

Addendum to the City Council Meeting Agenda New Business Old Business

Author: Tracy Carroll Council Meeting Date: June 21, 2011 Priority ____ of ____

Title: Status of Grand Harbor and continuing electric outages

Summary of your points for discussion: All customers of the electric utility deserve full disclosure of long-term problems affecting their individual usage of utilities they paid for, regardless of their location in or outside of City limits.

All agenda Additions - Public need or issue addressed: Continuing outages to customers, and development of a log of problems and a clear plan and time frame to address customer issues, as requested of the City Manager.

Statement of the proposed solution to the public need or issue: development of a log of problems and a clear plan and time frame to address customer issues

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

Mr. J. Rock Tonkel, resident of Grand Harbor,He then recalled that he was before them a few months ago and requested that they establish an incident report for utility failures and he has not seen anything. He is speaking about Grand Harbor and the impact that the residents feel with the numerous outages that they have occurring. He made a formal request to receive this incident report. He said that there have been at least twenty outages in Grand Harbor ranging from a few minutes to a few hours. He is requesting the City Manager develop a report that would be available to the public to review quantifying incidents in Grand Harbor and to discuss what will solve the problems on a permanent basis. The President of the Community Association of Grand Harbor met with FPL and he (Mr. Tonkel) will be discussing the correspondence generated from the outcome of that meeting. Their concerns have not changed and they would like Council to proceed with selling the utilities to FPL. He invited any of the Councilmembers to come and talk to the Grand Page Harbor ratepayers. He said that this invitation is particularly being made to Mayor Kramer, because he supports their utilities serving the City residents only and the residents of Grand Harbor are interested in hearing about that concept. Mr. Tonkel said that he would be back at their next meeting. Mrs. Carroll asked staff if the outages were occurring because of the switchgear. Mr. Falls commented that he does have this report as requested by Mr. Tonkel on his to do list and has not forgotten about it. He just has not had the time to get to it yet. Mr. Randall McCamish, Transmission & Distribution Director, reported that some of the switchgear has been replaced and there still are quite a few outages occurring in Grand Harbor. He said that the switchgear is part of the problem, but not the whole problem. He said that there are a couple more switchgears that still need to be replaced. So far they have replaced two out of the five. He assured Council that notice will be given to the residents when they make these replacements of the switchgear.

Addendum to the City Council Meeting Agenda New Business Old Business

Author: Brian Heady

Council Meeting Date: May 3, 2011

Priority ___ of ___

98-10)

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

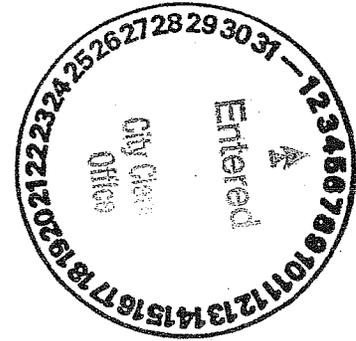
Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:



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.

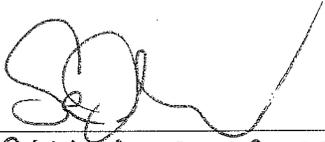
ARTICLE 13. ENTIRE AGREEMENT

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:

Addendum to the City Council Meeting Agenda

New Business Old Business

Author: Jay Kramer

Council Meeting Date:

Priority 1 of 1

Title: Consideration of Referendum

9B-1)

Summary of your points for discussion:

It has been brought to my attention that the maximum tax increase the Council can authorize is the roll back rate plus 10%. If we are to take action on any of the Utilities we are either going to have to ask permission from the public through referendum or decide what services to cut.

All agenda Additions - Public need or issue addressed:

Statement of the proposed solution to the public need or issue:

Discussion from Council on where the deficits from the loss of the utilities will be made up from.

New Business Only - Relevant City Charter, code references, legal:

Florida Department of Revenue Property Tax Oversight
"2011 Term Compliance Workbook"

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: Pilar Turner

Council Meeting Date: June 21, 2011

Priority 1 of 1

QB (2)

Title: Indian River Shores Franchise Agreement

Summary of your points for discussion: Negotiations without authorization from Council

All agenda Additions - Public need or issue addressed: Staff setting policy and representing the City without Council approval

Statement of the proposed solution to the public need or issue: Retract nonrenewal letters to IRS reuse customers. Terminate all negotiations with IRS by Staff until financials are reviewed and approved by Council and Council establishes direction.

New Business Only - Relevant City Charter, code references, legal: Draft Franchise agreement attached

Backup - additional attached documentation includes: request for financials from November 2010

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

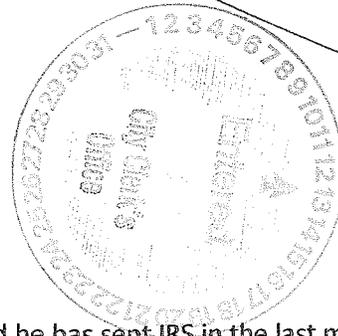
XC: Rob Bolton

To: Monte Falls

June 9, 2011

From: Pilar Turner

Re: Indian River Shores Franchise Agreement

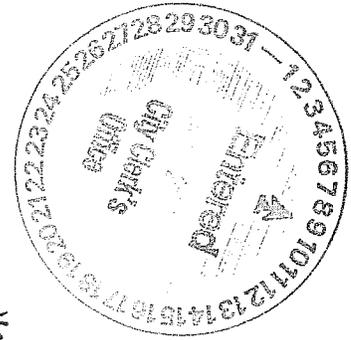


Please provide a copy of the revised IRS agreement Mr. Bolton said he has sent IRS in the last month and a half.

Please provide a ten year proforma for W&S without Indian River Shores in 2016. This request has been outstanding since November 2010. Any assumptions should be stated .

Thank you

CC: Mayor and Council



VILLE Mayor Turner -

I HAVE ATTACHED A COPY OF THE INFORMATION THAT WAS SENT TO THE IR SHORES STAFF ON 4/27/11.

ROB BOLTON HAS COMPLETED 3 , 10YR PROFORMAS
1) AS-IS, 2) CITY LIMITS ONLY AND 3) CITY LIMITS AND
COWLEY MAINLAND. HE WILL HAVE THE PROFORMA
WITHOUT IR SHORES DONE BY 6/17. HE WILL
ALSO GIVE US INFORMATION REGARDING OTHER
PROFORMAS AND DATES.

— Monte G/10

cc: Mayor
CITY COUNCIL
ROB BOLTON



Bolton, Robert

From: Bolton, Robert
Sent: Wednesday, April 27, 2011 5:32 PM
To: 'townclerk@irshores.com'
Subject: Purchase and Franchise Agreement
Attachments: Asset Purchase Franchise Agreement Between IRS and COVB revised 4_27_2011.pdf

Richard,

I have incorporated the changes that we discussed in today's meeting. Please review and comment. If we are in agreement on a staff level then we will place this item on the May 17th Council Meeting for discussion.

I will drop a hard copy off to you tomorrow.

Thanks,

Rob

*Where are
the financials?*

**ASSET PURCHASE AND WATER, WASTEWATER, AND
REUSE FRANCHISE AGREEMENT BETWEEN**
THE TOWN OF INDIAN RIVER SHORES, FLORIDA
AND THE CITY OF VERO BEACH, FLORIDA

This "Agreement" is entered into on this ___ day of _____ 20___, by and between the Town of Indian River Shores, a Florida municipal corporation, (hereinafter referred to as "INDIAN RIVER SHORES") and the City of Vero Beach, Florida, a Florida municipal corporation (hereinafter referred to as "VERO BEACH").

RECITALS

1. INDIAN RIVER SHORES is the owner of a portion of the water distribution and wastewater collection system in Indian River County, Florida, which is used in serving the residential community more fully described in Exhibits "A" and "B", attached, (hereinafter referred to as the "TOWN'S UTILITY AREA");

2. VERO BEACH currently provides water, wastewater, and ~~reclaimed~~reuse water service in this area and is authorized to be in the business of furnishing water service, wastewater service, ~~reclaimed~~reuse water service and any component of these services to the various communities in VERO BEACH's Exclusive Service Area.

3. VERO BEACH desires to acquire, and INDIAN RIVER SHORES desires to sell its potable water distribution facilities and wastewater collection facilities, (collectively the "Facilities"), subject to the terms and conditions of this Agreement, as such Facilities may be modified prior to Closing with the consent of VERO BEACH.

4. VERO BEACH currently holds water and sewer franchises issued by INDIAN RIVER SHORES that authorize VERO BEACH to provide water and wastewater service in the incorporated boundaries of INDIAN RIVER SHORES.

5. VERO BEACH and INDIAN RIVER SHORES have negotiated in good faith together and have determined that execution of this Agreement is in the best public interests of both municipalities.

6. INDIAN RIVER SHORES has agreed to grant to VERO BEACH in consideration of VERO BEACH's covenants set forth herein an exclusive franchise for the construction, operation and maintenance of a water, wastewater, and ~~reclaimed~~reuse water system within the incorporated boundaries of INDIAN RIVER SHORES.

7. The parties hereto agree, acknowledge, and affirm that they are entering into this Agreement in their proprietary capacities and that this Agreement constitutes a binding covenant of each party for which each has authority to enter into.

ACCORDINGLY, in consideration of the above Recitals and benefits to be derived from the mutual observation of the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. RECITALS. The above recitals are true and correct, and form a material part of this Agreement.

SECTION 2. TRANSFER OF FACILITIES. INDIAN RIVER SHORES, pursuant to the circumstances noted in the Recitals above, agrees to transfer and VERO BEACH agrees to accept the Facilities, consisting of all real, personal, and mixed property used or held for use in connection with the INDIAN RIVER SHORES Water and Wastewater System, hereinafter referred to as the "Transferred Assets," or the "Facilities".

SECTION 3. TRANSFERRED ASSETS. On the closing date, as defined below, INDIAN RIVER SHORES shall assign, transfer, convey, and deliver to VERO BEACH, and VERO BEACH shall accept all of the right, title and interest, in and to the following property and assets:

3.1 Real Property. All real property and interests in real property (the "Property"), if any, owned by INDIAN RIVER SHORES whereupon the Facilities are located. All Facilities are located in public rights-of-ways or easements.

3.2 Easements and Other Rights. All rights, privileges, easements, licenses, prescriptive rights, rights-of-ways, and rights to use public and private roads, highways, streets, and other areas owned and/or used by INDIAN RIVER SHORES in connection with the construction, reconstruction, installation, maintenance and operation of the Transferred Assets (collectively referred to as the "Easements").

3.3 Facilities. The following assets owned by INDIAN RIVER SHORES and used or held for use in connection with the Facilities, are more specifically described in Exhibits "A" and "B" hereof, including all water distribution and waste water collection facilities including without limitation, all trade fixtures, leasehold improvements, lift stations, pumps, generators, controls, valves, meters, service connections, and all other water and wastewater service connections, and all other water physical facilities and property installations . The parties hereto agree that the VERO BEACH is accepting the physical assets of INDIAN RIVER SHORES in an "as is" and "where is" condition without relying upon any warranty or representation from INDIAN RIVER SHORES regarding the physical condition of the Transferred Assets or condition of any of the improvements constructed thereon. VERO BEACH has made its own investigations of the Transferred Assets and is relying solely upon these investigations in making the purchase described in this Agreement.

3.4 Plans and Specifications. All current customer records and supplier lists, as-built surveys, and water and sewer plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, any and all reproducible documents, mylars, sepias, and other original documents used or held for use with the Facilities, and all other information that relate to the Facilities. INDIAN RIVER SHORES may make copies of its books, plans and records, at its expense, before transferring the original or copies of the books, plans and records to VERO BEACH. These documents shall include any such documents related to work-in-progress, if any.

3.5 Certificates, Permits and Approvals. Subject to all necessary regulatory approvals and to all conditions, limitation, or restrictions contained therein, any existing original certificates, permits, and other governmental authorizations and approvals of any kind in the possession of INDIAN RIVER SHORES necessary to operate and maintain the Facilities in accordance with all governmental requirements.

3.6. Excluded Assets. The parties agree that there are to be no excluded assets.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF INDIAN RIVER SHORES. INDIAN RIVER SHORES represents and warrants to VERO BEACH that:

4.1 Organization, Standing And Power. INDIAN RIVER SHORES is a municipal corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida authorizing it to construct, operate and maintain a public water distribution system` and wastewater collection system.

4.2 Authority for Agreement. INDIAN RIVER SHORES has the power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. This Agreement has been duly authorized by all action required to be taken by INDIAN RIVER SHORES, has been duly executed and delivered by INDIAN RIVER SHORES, and constitutes a valid and binding obligation of INDIAN RIVER SHORES, enforceable in accordance with its terms.

4.3 Good and MarketableSufficient Title. Subject to the Permitted Exceptions, INDIAN RIVER SHORES has good and marketablesufficient title to the Transferred Assets.

4.4 No Liens or Encumbrances. Except as otherwise specifically set forth in this Agreement or as may be released at or prior to the Closing Date, there are no mortgages, liens, claims or encumbrances of any type or nature upon or against the Transferred Assets including, but not limited to, mortgages, financing statements, or security instruments filed under the Uniform Commercial Code either in VERO BEACH where the Property is located or with the Secretary of State. INDIAN RIVER SHORES is in ownership, possession, and control of the Transferred Assets except for non-exclusive easements and INDIAN RIVER SHORES at closing shall deliver possession and control of the Transferred Assets to VERO BEACH.

4.5. Litigation. There are no actions, suits, or proceedings at law or in equity, pending against INDIAN RIVER SHORES before any federal, state, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect the Facilities or INDIAN RIVER SHORES' right and ability to make and perform this Agreement; nor is INDIAN RIVER SHORES aware of any facts which to its knowledge are likely to result in any such action, suit or proceeding. INDIAN RIVER SHORES is not aware of and has not been notified that it is in default with respect to any permit, approval order or decree of any court or of any administrative or governmental agency or instrumentality affecting the Facilities. INDIAN RIVER

SHORES agrees and warrants that it shall have a continuing duty to disclose up to and including the Closing Date the existence and nature of all pending judicial or administrative suits, actions, proceedings, and orders which in any way relate to the Facilities.

4.6 Leases. None of the Transferred Assets is subject to any interest of any lessor or lessee.

4.7 No Governmental Violations. INDIAN RIVER SHORES is not aware of and has not been notified of the existence of any violations of any governmental rules, regulations, permitting conditions or other governmental requirements applicable to the ownership, maintenance or operation of the Facilities.

4.8 Absence of Changes. After the date of the execution of this Agreement, INDIAN RIVER SHORES shall not permit any change in its condition of properties, assets, liabilities, business or operations other than changes in the ordinary course of business which are not, either in any case or in the aggregate, materially adverse to the Facilities.

4.9 Disclosure. No representation or warranty made by INDIAN RIVER SHORES in this Agreement contains any untrue statement of material facts or omits to state any material fact required to make the statements herein contained not misleading. Should INDIAN RIVER SHORES become aware that any of the representations or warranties to VERO BEACH provided for herein are, or may reasonably be, materially untrue or incorrect, INDIAN RIVER SHORES will promptly advise VERO BEACH of same, in writing, specifying in reasonable detail the reasons why INDIAN RIVER SHORES believes such representations or warranties of VERO BEACH are, or may reasonably be, untrue or incorrect.

4.10 Cooperation. INDIAN RIVER SHORES will cooperate fully with VERO BEACH in any and all applications or petitions to public authorities deemed necessary or desirable by VERO BEACH in connection with the purchase of the Facilities from INDIAN RIVER SHORES as contemplated herein.

4.11 Exhibits. Attached hereto as Exhibits "A" and "B" are detailed maps and listings of the Facilities of INDIAN RIVER SHORES to be acquired by VERO BEACH, pursuant to this Agreement, showing both their respective installation location and description. Said Facilities include all water and wastewater utility assets and equipment owned by INDIAN RIVER SHORES within the Property, including but not limited to a water distribution system and a wastewater collection system as shown in Exhibits "A" and "B". ~~The engineering plans and specifications for the Facilities have been organized and will be transferred to VERO BEACH with all other records.~~ The Facilities are constructed within publicly dedicated lands or are otherwise accessible to INDIAN RIVER SHORES and VERO BEACH. To the extent VERO BEACH reasonably requires any rights of non-exclusive access to the Facilities, INDIAN RIVER SHORES agrees to grant those rights.

4.12 Additional Representations. All real estate, easements and rights and/or privileges associated with the Facilities owned by INDIAN RIVER SHORES shall be transferred to VERO BEACH.

4.13 No Service Agreements. There are no contracts or obligations of any nature between INDIAN RIVER SHORES and any other party relating to the Facilities or service or promised service. Neither INDIAN RIVER SHORES nor any entity or individual affiliated with INDIAN RIVER SHORES has executed any agreement with VERO BEACH regarding lots within the Service Area, or with any other parties, where under such purchases other parties have acquired any interest in the Facilities used or to be used in rendering service to them.

4.14 Compliance. Facilities are capable of rendering water and wastewater utility service in the ordinary course of business in compliance with all federal, state and local rules and regulations including but not limited to all rules and regulations related to environmental protection, wastewater collection, and drinking water.

4.15 Authorizations. Prior to the Closing, the consummation of the transactions contemplated herein will have been duly authorized by all necessary action, corporate or otherwise, on behalf of INDIAN RIVER SHORES.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF VERO BEACH. VERO BEACH represents and warrants to INDIAN RIVER SHORES that:

5.1 Organization, Standing And Power. VERO BEACH is a municipal corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida authorizing it to construct, operate and maintain a public water distribution system` and wastewater collection system.

5.2 Authority for Agreement. VERO BEACH has the power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. This Agreement has been duly authorized by all action required to be taken by VERO BEACH, has been duly executed and delivered by VERO BEACH, and constitutes a valid and binding obligation of VERO BEACH, enforceable in accordance with its terms.

5.3 No Governmental Violations. VERO BEACH is not aware of and has not been notified of the existence of any violations of any governmental rules, regulations, permitting conditions or other governmental requirements applicable to the ownership, maintenance or operation of the Facilities.

5.4 Disclosure. No representation or warranty made by VERO BEACH in this Agreement contains any untrue statement of material facts or omits to state any material fact required to make the statements herein contained not misleading. Should VERO BEACH become aware that any of the representations or warranties to INDIAN RIVER SHORES provided for herein are, or may reasonably be, materially untrue or incorrect, VERO BEACH will promptly advise INDIAN RIVER SHORES of same, in writing.

specifying in reasonable detail the reasons why VERO BEACH believes such representations or warranties of INDIAN RIVER SHORES are, or may reasonably be, untrue or incorrect.

5.5 Cooperation. VERO BEACH will cooperate fully with INDIAN RIVER SHORES in any and all applications or petitions to public authorities deemed necessary or desirable by INDIAN RIVER SHORES in connection with the purchase of the Facilities from VERO BEACH as contemplated herein.

5.6 Compliance. Facilities are capable of rendering water and wastewater utility service in the ordinary course of business in compliance with all federal, state and local rules and regulations including but not limited to all rules and regulations related to environmental protection, wastewater collection, and drinking water.

5.7 Authorizations. Prior to the Closing, the consummation of the transactions contemplated herein will have been duly authorized by all necessary action, corporate or otherwise, on behalf of VERO BEACH.

SECTION 56. CLOSING AND PURCHASE PRICE.

56.1 Closing Date The Closing shall take place simultaneously with the grant of the renewal of the Franchise agreement as much as practical. The Closing shall take place by or before ~~January-September~~ 30th, 2011, thus meeting the five year notice as described in the existing franchise agreement between INDIAN RIVER SHORES and VERO BEACH.

56.2 Documents at Closing At closing, INDIAN RIVER SHORES will, upon due performance by VERO BEACH of its obligations under the Agreement, deliver:

(a) such good and sufficient special warranty deeds, bills of sale with covenants of warranty, and sufficient instruments of sale, in form and substance reasonably satisfactory to VERO BEACH's counsel, as shall be required to vest in VERO BEACH ~~marketable~~sufficient title to all of the Facilities used for the existing water and wastewater system, free and clear of liens and encumbrances of every nature that would render title to the Facilities ~~unmarketable~~ not sufficient;

(b) all of the files, documents, papers, agreements, original cost invoices, engineering drawings, and records possessed by INDIAN RIVER SHORES pertaining to the Facilities;

(c) all orders, permits, licenses or certificates issued or granted to INDIAN RIVER SHORES by any governmental authority in connection with any authorization related to the construction of its Facilities; and

(d) an opinion of Counsel for INDIAN RIVER SHORES, dated as of the Closing, that upon the delivery to VERO BEACH of the Bill of Sale that VERO BEACH will then have title to the Facilities, free and clear of all liens and encumbrances in connection with the acquisition, construction, installation, and financing of the Facilities.

56.3 Further Instruments At the Closing and from time to time thereafter, INDIAN RIVER SHORES shall execute and deliver such further instruments of sale, conveyance, transfer and assignment, and take such other action (without expending funds or bringing suit) as VERO BEACH may reasonably request, in order more effectively to sell, convey, transfer and assign to VERO BEACH any of INDIAN RIVER SHORES's Facilities, to confirm the title of VERO BEACH thereto and to assist VERO BEACH in exercising rights with respect thereto.

56.4 Closing Costs At closing, VERO BEACH shall, upon due performance by INDIAN RIVER SHORES of its obligations under the Agreement, deliver to INDIAN RIVER SHORES closing costs in the amount of ten thousand dollars (\$10,000). In addition, VERO BEACH shall assume any liabilities related to the Facilities owned by INDIAN RIVER SHORES wholly arising prior to Closing.

56.5 Other Fees at Closing At closing, VERO BEACH shall also deliver to INDIAN RIVER SHORES the costs incurred for legal and consulting services incurred by INDIAN RIVER SHORES for the purposes associated with creation of this Agreement and equity assessment of Facilities, as well as transactional costs, the total for all not to exceed \$50,000.00.

56.6 How Purchase Price to be Paid Within 30 days of the closing date, VERO BEACH shall waive the 10% surcharge that currently applies to water and wastewater customers ~~for a period of 13 years as outlined in Exhibit "C"~~. This shall constitute the purchase price for said Facilities including Franchise Value, Financing Interest and Industry Risk.

Indefinite?

SECTION 67. AGENCY APPROVALS. Within fifteen (15) days following the execution of this Agreement VERO BEACH will file applications for transfer with the Florida Department of Environmental Protection (FDEP) and the Saint Johns River Water Management District (SJRWMD) requesting the transfer of the Public Utility permits or sequential water use permit. INDIAN RIVER SHORES agrees to cooperate fully with VERO BEACH in VERO BEACH's application for such transfers and approvals.

SECTION 78. GENERAL.

78.1 Manner of Service Upon purchase of the Facilities of INDIAN RIVER SHORES, and for the duration of the Franchise Agreement found in Section 89, VERO BEACH shall supply all customers within INDIAN RIVER SHORES with continuous (subject to unavoidable outages), adequate and customary water and wastewater utility service, and operate, continuously maintain and promptly repair when necessary Facilities acquired herein, thus meeting all level-of-service standards as per comprehensive plans. VERO BEACH shall maintain wholesale emergency interconnect agreements and interconnects as appropriate in order to continue to provide adequate service to INDIAN RIVER SHORES in the event of outages, excessive demand, or other related events. INDIAN RIVER SHORES's customers shall be treated in a manner equivalent to that of customers served inside of the boundaries of VERO BEACH, and shall receive a rate no less favorable than the rate offered by VERO BEACH to any other customer in the same class it serves inside of the boundaries of VERO BEACH. This warranty shall survive the Closing of this Agreement.

78.2 Surcharge Upon purchase of the Facilities of INDIAN RIVER SHORES, VERO BEACH shall within 30 days waive the 10% surcharge paid by customers in INDIAN RIVER SHORES in consideration of the purchase of the facilities as, shown in Exhibit "C", Bill of Sale, and shall continue to waive the surcharge for the term of this agreement and any renewal term. ~~13 years, in exchange for the transfer of all Facilities from INDIAN RIVER SHORES to VERO BEACH. At the end of 13 years, VERO BEACH may again start charging the surcharge at a maximum rate of 10% for both water and wastewater services only.~~

78.3 Charges to Existing Customers. ~~Upon purchase of the Facilities of INDIAN RIVER SHORES, Customers existing within INDIAN RIVER SHORES at the time of purchase of the Facilities and for perpetuity, existing customers within INDIAN RIVER SHORES shall not be charged impact fees, connection charges, capacity charges, assessments, capital recovery charges, or any form thereof by VERO BEACH. All capital improvements undertaken by VERO BEACH within INDIAN RIVER SHORES' boundaries and to serve existing customers in INDIAN RIVER SHORES shall be borne solely and completely by VERO BEACH. Notwithstanding any of the foregoing language to the contrary, such restrictions on fees and charges shall not apply to any new connections for any new services.~~

78.4 Capital Improvement Plan. Upon purchase of the Facilities of INDIAN RIVER SHORES, and for the duration of the Franchise Agreement found in Section 89, VERO BEACH shall annually provide the Town Manager and Town Planner of INDIAN RIVER SHORES the detailed five (5) year Capital Improvement Plan, specific to facilities within INDIAN RIVER SHORES, upon its completion for review and comment.

7.5 Title Reversion at 99 Years. ~~If, at the end of ninety nine (99) years, INDIAN RIVER SHORES unilaterally elects to own the Transferred Assets again, title to all Facilities transferred as a part of this transaction shall revert from VERO BEACH to INDIAN RIVER SHORES at no cost.~~

7.68.5 No Waiver Clause. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.

7.78.6 Notices. Any ~~notice of delivery of notice~~ required or permitted to be made hereunder may be made by personal delivery, courier, or mailing a copy thereof addressed to the appropriate party as follows:

If to INDIAN RIVER SHORES Town Manager
Town of Indian River Shores
6001 N. Highway A-1-A
Indian River Shores, Florida 32963

If to VERO BEACH City Manager
City of Vero Beach
1053 20th Place
Vero Beach, FL 32960-5359

Delivery when made by registered or certified mail shall be deemed complete upon mailing.

7.88.7 Exhibits. The Exhibits to this Agreement are a part hereof and are hereby incorporated in full by reference.

7.98.8 Governing Law. This Agreement shall be governed by the laws of the State of Florida.

7.108.9 Indemnity. The representations and warranties contained herein in Section 4 do not obviate the fact that this transaction is an “as-is” and “where-is” transaction. VERO BEACH agrees to indemnify INDIAN RIVER SHORES, its successors and assigns, and hold it harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of VERO BEACH under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to INDIAN RIVER SHORES by VERO BEACH; INDIAN RIVER SHORES agrees to indemnify VERO BEACH, its successors and assigns, and hold it harmless against any loss, damage, liability, expense or cost, accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement made or to be performed by INDIAN RIVER SHORES under this Agreement or from any misrepresentation in or material

omission from any certificate or other document furnished or to be furnished to VERO BEACH by INDIAN RIVER SHORES.

7.118.10 Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 89. FRANCHISE AGREEMENT. As further consideration for the transfer of the rights, duties, and obligations of INDIAN RIVER SHORES to VERO BEACH, INDIAN RIVER SHORES agrees to hold any necessary hearings and grant an exclusive, thirty (30) year water, wastewater, and ~~reclaimed~~reuse water franchise to VERO BEACH on or before the date of closing of the exchange by ordinance but subject to the following terms and conditions:

8.19.1 Franchise Grant. INDIAN RIVER SHORES grants to VERO BEACH, its successors and assigns, the sole and exclusive right, privilege ~~or~~and franchise to construct, maintain, and operate a public water, wastewater, and ~~reclaimed~~reuse water system in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places throughout all the incorporated areas of INDIAN RIVER SHORES and its successors, in accordance with established practices with respect to water, wastewater, and ~~reclaimed~~reuse water system construction and maintenance, for a period of thirty (30) years from the date of acceptance hereof. Such water, wastewater, and ~~reclaimed~~reuse water system shall consist of water, wastewater, and ~~reclaimed~~reuse water facilities (including, pipes, fixtures, mains, valves, meters, tanks, lift stations, etc., and, for water, wastewater, and ~~reclaimed~~reuse water system use, telephone and electric lines) for the purpose of supplying water, wastewater, and ~~reclaimed~~reuse water service to INDIAN RIVER SHORES, and its successors, the inhabitants thereof, and persons and corporations beyond the limits thereof. Notwithstanding any language to the contrary, INDIAN RIVER SHORES may grant additional franchises to JOHN'S ISLAND WATER MANAGEMENT, INC., as shown in Exhibit "D" and/or INDIAN RIVER COUNTY to provide for reuse water north of the JOHN'S ISLAND WATER MANAGEMENT, INC. service area if VERO BEACH cannot provide the minimum reuse obligation as defined in Section 9.7.

89.2 Service Standards. Upon acceptance of this franchise, VERO BEACH agrees to provide such areas of INDIAN RIVER SHORES with continuous (subject to unavoidable outages), adequate and customary water, wastewater, and ~~reclaimed~~reuse water utility service. All of the water, wastewater, and ~~reclaimed~~reuse water facilities of VERO BEACH shall be constructed, maintained and operated in accordance with the applicable regulations of the Federal Government and the State of Florida, as well as meeting all level-of-service standards as per comprehensive plans. The quantity and quality of water delivered and sold shall at all times be and remain not inferior to the applicable standards for public water supply and other applicable rules, regulations and standards now or hereafter adopted by the Federal Government and the State of Florida.

The quantity and quality of wastewater service provided and sold shall at all times be and remain not inferior to the applicable standards for public wastewater service and other applicable rules, regulations and standards now or hereafter adopted by the Federal Government and the State of Florida. VERO BEACH shall also supply all water to consumers through meters which shall accurately measure the amount of water supplied in accordance with normally accepted utility standards.

89.3 Fire Hydrants. VERO BEACH shall maintain sufficient water pressure and mains of sufficient size with fire hydrants and other facilities necessary in the water system to furnish fire protection at any and all areas within the territory receiving services from VERO BEACH in accordance with the same applicable standards used to provide fire protection and service in VERO BEACH. ~~VERO BEACH shall also supply all water to consumers through meters which shall accurately measure the amount of water supplied in accordance with normally accepted utility standards.~~ Additionally, VERO BEACH shall waive all hydrant rental fees within INDIAN RIVER SHORES upon execution of this Agreement during the term of this agreement and any renewal terms. Cost 2

89.4 Location of Facilities The facilities shall be so located or relocated and so constructed as to interfere as little as practicable with traffic over said streets, alleys, bridges and public places, and with reasonable egress from and ingress to abutting property. The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body of INDIAN RIVER SHORES may designate for the purpose, but not so as unreasonably to interfere with the proper operation of VERO BEACH's facilities and service. That when any portion of a street is excavated by VERO BEACH in the location or relocation of any of its facilities, the portion of the street so excavated shall, within a reasonable time and as early as practicable after such excavation, be replaced by VERO BEACH at its expense, and in as good condition as it was at the time of such excavation. Provided, however, that nothing herein contained shall be construed to make INDIAN RIVER SHORES liable to VERO BEACH for any cost or expense in connection with the construction, reconstruction, repair or relocation of VERO BEACH's facilities in streets, highways and other public places made necessary by the widening, grading, paving or otherwise improving by said INDIAN RIVER SHORES of any of the present and future streets, avenues, alleys, bridges, highways, easements and other public places used or occupied by VERO BEACH, except, however, VERO BEACH shall be entitled to reimbursement of its costs as may be provided by law.

89.5 Hold Harmless. INDIAN RIVER SHORES shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenances by VERO BEACH of its facilities hereunder, and the acceptance of this AGREEMENT shall be deemed an agreement on the part of VERO BEACH to indemnify INDIAN RIVER SHORES and hold it harmless against any and all liability, loss, cost, damage or expense, which may accrue to INDIAN RIVER SHORES by reason of the neglect, default or misconduct of VERO BEACH in the construction, operation or maintenance of its facilities hereunder.

89.6 Equal rates. That all rates and rules and regulations established by VERO BEACH from time to time shall be reasonable, and that VERO BEACH's rates for water, wastewater, and reclaimedreuse water services shall at all times be subject to such regulation as may be provided by State law. INDIAN RIVER SHORES' customers shall be treated in the exact same manner as customers served inside of the boundaries of VERO BEACH, and shall be charged in conjunction with prevailing Inside City rates levied by VERO BEACH. ~~In addition to the prevailing rates VERO BEACH may charge a maximum 10% surcharge on INDIAN RIVER SHORES's water and wastewater customers after the obligations in Section 5, above, have been satisfied. VERO BEACH shall not charge existing customers within INDIAN RIVER SHORES impact fees, connection charges, capacity charges, assessments, capital recovery charges, or any form thereof. Additionally, VERO BEACH shall waive all hydrant rental fees within INDIAN RIVER SHORES upon execution of this Agreement.~~ VERO BEACH shall annually provide the Town Manager and Town Planner of INDIAN RIVER SHORES the detailed five (5) year Capital Improvement Plan, specific to facilities within INDIAN RIVER SHORES, upon its completion for review and comment. VERO BEACH shall also provide the Town Manager of INDIAN RIVER SHORES, for review and comment, any proposed rate increases no less than ninety (90) days before the rate increase is scheduled to go before the VERO BEACH City Council for approval. The right to regulate water, wastewater, and reclaimedreuse water rates, impact fees, service policies or other rules or regulations or the construction, operation and maintenance of the water, wastewater, and reclaimedreuse water system is vested solely in VERO BEACH except as may be otherwise provided by application laws of the Federal Government, the State of Florida, or as specified in this Agreement. The transfer to VERO BEACH's General Fund will not exceed six percent (6%) of gross revenues and is considered a Return On Investment (ROI) to the owners of the system.

89.7 Quantity of ReclaimedReuse Water. VERO BEACH shall commit to providing a minimum of 2.0 MGD annual average daily flow (ADF) of reclaimedreuse water capacity to customers in INDIAN RIVER SHORES in ~~2010~~2011, increasing to 2.5 MGD ADF by 2014, increasing to 3.0 MGD ADF by 2030 and increasing to 2-93.4 MGD ADF by the year 2040.

~~**8.8 Franchise Fee by Indian River Shores.** Prior to the imposition of any franchise fee by INDIAN RIVER SHORES, INDIAN RIVER SHORES shall give a minimum of sixty (60) days advance notice to VERO BEACH of the imposition of such fee. Such fee shall be initiated only upon passage of an appropriate ordinance in accordance with Florida statutes. Such fee shall be a percentage of gross revenues from the sale of water and wastewater service to customers within the incorporated limits of INDIAN RIVER SHORES. Said fee, at the option of VERO BEACH, may be shown as an additional charge on affected utility bills. The franchise fee, if imposed, shall not exceed six (6%) per cent of applicable gross revenues. Payments in the amount to be paid to INDIAN RIVER SHORES by VERO BEACH under the terms described above shall be made in monthly installments. Such monthly payments shall be rendered twenty (20) days after the monthly~~

~~collection period. INDIAN RIVER SHORES agrees to hold VERO BEACH harmless from any damages or suits resulting directly or indirectly as a result of the collection of such fees, and INDIAN RIVER SHORES shall defend any and all suits filed against VERO BEACH based on the collection of such moneys.~~

8.99.8 Exclusive Franchise, Exceptions. As further consideration of this franchise, INDIAN RIVER SHORES agrees not to engage in or permit any person other than VERO BEACH to engage in the business of distributing and selling water and ~~reclaimed~~reuse water and collection of sewage to multiple customers during the life of the franchise or any extension thereof in competition with VERO BEACH, its successors and assigns, with the following exceptions:

(a) Any non-potable water system(s) operated by INDIAN RIVER SHORES or any other operator properly licensed by INDIAN RIVER SHORES. JOHN'S ISLAND WATER MANAGEMENT, INC. is currently a properly licensed operator at the time of this franchise.

(b) Any customers not served by VERO BEACH as of the effective date of this Franchise. Such customers will be served by VERO BEACH, upon request by them, and after appropriate approvals by INDIAN RIVER SHORES and any other affected parties. It is expressly noted that the Baytree Development is not served by VERO BEACH and no change in service is contemplated in this franchise.

(c) VERO BEACH shall have the authority to enter into Developer Agreements with developers of real estate projects and other consumers within the franchise territory, which agreements may include, but not be limited to provisions relating to:

- (i) Advance payment of contributions in aid of construction to finance system expansion and/or extension,
- (ii) Revenue guarantees or other such arrangements as may make the expansion/extension self supporting,
- (iii) Capacity reservation fees,
- (iv) Prorata allocation of plant expansion/main extension charges between two or more developers.

Developer agreements entered into by VERO BEACH shall be fair, just and non-discriminatory, and generally have the same content as in-city developer agreements.

~~(d) VERO BEACH shall inherit any and all INDIAN RIVER SHORES' bulk service agreements and interlocal agreements, and shall abide by the terms and conditions thereof.~~

8.10 Franchise Extensions. ~~This franchise shall be automatically renewed for additional thirty (30) year terms pursuant to the terms and conditions of 8.14 of this section. Failure on the part of VERO~~

~~BEACH to comply in any substantial respect with any of the provisions of this Agreement, shall be grounds for a forfeiture of this grant, but no such forfeiture shall take effect, if the reasonableness or propriety thereof is protested by VERO BEACH, until a court of competent jurisdiction (with right of appeal in either party) shall have found that VERO BEACH has failed to comply in a substantial respect with any of the provisions of this franchise, and VERO BEACH shall have six (6) months after final determination of the question, to make good the default, before a forfeiture shall result, with the right in INDIAN RIVER SHORES at its discretion to grant such additional time to VERO BEACH for compliance as necessities in the case require; provided, however, that the provisions of this section shall not be construed as impairing any alternative right or rights which INDIAN RIVER SHORES may have with respect to the forfeiture of franchises under the Constitution or the general laws of Florida.~~

~~**8.11 [reserved]**~~

~~**8.129.9 Franchise Boundary Changes.** The franchise territory may be expanded or contracted to include or exclude lands by mutual agreement between VERO BEACH and INDIAN RIVER SHORES. Any franchise territory that is subsequently annexed by VERO BEACH shall be removed automatically from the franchise territory.~~

~~**8.139.10 Supersedes Other Agreements.** This Franchise supersedes, with respect to water, wastewater, and reclaimed reuse water only, any previous agreements between VERO BEACH and INDIAN RIVER SHORES regarding such service.~~

~~**8.149.11 Franchise Renewal and Termination.** This franchise shall automatically renew for up to two (2) additional thirty (30) year terms unless either party shall send written notice to the other party at least five (5) years prior to the date of expiration of any thirty (30) year term. In no event will shall the franchise be terminated prior to expiration of any thirty (30) year period, except as provided for in this Section 8.10 hereof. Failure on the part of VERO BEACH to comply in any substantial respect with any of the provisions of this Agreement, shall be grounds for a forfeiture of this grant, but no such forfeiture shall take effect, if the reasonableness or propriety thereof is protested by VERO BEACH, until a court of competent jurisdiction (with right of appeal in either party) shall have found that VERO BEACH has failed to comply in a substantial respect with any of the provisions of this franchise, and VERO BEACH shall have six (6) months after final determination of the question, to make good the default, before a forfeiture shall result, with the right in INDIAN RIVER SHORES at its discretion to grant such additional time to VERO BEACH for compliance as necessities in the case require; provided, however, that the provisions of this section shall not be construed as impairing~~

any alternative right or rights which INDIAN RIVER SHORES may have with respect to the forfeiture of franchises under the Constitution or the general laws of Florida. Upon termination or expiration of this agreement and the franchise, all of the assets owned by VERO BEACH at such time, in INDIAN RIVER SHORES, shall be purchased by INDIAN RIVER SHORES or another qualified water, wastewater, and reuse provider approved by INDIAN RIVER SHORES, except that VERO BEACH shall retain ownership of the north river crossing (20" water main) located in the Fred R. Tuerk Drive right-of way and associated easements and the transmission mains associated with the north river crossing (18" and 20" water mains) that exist in the SR A1A right-of-way from Fred R. Tuerk Drive south to the VERO BEACH/INDIAN RIVER SHORES city limits.

8.159.12 Acts of God. Provisions herein to the contrary notwithstanding, VERO BEACH shall not be liable for the non-performance or delay in performance of any of its obligations undertaken pursuant to the terms of this franchise, where said failure or delay is due to cause beyond VERO BEACH's control including, without limitation, "Acts of God," unavoidable casualties and labor dispute.

SECTION 9. BINDING EFFECT. All of the provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, successors and nominees of VERO BEACH and INDIAN RIVER SHORES. Vero Beach reserves the right to sell all or part of its utility system to another qualified utility provider, provided that the Buyer assumes all the obligations of the City of Vero Beach to the Town of Indian River Shores under this franchise agreement.

SECTION 10. TIME OF THE ESSENCE. Time is hereby declared of the essence in the performance of each and every provision of this Agreement.

SECTION 11. APPLICABLE LAW. This Agreement shall be construed, controlled, and interpreted according to the laws of the State of Florida.

SECTION 12. ENTIRE AGREEMENT. This instrument constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

SECTION 13. AMENDMENT. Amendments to and waivers to the provisions of this Agreement shall be made by the parties only in writing by formal amendment.

SECTION 14. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the formal parties herein, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

SECTION 15. CONDITION PRECEDENT TO CLOSING. Notwithstanding anything to the contrary contained in this Agreement, the closing of this transfer is subject to the following condition precedent: The adoption of a franchise ordinance by INDIAN RIVER SHORES granting VERO BEACH the franchise contemplated by and subject to this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year above first written.

TOWN OF INDIAN RIVER SHORES, FLORIDA

(Seal)

By _____

Thomas Cadden ~~E. William Kenyon~~, Town Mayor

ATTEST:

Laura Aldrich, Town Clerk

Reviewed as to form and legal sufficiency

Chester Clem, PA
Town Attorney

CITY OF VERO BEACH, FLORIDA

(Seal)

By _____

Jay Kramer~~Kevin Sawnick~~, City Mayor

ATTEST:

Tammy K. Vock, City Clerk

Reviewed as to form and legal sufficiency

Approved as to content and legal sufficiency

Wayne Coment~~Charles P. Vitunac~~, Esquire
Acting City Attorney

Thomas A. Cloud, Esquire
Gray-Robinson
Special Counsel

Reviewed for Administrative Matters

Monte Falls~~James M. Gabbard~~
Interim City Manager

Exhibits

Exhibit "A" Town of Indian River Shores Water System Map & Facilities Listing

Exhibit "B" Town of Indian River Shores Wastewater System Map & Facilities Listing

Exhibit "C" Bill of Sale~~Town of Indian River Shores Surcharge Calculation and Waiver Schedule~~

Exhibit "D" Map of John's Island Water Management, INC. Service Territory

Exhibit “A”

Town of Indian River Shores Water System Map & Facilities Listing

Contents

- Exhibit A-1 Potable Water System Asset Reference Sheet
- Exhibit A-2 Potable Water System Maps
- Exhibit A-3 Potable Water Asset List and Valuation

Asset Purchase Franchise Agreement Between IRS COVB 091310 comments by Rob Bolton 091510 Tom Clou 92110Charlie Vitunac revised 10_5_2010revised 4_26_2011.docx
Asset Purchase Franchise Agreement Between IRS COVB 091310 comments by Rob Bolton 091510 Tom Clou 92110Charlie Vitunac revised 10_5_2010revised 4_26_2011.docx

9/13/2010

Exhibit "B"

Town of Indian River Shores Wastewater System Map & Facilities Listing

Contents

- Exhibit B-1 Wastewater System Asset Reference Sheet
- Exhibit B-2 Wastewater System Maps
- Exhibit B-3 Wastewater Asset List and Valuation

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9/13/2010

Exhibit "C"

Bill of Sale ~~Town of Indian River Shores~~ ~~Surcharge Calculation and Waiver Schedule~~

Asset Purchase Franchise Agreement Between IRS COVB 091310 comments by Rob Bolton
091510 Tom Clou 92110Charlie Vitunac revised 10_5_2010revised 4_26_2011.docx~~Asset~~
~~Purchase Franchise Agreement Between IRS COVB 091310 comments by Rob Bolton 091510~~
~~Tom Clou 92110Charlie Vitunac revised 10_5_2010revised 4_26_2011.docx~~

9/13/2010

Town of Indian River Shores

Surcharge Calculation and Waiver Schedule

| Collected Revenue | | | |
|--------------------------|------------------------|------------------------|------------------------|
| Month | Water | Sewer | Total |
| Oct 2009 | \$ 147,127.60 | \$ 91,690.25 | \$ 238,817.85 |
| Nov 2009 | \$ 162,030.51 | \$ 101,839.03 | \$ 263,869.54 |
| Dec 2009 | \$ 151,478.41 | \$ 105,895.60 | \$ 257,374.01 |
| Jan 2010 | \$ 140,247.74 | \$ 110,619.34 | \$ 250,867.08 |
| Feb 2010 | \$ 127,196.97 | \$ 106,372.16 | \$ 233,569.13 |
| Mar 2010 | \$ 123,194.70 | \$ 109,404.74 | \$ 232,599.44 |
| Apr 2010 | \$ 154,853.04 | \$ 133,698.41 | \$ 288,551.45 |
| May 2010 | \$ 134,929.11 | \$ 117,928.78 | \$ 252,857.89 |
| Jun 2010 | \$ 140,079.89 | \$ 103,600.93 | \$ 243,680.82 |
| Jul 2010 | \$ 188,898.32 | \$ 104,331.99 | \$ 293,230.31 |
| Total | \$ 1,470,036.29 | \$ 1,085,381.23 | \$ 2,555,417.52 |
| Months of Year | 0.83 | 0.83 | 0.83 |
| Annualized Total | \$ 1,764,043.55 | \$ 1,302,457.48 | \$ 3,066,501.02 |
| Surcharge Percent | | | 10.0% |
| Surcharge Total | | | \$ 306,650.10 |

| Equity Assessment | |
|--|--------------|
| Franchise Value | \$ 500,000 |
| Water ¹ | \$ 1,394,224 |
| Sewer ² | \$ 694,500 |
| Total Value | \$ 2,588,724 |
| Surcharge per Year (Rounded) | \$ 306,650 |
| Discount Rate (5.5% Finance, 1.0% Industry Risk) | 6.5% |
| Number of Years for Surcharge Waiver for Town | 13 |

Notes:

1. As valued in Exhibit "A".
2. As valued in Exhibit "B".

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9/13/2010

City of Vero Beach

1053 20th Place - P.O. Box 1389

Vero Beach, FL 32961-1389

Phone: (772) 978-4700 – Fax: (772) 978-4790

E-mail: cityclk@covb.org - www.covb.org

OFFICE OF THE
MAYOR



February 10, 2011

William Kenyon, Mayor
Town of Indian River Shores
6001 North A1A
Indian River Shores, FL 32963

RE: Future Reuse Capacity for North Indian River Shores

Dear Mr. Kenyon:

I had the pleasure of talking with Tom Cadden last week, and he inquired about the availability of reuse water for the north portion of the Town. I have discussed this request with City staff and have some information for your review and comment.

Currently, the City serves the south portion of the Town directly with reuse water. The City also wholesales reuse water to Johns Island (J.I.) Water Management, who adds additional water from wells and stormwater for retail sale to the Johns Island customers. I use the terms wholesale and retail for simplicity purposes, however they actually correlate to non-pressure and pressure customer classifications respectfully. The City has exhausted all of the reuse capacity through existing users and has a waiting list of potential new customers that want reuse water.

The City has a few projects in its Five Year Capital Improvement Plan that, once constructed, will provide additional capacity for reuse system expansion. The first project is budgeted this year and will add approximately 90,000 to 100,000 gallons per day of reuse water by pumping filter backwash water at the Water Treatment Plant through the Wastewater Plant. The second project is budgeted in FY 2013 and is a stormwater pump station to be located at 43rd Avenue and the Main Relief Canal. This station will be designed at approximately 1 million gallons per day and will filter the stormwater to remove vegetation then pump it through the Wastewater Plant for reuse supplementation. This second project is designed primarily to reduce drinking water supplementation of the reuse system; however there should be approximately 200,000 gallons per day of additional reuse capacity for new customers. It is expected that this project will be eligible for grants and, therefore, is not funded through rates.

On the long term horizon, the City has the ability to divorce part of the Lime Softening Plant Filter System from the Water Treatment Plant and dedicate the filters for filtration of Main Canal stormwater. This would add approximately 3.6 million gallons per day of irrigation water that could be piped directly into the reuse system. This project is not in

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William Kenyon, Mayor
Re: Future Reuse Capacity for North Indian River Shores
Page 2
February 10, 2011

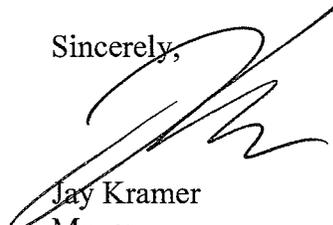
the Five Year Plan and a project budget has not been established. While this project would provide a considerable amount of irrigation water, the City has not yet established a customer base for this amount of water.

As stated earlier, the Town has two suppliers of reuse water - the City and J.I. Water Management. The City could serve the north end of the Town; however, a large investment in piping through the J.I. Water Management Area would have to be made (approximately \$500,000.00). An alternative would be the expansion of the J.I. Water Management Area to serve the north end of the Town in a retail capacity with the City providing additional wholesale reuse water to J.I. Water Management. If this is appealing to the Town, I would suggest a meeting between the three entities to discuss details.

The last segment of serving the north end of the Town would be the installation of the distribution piping in the residential subdivisions. The cost of the distribution lines is estimated at around \$50.00 a linear foot pending actual layout of each subdivision. This cost would be borne by the residents through an assessment process or other means. Therefore, the approximate cost to the residents would be either \$25.00 or \$50.00 per front linear foot pending subdivision layout. The benefit to the residents will differ pending the water demands for each individual subdivision. I would suggest that we investigate the individual needs of each subdivision in the north end of the Town to determine a project scope and then use the reuse water generated from the filter project to supply the water for a "pilot project". This "pilot project" may be one or two subdivisions pending the subdivision size and reuse demand. The City or the Town could provide the project management for this investigation.

Please advise as to your wishes. Should you have any questions regarding this information, do not hesitate to contact my office.

Sincerely,



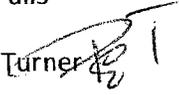
Jay Kramer
Mayor

xc: Councilmembers
Tom Caden
Richard Haverland

XC: Ro B B01707

To: Monte Falls

June 9, 2011

From: Pilar Turner 

Re: Indian River Shores Franchise Agreement

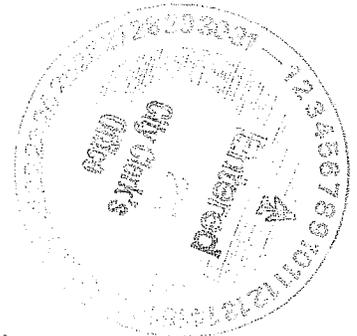


Please provide a copy of the revised IRS agreement Mr. Bolton said he has sent IRS in the last month and a half.

Please provide a ten year proforma for W&S without Indian River Shores in 2016. This request has been outstanding since November 2010. Any assumptions should be stated .

Thank you

CC: Mayor and Council



June 13

Monte ,

This request is still outstanding. With the Coyenta report completed and Bolton's ability to present some scenarios, this should be done before presenting any 30 yr franchise agreement to IRS.

cc: Council

From: Erik Olson [eolson@ircgov.com]
Sent: Monday, June 13, 2011 1:06 PM
To: Turner, Pilar
Subject: FW: Underwater Crossing

From: Erik Olson [mailto:eolson@ircgov.com]
Sent: Monday, June 13, 2011 10:56 AM
To: pilarturner@covb.org
Subject: FW: Underwater Crossing



From: Erik Olson [mailto:eolson@ircgov.com]
Sent: Monday, June 13, 2011 10:53 AM
To: PilarTurner@COVB.org
Subject: FW: Underwater Crossing

From: Alan Polackwich
Sent: Thursday, June 09, 2011 5:08 PM
To: 'Lisa Zahner'
Cc: Erik Olson
Subject: Underwater Crossing

Lisa, here are my responses to Rob's comments:

1. To his comment that the county cannot run parallel pipes ... that's why we have franchise agreements/service territories: we're talking about service after the franchise agreement ends in 2016. At that point, the city has no franchise agreement or service territory. If the town grants a new franchise agreement to the county, the service territory will become the county's. The county will be free to install whatever pipes it needs to serve the town. If the town does grant a franchise to the county, it is my hope that cooler heads will prevail and the county and city will reach an agreement for the county to use or acquire some of the existing city pipes, rather than install new pipes.
2. To his comment that that only the pipes, etc existing in 1986 would revert to the town upon termination of the city's franchise, and any new pipes, improvements, etc would have to be purchased by the town: this is really an issue between the city and the town. However, to the extent that it impacts the county's ability to provide service to the town, I completely disagree with Rob. The franchise agreement granted to the city the right to "construct, maintain, and operate" the water and wastewater systems. The use of the words "construct" and "maintain" clearly contemplates that new components will be added to the system over the 30 year term. The agreement then provides that upon termination, "the entire water system" and "the entire wastewater system" will revert to the town (with minor exceptions). To me, this language is clear – everything within the scope of the franchise agreement will revert to the town upon termination of the franchise. In today's meeting, Rob referred to other pipes, etc constructed under separate, subsequent agreements. I have not reviewed these subsequent agreements, so cannot comment on them. However, I believe the basic fact is correct: if the pipes, etc fall within the franchise agreement, they revert to the town upon termination. You may want to

check with Chester Clem, town attorney, to see if he agrees with Rob's interpretation of the reversion language.

3. To his comment that the value of the city's pipes located in the town is \$12.6/9.8 million, we have heard Rob say this, but we have not seen any backup or substantiation. We have asked for the backup materials and will be in a better position to comment once they are received.

Alan P

Alan S. Polackwich, Sr.
County Attorney, Indian River County
1801 27th Street
Vero Beach, FL 32960
tele # 1-772-226-1424
fax # 1-772-569-4317
apolackwich@ircgov.com

To: Monte Falls

June 13, 2011

From : Pilar Turner 

Re: Public Records Request



Please provide a copy of Eric Olson's letter to the City offering one million gallons of reuse water.

Please provide a copy of City residents awaiting reuse water.

Please provide a copy of all reuse water contracts within Indian River Shores.

Thanks

Cc: Mayor and Council

Addendum to the City Council Meeting Agenda New Business Old Business

Author: Tracy Carroll Council Meeting Date: June 21, 2011

Priority — 9B-3)

Title: Request HR post for position of City Attorney

Summary: The following issues are of utmost importance to the City of Vero Beach, and under negotiations. An outside firm with contracts exceeding one half million dollars is representing the City, and there is concern over the long-term status of the acting City attorney, who is currently seeking other employment.

Legal projects include: PSC contract, FMPA entitlements, Acquisition of Vero Beach Electric with FPL, Merger of City WSI with IR County, among many others.

All agenda Additions - Public need or issue addressed:

The City Council needs to hire the **permanent** Charter Officer.

Definitions of interim (adj)

1. having temporary effect: serving as a temporary measure until something more complete and permanent can be established
 2. holding temporary office: serving temporarily until a permanent replacement can be elected or appointed
 3. intervening time: a period of time between two occurrences or periods
- Synonyms: temporary, provisional, acting, short-term, intervening, pro tem, ad hoc

Statement of the proposed solution to the public need or issue:

Request Interim City Manager have HR Department post and begin the search for a City Attorney as per Charter. The current acting City Attorney is welcome to apply. Experience in transactional, corporate, and HR law will be looked upon favorably.

New Business Only - Relevant City Charter, code references, legal:

Section 3.01. Designation.

The city manager, city clerk, and city attorney are designated Charter officers.

Section 3.02. Appointment.

The Charter officers shall be appointed by the council and shall serve at the pleasure of the council subject to the provisions of section 3.03 of this article.

Section 3.06. City attorney--Powers and duties.

The city attorney shall be a member of the Florida Bar and shall be the legal advisor to the City of Vero Beach. The city attorney or his designee shall attend all city council meetings and perform such professional duties as may be required of him by law or by the council. The city attorney when necessary shall appoint, suspend, demote, or dismiss any employee in the office of the city attorney in accordance with law and the personnel rules of the city. The city attorney shall prepare an annual budget for the operation of the office of the city attorney and shall submit this budget to the city manager for inclusion in the annual city budget in accordance with uniform city procedures.

Backup - additional attached documentation includes: VeroNews.com article



Acting Vero Attorney on short list for Seminole County job

By Lisa Zahner - Friday, May 20, 2011 02:45 PM

VERO BEACH -- Acting Vero Beach City Attorney Wayne Coment told the City Council Friday that he will be interviewing next week for the job of Seminole County Attorney.

Coment, who worked for the City of Vero Beach from 1997 to 1998 and then returned as Assistant City Attorney in the summer of 2002, said he applied for the Seminole County job a few months ago during the termination of former City Attorney Charles Vitunac.

The impetus for notifying the City Council was that Seminole told him the names of the finalists would soon be made public.

According to the job description posted on the website of Georgia-based executive search firm Slavin Management consultants, the office of the Seminole County Attorney consists of 16 employees, including nine lawyers and support staff.

There is no salary posted with the position, but Coment said he thinks he saw a figure that the job "topped out at \$160,000."

Coment recently had to resign from a second job as attorney for the Indian River County Code Enforcement Board due to his increased duties at the city. He said he was working for the County on his furlough days off from Vero and that he will only work one more day for the County before that relationship is concluded.

The Board of County Commissioners last month replaced Coment with a new attorney. According to county records, Coment took on the extra work last summer and earned less than \$1,000 on average per month working for the Code Enforcement Board.

Coment said he has no personal or family ties to Seminole County, except for some history of studying in Orlando.

"I went to the University of Central Florida, so I know the area," Coment said. "And there has been a lot of turmoil around here."

Seminole County spans between the greater Orlando area and Daytona Beach. The county has a budget of \$774 million, of which operating and capital budgets total \$482 million. The County Attorney is a charter officer who reports directly to a five-member County Commission.

The current Seminole County Attorney, Robert McMillan, is set to retire soon after 26 years of service. Coment said that if he is chosen by the Seminole County Commission that he would like to give the city as much notice as possible. Coment has no employment contract with Vero.

"I certainly would not want to just leave (Assistant City Attorney) Peggy (Lyon) in the lurch or to leave the city in a lurch," Coment said. "I would take as much time as they would allow me."

Coment and Lyons have been handling legal matters for the city since Vitunac retired in March amidst termination proceedings. Coment said that he believes that after the electric, water and sewer issues are settled, that the city could manage with only two attorneys.

In the interim, however, the City Council has chosen to outsource some utility legal work to the Gray Robinson law firm out of Orlando. Gray Robinson works in conjunction with GAI Consultants, the firm which is under contract with Vero for about a half million dollars in consulting work at present.

Vero also hires outside counsel to handle most labor disputes and complaints.

Addendum to the City Council Meeting Agenda

New Business Old Business

Author: Jay Kramer

Council Meeting Date: 6/21/11

Priority 1 of

Title: Consideration of Referendum

Summary of your points for discussion:

It has been brought to my attention that the maximum tax increase the Council can authorize is the roll back rate plus 10%. If we are to take action on any of the utilities we are either going to have to as permission from the public through referendum or decide what services to cut.

All agenda Additions - Public need or issue addressed:

Statement of the proposed solution to the public need or issue:

Discussion from Council on where the deficits from the loss of the utilities will be made up from.

New Business Only - Relevant City Charter, code references, legal:

Florida Department of Revenue Property Tax Oversight
"2011 Trim Compliance Workbook"

Backup - additional attached documentation includes:

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

9A-7)

Addendum to the City Council Meeting Agenda New Business Old Business

Author: Tracy Carroll **Council Meeting Date:** June 21, 2011 **Priority** ____ **of** ____

Title: Status of Live Oak and Indian River Dr. improvements and public safety measures

Summary of your points for discussion: Neighborhoods and the families residing within should expect their City to provide public safety. If the neighborhood feels the residents are at risk, they have the right to petition for increased measures from their city. Many residents have utilized the methods of letters to the City and speaking at Council meetings and a neighborhood Public meeting was held June 14.

All agenda Additions - Public need or issue addressed: At least one person has been killed on the roadway within the area, pets have been run over, landscaping has been lost, and families are worried that their children are in peril as a result of speeding and cut-through drivers.

— **Statement of the proposed solution to the public need or issue:** What is the steps staff is planning to take to meet the concerns of the residents? How will the proposed improvements to Live Oak have safety of the neighborhood incorporated into them?

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

Minutes of 6/7 Council meeting and 6/13 Neighborhood meeting

Addendum to the City Council Meeting Agenda

4A-6)
__ New Business __X__ Old Business

Author: Tracy Carroll **Council Meeting Date:** June 21, 2011

Priority ____ of ____

Title: Status of expenses to consultant, legal subcontractor, meetings with regulatory agencies

Summary of your points for discussion: Monthly invoices were to be provided by contract. Council mandated that these be presented by the City Manager when the contract was approved April 5. Council has yet to be presented with an invoice over two months later.

All agenda Additions - Public need or issue addressed: City residents deserve to have a Council approve of the expenditures coming from their tax dollars and electricity bill transfers to the general fund. City residents have not written a blank check to consultants.

Statement of the proposed solution to the public need or issue: Monthly invoices presented to Council on the first meeting delineated all expenditures occurring in the past month from all consultants, all extra charges. All extra expenditures above the contract need prior approval from Council.

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

Minutes from 6/7/2011

Mrs. Turner would like to see a progress report on the evaluation of the FPL offer and GAI expenditures to date. Mr. Falls stated that he would be providing that to Council at their next meeting. He said to date he has only received one invoice from GAI. Mrs. Carroll asked how much was the invoice for. Mr. Falls told her it was for the amount agreed upon, which was \$4,000. He expressed that they have not received May's invoice yet. Mrs. Turner wanted to know about their progress and what activities have they done since last month. Mr. Falls recalled that GAI has met with OUC. They talked about some possibilities that OUC may be able to do. This involves how the penalty clause may or may not be assessed if certain other things happen and if OUC could be a partner to part of the deal. Mrs. Turner wanted to know what they could tell the public on what progress is being made in evaluating the FPL offer. Mr. Falls hoped to have some answers after tomorrow's meeting. Mrs. Carroll referred to the meeting that GAI had with OUC. She asked if there was any staff present when that meeting took place. Mr. Falls answered no. Mrs. Carroll had some concerns about why the City Manager or the City Attorney were not in attendance at that meeting. Mr. Coment explained that they just learned about their initial contact and will talk to GAI about this tomorrow. However, he knows that there will be future meetings with both entities. Mrs. Turner expressed that Council (along with staff) needs to have a time line and the issues that GAI is involved in. Mrs. Carroll commented that she did not know about the FPL meeting scheduled for tomorrow until the Press called her about it. Mr. Fletcher wanted to make sure that Mrs. Carroll knows about all those meetings. She is the point person for the Council. Mrs. Carroll added how important it is to have a representative from the City attend these meetings. Mrs. Turner hoped that at their next meeting they will be provided with account expenditures to date, a time line and the issues that GAI is involved in.

Minutes from May 3, 2011 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.

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.

9A-8)

Addendum to the City Council Meeting Agenda

Author: Tracy Carroll

Council Meeting Date: June 21, 2011

Priority ___ of ___

Title: Discussion of Status of Finance Department management

Summary of your points for discussion: Finance Department has existed for over one year without leadership. Council has demanded repeatedly that the acting City Manager make this a priority. Council has asked that private sector candidates be looked at. The candidates selected by the HR department were not adequate, as referenced by no one yet in the position. Should a private consultant be utilized for this role?

All agenda Additions - Public need or issue addressed:

The City needs to have continuity in the Finance Department.

The position required a CPA – there are 33,000 licensed CPA’s in the state.

The HR director has told me that Mr. Maillet would like someone with a CGFO – of which there are approx 200 in the state, all in public employee. The requirements include 3 years of governmental work, effectively denying any applicant from the private sector.

Statement of the proposed solution to the public need or issue: Begin again the posting and receipt of applications so they are ready for review of the City Manager when he starts the position.

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

Feb 1, discussions at each meeting

1. Mr. Maillet tendered his resignation from the Director of Finance on March 2, 2010 to take effect 3/30/10. Posted by HR on 3/15/10. # of people interviewed for this position 5 – one offered but too little money. Mr. Maillet “put his resignation on hold” 7/2/10

2. Jackie Mitz, with only an AA degree, resigned the role of Asst. Finance Director to take early retirement effective 8/31/10

The job was posted as a Comptroller, with responsibility only over Accounting, on 9/7/10. No one was found or hired. The job was reposted as Asst. Finance Director 11/1/10.

May 17 meeting:

Mr. Falls reported that he has been trying to hire a new Finance Director to take Steve Maillet’s place. They received around 60 applications and narrowed their search down to five applicants and out of the five they pulled three applicants. An offer was made to one of the applicants who declined. Offers were also made to the other top two applicants and they also have all declined. They will now readvertise the position and will be ready to review the applications with Mr. O’Connor.

Mrs. Turner made a motion to utilize an outside firm to help in hiring a Finance Director.

Mr. Falls went over the reasons that the three applicants declined the offers. He said that one of the applicants said after doing some further research that it was not a right fit for him, another applicant was offered a better position at the place he is currently employed and the third applicant could not take the job because of unexpected illness in the family.

Mrs. Carroll suggested reviewing the applications that they have instead of starting the whole process again.

Mr. Falls wanted to get some more applications to have some indication on who is out there.

Mrs. Turner reiterated her motion to hire an outside consultant to find a new Finance Director.

Mayor Kramer suggested holding off doing that until the new City Manager was in place.

Mr. Fletcher agreed with Mayor Kramer’s comments. He said that he (Mr. O’Connor) might have better luck. The City Manager has requested the issue be put on hold until a new City Manager starts.

MEMORANDUM

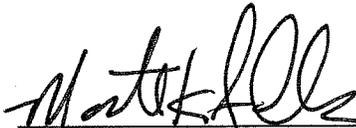
TO: The Honorable Mayor Jay Kramer, Vice Mayor Pilar Turner, Councilmember Brian Heady, Councilmember Craig Fletcher and Councilmember Tracy Carroll

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

DATE: May 3, 2011

SUBJECT: FINANCE DIRECTOR

At our April 19 meeting, I reported that I had selected a Finance Director. Late last week, the selected applicant turned the offer down 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 our offer. With the selection of a permanent City Manager scheduled for Friday, I will defer further action until then.



Monte K. Falls, P.E.

MKF:jav

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4H-9

Addendum to the City Council Meeting Agenda New Business Old Business

Author: Tracy Carroll Council Meeting Date: June 21, 2011 Priority ____ of ____

Title: Status of Grand Harbor and continuing electric outages

Summary of your points for discussion: All customers of the electric utility deserve full disclosure of long-term problems affecting their individual usage of utilities they paid for, regardless of their location in or outside of City limits.

All agenda Additions - Public need or issue addressed: Continuing outages to customers, and development of a log of problems and a clear plan and time frame to address customer issues, as requested of the City Manager.

Statement of the proposed solution to the public need or issue: development of a log of problems and a clear plan and time frame to address customer issues

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

Mr. J. Rock Tonkel, resident of Grand Harbor,He then recalled that he was before them a few months ago and requested that they establish an incident report for utility failures and he has not seen anything. He is speaking about Grand Harbor and the impact that the residents feel with the numerous outages that they have occurring. He made a formal request to receive this incident report. He said that there have been at least twenty outages in Grand Harbor ranging from a few minutes to a few hours. He is requesting the City Manager develop a report that would be available to the public to review quantifying incidents in Grand Harbor and to discuss what will solve the problems on a permanent basis. The President of the Community Association of Grand Harbor met with FPL and he (Mr. Tonkel) will be discussing the correspondence generated from the outcome of that meeting. Their concerns have not changed and they would like Council to proceed with selling the utilities to FPL. He invited any of the Councilmembers to come and talk to the Grand Page Harbor ratepayers. He said that this invitation is particularly being made to Mayor Kramer, because he supports their utilities serving the City residents only and the residents of Grand Harbor are interested in hearing about that concept. Mr. Tonkel said that he would be back at their next meeting. Mrs. Carroll asked staff if the outages were occurring because of the switchgear. Mr. Falls commented that he does have this report as requested by Mr. Tonkel on his to do list and has not forgotten about it. He just has not had the time to get to it yet. Mr. Randall McCamish, Transmission & Distribution Director, reported that some of the switchgear has been replaced and there still are quite a few outages occurring in Grand Harbor. He said that the switchgear is part of the problem, but not the whole problem. He said that there are a couple more switchgears that still need to be replaced. So far they have replaced two out of the five. He assured Council that notice will be given to the residents when they make these replacements of the switchgear.

Addendum to the City Council Meeting Agenda New Business Old Business

Author: Brian Heady

Council Meeting Date: May 3, 2011

Priority ___ of ___

98-10)

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

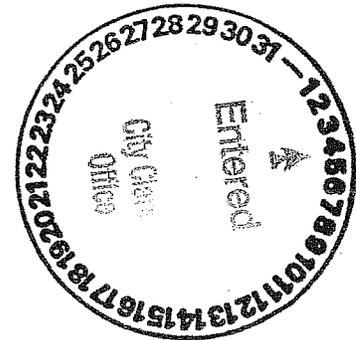
Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:



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:

9A-5)

Addendum to the City Council Meeting Agenda New Business Old Business

Author: Tracy Carroll **Council Meeting Date:** June 21, 2011 **Priority** ____ **of** ____

Title: Council notification of meetings with FPL, GAI, City of IRS and County in regards to WSI and Electric issues

Summary of your points for discussion: Notification of Council appointees of scheduled meetings

All agenda Additions - Public need or issue addressed: Council requested notification of all meetings. As representatives of the City customers of utilities, we have a vested interest in safeguarding the interests of the residents in these negotiations. Staff has made it very well known that they are not in favor of either transaction occurring and the public, who made their feelings known in the last election, deserve to have representation at the negotiation table.

Statement of the proposed solution to the public need or issue: Contact point person via telephone as soon as all meetings are set up. Point person should also be told of any meetings taking place with regulatory agencies by staff and consultants as soon as scheduled, also by personal telephone call and backup by written communication/ email.

Old Business Only - Dates of past discussions / decisions by Council relevant to the issue:

Minutes from 6/7/2011

Mrs. Turner wanted to know what they could tell the public on what progress is being made in evaluating the FPL offer. Mr. Falls hoped to have some answers after tomorrow's meeting.

Mrs. Carroll referred to the meeting that GAI had with OUC. She asked if there was any staff present when that meeting took place. Mr. Falls answered no. Mrs. Carroll had some concerns about why the City Manager or the City Attorney were not in attendance at that meeting.

Mr. Coment explained that they just learned about their initial contact and will talk to GAI about this tomorrow. However, he knows that there will be future meetings with both entities.

Mrs. Turner expressed that Council (along with staff) needs to have a time line and the issues that GAI is involved in. Mrs. Carroll commented that she did not know about the FPL meeting scheduled for tomorrow until the Press called her about it.

Mr. Fletcher wanted to make sure that Mrs. Carroll knows about all those meetings. She is the point person for the Council.

Mrs. Carroll added how important it is to have a representative from the City attend these meetings. Mrs. Turner hoped that at their next meeting they will be provided with account expenditures to date, a time line and the issues that GAI is involved in.



9B-4)

Addendum to the City Council Meeting Agenda

Author: BTH Council Meeting Date: 6.15.2011 Priority ___ of ___

Title: Elimination of Election fees

Summary: Discussion for possible action

Public need or issue addressed: A discussion in the public eye concerning the fee charged to candidates for election to city office.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None



9.B-8)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 6.21.2011 **Priority** ____ **of** ____

Title: Saving tax dollars and balancing future budgets.

Summary: Discussion for possible action on reducing cost without reducing staff.

Public need or issue addressed: A discussion in the public eye concerning the continued tax burden and income shortages.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None



9 B-9)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 6.21.2011 **Priority** ____ **of** ____

Title: Resolving traffic concerns.

Summary: Discussion for possible action on suggestions from 6/16/11 meeting.

Public need or issue addressed: A discussion in the public eye relating to the concerns of citizens in beachside neighborhoods.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None



9 B-10)

Addendum to the City Council Meeting Agenda

Author: BTH **Council Meeting Date:** 6.21.2011 **Priority** ___ **of** ___

Title: Reduction in work load of staff and paper reduction.

Summary: Discussion for possible action on suggestions from City Clerk on staff time and possible paper use reduction.

Public need or issue addressed: A discussion in the public eye relating to benefits of use of new technology.

Relevant City Charter, code references, legal: N/A

Dates of past decisions by Council relevant to the issue: N/A

Statement of the proposed solution to the public need or issue: To be determined

Additional attached documentation includes: None