CITY OF VERO BEACH, FLORIDA
OCTOBER 19, 2010 6:00 P.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 –
C. Pledge of Allegiance

2. PRELIMINARY MATTERS

A. Agenda Additions, Deletions, and Adoption
B. Proclamations

1. National Arts and Humanities Month – October 2010

C. Public Comment
D. Adoption of Consent Agenda

1. Regular City Council Minutes – October 5, 2010
2. Regular City Council Minutes – September 21, 2010
3. Regular City Council Minutes – September 7, 2010
4. Special Call City Council Minutes – September 21, 2010
5. Request for Vehicle Purchase – Police Department
6. 2010 Amendment to Lease Agreement for Fire Station #2 Boat Dock
7. Request Approval of Florida Inland Navigation District (FIND) Project Agreement for the City Marina South Complex – Part 3 – Project #1R-VB-10-51
8. Change Order No. 4 to Work Order No. 1371-1 between Wilbur Smith Associations and the City of Vero Beach (RFQ 340-06/CSS)
9. 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

5. FIRST READINGS BY TITLE FOR ORDINANCES AND RESOLUTIONS

THAT REQUIRE A FUTURE PUBLIC HEARING

6. CITY CLERK'S MATTERS

7. CITY MANAGER'S MATTERS

8. CITY ATTORNEY'S MATTERS

9. CITY COUNCIL MATTERS

A. Old Business

1. The playing in the public of a video of the 8/12/08 County Commission meeting which I supplied to the City Clerk several months ago. Discussion to follow – Requested by Councilmember Brian Heady
2. An overview of the documents supplied by the City Attorney of the Honest Services requirements under Federal Law and Supreme Court decisions – Requested by Councilmember Brian Heady
3. Update of Federal lawsuit – Requested by Councilmember Brian Heady
4. Interim City Manager – Requested by Councilmember Brian Heady
5. Repeal of restrictions on Councilmembers – Requested by Councilmember Brian Heady
6. Downtown Parking – Requested by Councilmember Brian Heady
7. Advisory Committees – Requested by Councilmember Brian Heady
8. Speed Bumps on City streets – Requested by Councilmember Brian Heady

B. New Business

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Kevin Sawnick's Matters
   1. Correspondence
   2. Committee Reports
   3. Comments

B. Vice Mayor Sabin Abell's Matters
   1. Correspondence
   2. Committee Reports
   3. Comments

C. Councilmember Tom White's Matters
   1. Correspondence
   2. Committee Reports
   3. Comments

D. Councilmember Brian Heady's Matters

1. Correspondence
2. Committee Reports
3. Comments

E. Councilmember Ken Daige'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
OCTOBER 19, 2010 6:00 P.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

1. CALL TO ORDER

A. Roll Call

Mayor Kevin Sawnick, present; Vice Mayor Sabin Abell, present; Councilmember Tom White, present; Councilmember Brian Heady, present and Councilmember Ken Daige, present **Also Present:** Monte Falls, Interim City Manager; Charlie Vitunac, City Attorney and Tammy Vock, City Clerk

B. Invocation

The invocation was given by Rabbi Michael Birnholz of Temple Beth Shalom.

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

Mrs. Tammy Vock, City Clerk, requested that item 7-A) be added on to the agenda under City Manager's Matters, which would be titled "Update on action of the Minor League Baseball Issue."

Mayor Sawnick made a motion to add item 7-A) to the agenda. Mr. Daige seconded the motion and it passed unanimously.

Mayor Sawnick made a motion to delete items 9A-1) through 9A-8) from the agenda because of lack of clarification and that there was no backup material provided for these items. Mr. White seconded the motion.

Mr. White commented that there are a couple of items under Old Business that he would have no objections to if Mr. Heady wanted to discuss them under his matters. The items that he agrees with pulling off the agenda are items 9A-1), 9A-2), 9A-3), and 9A-5).

Mr. Heady told Mr. White whether or not he had a problem with his items he (Mr. Heady) can discuss anything under his comments. The motion is to remove all of his items. He mentioned that there is an Election coming up, and during Election where the things you (Council) say all the time that you want everything on the table, but if certain members of the public want something on the table for discussion they are not interested.

If he wants something on the table to be discussed, they are not interested. He told them that they can remove these items, they have been doing this for months and months. He said that he was clearly opposed to more of their same nonsense.

Mr. Abell felt that it would be very easy for Mr. Heady to do what is required of them and that is to provide backup material. He referred to one of the items under Old Business – item 9A-6) Downtown Parking and he asked Mr. Heady was he talking about downtown on the mainland or downtown on the beachside. He said that Mr. Heady needs to explain what he was wants to speak about. He said that the same thing that they have been accused of not letting him talk on some sort of referendum because all he put on the agenda was "November Elections." He said that "November Elections" was discussed at one of their meetings and it came out that he (Mr. Heady) wanted to put candidates pictures on the website and information on Channel 13. Mr. Heady stopped Mr. Abell and said to him "I wanted to what". Mr. Abell informed him that is what he asked for. Mr. Heady asked Mr. Abell what he was saying was that he said at a public meeting he wanted to add the candidates to the City's website. Mr. Abell answered yes. Mr. Heady asked Mr. Abell if he could refer to the meeting when he said that and is that recorded in the minutes. Mr. Abell said that he would find the information for Mr. Heady. Mr. Heady asked Mr. Abell that during a break tonight would he like to tell him where in the minutes he said that. Mr. Heady said he doesn't think that is accurate. It is more of the same stuff that he usually does and that is he thinks that he can just sit here and say things for the public to hear and they will accept it. He knows that is not true, it is just not true.

Mayor Sawnick told Mr. Heady that Mr. Abell has said that he would provide him with the information, but it probably would not be during the break.

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

Mayor Sawnick made a motion to adopt the agenda as amended. Mr. Daige seconded the motion and it passed 4-1 with Mr. Heady voting no.

B. Proclamations

1. National Arts and Humanities Month – October 2010

Mayor Sawnick read and presented the proclamation.

C. Public Comment

Mr. Joseph Guffanti stated that back in 2008 the Florida Municipal Power Agency (FMPA) got involved with a future contract regarding the price of natural gas. Not long after that the price of natural gas dropped to about a third. He learned that the City of Vero Beach was involved with that contract. He knew about the contract because the former City Manager, Jim Gabbard, announced it at a public meeting that FMPA had engaged in a contract to buy natural gas at a fixed price. He then brought up the situation

that occurred with Mr. Frank Zorc some time ago. He said that it involved police activity and at that time Jim Gabbard was the Police Chief. He said that he did not approve of anyone being denied their rights to be heard. He can only think that the City Council takes the public for a bunch of fools. He said that next month (November Election) they will find out whether they are right or wrong.

Mrs. Linda Hillman commented that she could not be at the last Council meeting, which was Jim Gabbard's last meeting. She wanted to thank him for everything that he did during the time that he has served the City. She then welcomed Mr. Monte Falls. She recalled that yesterday she sent an e-mail to the City Council, which she read into the record (please see attached). She said even with the new proposed Go-Line bus location that there are neighbors still upset. She said that Council could expect e-mails and phone calls from neighbors who will fight to keep the buses out of their neighborhood.

Mr. White explained that when they talked to the Senior Resource Center they were under the impression that the "hub" would be used for pickup and drop off of passengers. It was not going to be a place where the buses would be parked overnight. He said that the buses should be parked at the County garage or someplace like that. He wanted Council to approve the Mayor or Interim City Manager sending a letter to the Senior Resource Center asking that their buses be stored at a garage overnight.

Mrs. Hillman brought up that they are very close to daylight savings time and at 4:00 p.m. it starts getting dark and that this is not a pleasant situation.

Mr. Monte Falls, Interim City Manager, reported that the Planning and Development Director has been in contact with the County (Mr. Phil Madsen) who has told him that they are working on a temporary site where the hub will be located. They are also working on getting the buses moved temporarily until they come up with a permanent spot for the hub. They are looking at the old Health Department site to see if it is compatible. The Senior Resources Center would like to keep the hub as close to downtown as possible.

Mr. Abell suggested working with the neighbors to make sure that this situation is not sited in the neighborhood.

Mr. Daige mentioned that he had a number of papers on file in the City Clerk's office demonstrating the work that he had done in regards to the hub. He is thankful that the City Council is working on a letter to get those buses out of there (place they currently park at now). He said that the neighbors need some relief. He asked the City Attorney if they needed to make a motion in order to give direction for this letter to be sent out.

Mr. Charles Vitunac, City Attorney, said that they could handle it either with or without a motion.

Mr. White reiterated that the last time they talked about the hub he thought that it was a drop off and pick up location. He asked if there were Codes in place not allowing this activity to take place in certain locations.

Mr. Tim McGarry, Planning and Development Director, explained that the Senior Resource Center does not have site plan approval right now for the temporary hub. He understands the direction that Council wishes to move in.

Mr. White made a motion that a letter be sent from the City Council to Indian River County/Senior Resource Center referencing the hub and that they object to the buses/vehicles being parked in the Original Town neighborhood. Mr. Daige seconded the motion.

Mr. Heady noted that Mrs. Hillman separated the City residents from the County residents. He said that County residents are not City residents, but City residents are County residents. He said with respect to no input, that has been a concern over and over again at these meetings where input is shut down. He said it was nice to see that her input was not shut down. He then welcomed Mr. Falls to his first meeting. He said it is interesting that people talk about a learning curve and the first issue that Mr. Falls has had to respond to it is clear that there is no learning curve. He thanked Mr. Falls for his services.

Mayor Sawnick stated that there was a motion on the floor to send a letter to the County explaining their objections to the buses being parked in that particular area and send a copy of that letter to the Senior Resource Center. The motion passed unanimously.

Mr. Heady commented that he had a question before he voted, but never mind.

Mrs. Hillman then spoke about several letters and articles that she has been reading in the newspaper. She said that Mr. Russ Lemon did an article about Mr. Heady attending the Florida League of Cities conference, where he approached a newsman concerning corruption in local government (Indian River County). She knows that for about a year they have been hearing about this local corruption in government and nothing has ever been proven, yet it is continually talked about. She does not see it and is sure that plenty of the citizens don't see it either. She felt that she could be swayed the other way if there was proof and it was put out in front of everyone. She said that there is no proof and there hasn't been any proof going forward, it is just talk. The article said that Mr. Heady boasted about suing his own City and how he has his own television show. Another item reported by Russ Lemon noted that during Mr. Heady's days as a gadfly he often called the Vero Beach City Council liars, cheats and thieves. Now that he is an elected official is he an exception to that blanket indictment. Mr. Heady said in the article that he has never sat on the dais and lied and he does not cheat or steal from the public. Mrs. Hilman said that she begs to differ. Mr. Heady lied to the public during his campaign. He said that he would never cheat the taxpayers of their money. She said suing the City Council, the same City that is paying him to sit before the citizens, is cheating and lying to the taxpayers. In her opinion that makes Mr. Heady a thief. On October 14th Mr. Heady put

a letter in the Press Journal endorsing Mrs. Carroll, Mrs. Turner and Mr. Kramer for City Council. She then showed an article of September 9th where it stated that FP&L customers were to pay $31 million dollars for their project. She does not see where the City of Vero Beach is going to be excluded from this if they go with FP&L. She felt getting $20 million dollars from the Power Plant and putting it into their General Fund is something that she would stay with. She also understands that there is some type of overhaul that is going to be done at the Power Plant, which will make it more efficient. She has heard different people speak (Mr. Heady, Mrs. Carroll and Mr. Heran) that going to FP&L will only raise their taxes 80%. She has some problems in this economy with them looking at going with FP&L who will have to charge them more because of all their nuclear plants. She does not see where City customers will be charged any different then what they are being charging now. She said that FP&L is asking for a raise from the Public Service Commission, which they will get and if the City goes with FP&L she finds it very hard to believe that their taxes will only go up that amount (she referred to earlier in the meeting). She said they will also lose a lot of services. She said if it was a sure thing that FP&L would not charge them anymore than what they are being charged now and give them greater service then what they are being given now, then she would be happy to say maybe it is something they need to look at. She did not think that FP&L was going to make the decision to break down and haul away the Power Plant. She thanked everyone for listening to her.

Mayor Sawnick commented that he was not sure that he has seen the 80% tax increase that Mrs. Hillman was referring to.

Mr. Heady stated that with respect to Mrs. Hillman's comment about corruption that has never been proven. He said that if she follows City Council meetings then she knows that if he was to dare to put something like that on the agenda it would be removed. He has put similar things like that on the agenda and they have been removed. He mentioned that a former speaker said that Council denies the public the opportunity to hear things. With respect to suing the City and he boasted that down at the FLOC conference. What he said was that he is suing the City in Federal Court and it is about amendment one and amendment fourteen (Free Speech and Equal Opportunity). As a citizen of the United States anytime that he stands up for the basic rights that make this Country great, yes he will boast for his support of those rights. He is proud of that. He said what he is not proud of is the City Council that denies those rights to their citizens. With respect to the television show, he thinks that most everyone knows that he has a television show, which is a talk show and Mrs. Hillman is welcome to call in at anytime. If she has something that "fires" her up that she wants to discuss, to please telephone in. The liar, cheat and thieves comment with respect to the promises as a candidate, he did file suit against the City because the City was denying civil rights to both himself and other citizens. He said that was not lying, cheating or stealing. The responsibility for denying those rights to the citizens was not made by him, it was made by the other four sitting Councilmembers who decided that was the proper thing to do. He then referred to the letter in which he endorsed Mrs. Turner, Mrs. Carroll and Mr. Kramer. He agreed that was a letter to the editor and that he does endorse those three candidates. He has received some calls as to why he didn't endorse a fourth candidate and he has since said that he thought the best

fourth choice would be Mr. Michael Thomas. He stands by this and thinks that they are the best candidates to serve the City. With respect to FP&L asking to be allowed to charge the $1 million dollars for a project, he wondered if Mrs. Hillman realized that was the amount of money that flies out of this community and has each and every single year because of the rate disparity. He also wondered if Mrs. Hillman understood that City ratepayers are paying that amount of money in excess of what they would have to pay if they were on FP&L. He said the point is that $30 million dollars has flown out of this community because this Council has refused to discuss ways of going forward with the electric utility and water and sewer that would be more cost effective for their ratepayers. That is why he put items on the agenda and they are removed consistently. With respect to the taxes only being raised by 80%, Mayor Sawnick said that he hasn't heard that number and he has not heard that number either. He does not believe that number is accurate and he does not believe that Mrs. Turner, Mrs. Carroll or Mr. Kramer mentioned being raised by that amount and he does not think that was a number quoted by Mr. Heran. However, he does think that Mr. Heran and his model showed what would happen if certain scenarios occurred as to what FP&L offered them. He felt that with an FP&L offer if you look at Mr. Heran's numbers, even if they offered the City zero which can't happen because the Public Service Commission would not allow that to happen. Even in the worst case scenario if their taxes doubled, he knows on his home if his taxes doubled he would recoup the money the first month that he was on FP&L because of the savings to his electric bill. With respect to FP&L rates going up because they are making all of these nuclear plants, he said there is no plan that he knows of that FP&L has to build another nuclear power plant. They have one nuclear Plant now and the City owns generating rights to that Plant. As far as FP&L getting approval for a raise, right now FP&L is not going to get a raise until 2012. Mrs. Hillman made a comment about FP&L charging them what they pay now. He said that the conversations that he has had with FP&L is that their goal would be to charge FP&L rates. These are the rates that they charge to every ratepayer in the State of Florida. He said that there is absolutely no reason to believe that their rates would be any different and FP&L has said that is their goal. If they were paying FP&L rates they would have saved $20 to $30 million dollars just last year. He said that this whole FP&L discussion that was pressed when Mr. Charlie Wilson was on Council, has been pressed by him. This is an effort to try to get the ratepayers a decent rate and to try to save them money and put money back into the economy of their City.

Mr. Jim Gillon commented that he had the honor in 2004 to serve as a member on the original Vision Team. It was an experience that he will never forget. When he was on the Vision Team the members went through the City and met with people from different neighborhoods. He treasured what he heard from their citizens, which is that they love the City. They have an opportunity coming up in two weeks for an Election and he hopes that the quality of life in this community will continue. If all those citizens that he met will vote at the polls then they have an excellent chance of keeping Vero Beach that way.

Mr. Al Benkert, a candidate for office, appreciated the chance to come up and say a few things. He agrees a hundred percent with the comments just made by Mr. Gillon. However, they do need to do some things in the City of Vero Beach. One of the things

that has become apparent is that they need to cut costs and do something about the electric utilities. He passed out a memo entitled the City of Vero Beach Action Plan, which he read (please see attached).

Mr. Heady had some comments to make. Mayor Sawnick told him that it would not be appropriate to debate with someone who is running for office. Mr. Heady felt that if it was appropriate to have a candidate stand in front of a Council meeting and basically give a campaign speech, which is exactly what just happened, then he thinks it is appropriate to have a Councilmember respond to it.

Mr. White did not think that a response was needed.

Mayor Sawnick commented that Mr. Benkert has the right to speak. Mr. Heady said that everyone has a right to speak except for him. He asked to be able to make some comments in respect to the speaker. Mayor Sawnick told Mr. Heady because of the aforementioned situation his ruling is that at this point he would not be allowed to ask any questions. He told Mr. Heady that he may appeal his decision and if the majority of Council agrees with him then he may continue. Mr. Heady thought that the comments made by Mrs. Hillman were about him suing the City and he was suing the City because of equal protection, the fourteenth amendment and free speech. Mayor Sawnick told Mr. Heady that at this time they were not debating the issue. If he wants to appeal the ruling then he may do so. Mr. Heady wanted to finish his comments. Mayor Sawnick told him that at this point an appeal is necessary and if there is a second to the appeal they will vote on it and then continue from there. Mr. Heady stated that he certainly appeals the Mayor's decision to cut him off and not allow to him to have any comments at all. They just had a gentleman that stood at the public podium and gave a campaign speech and he feels that he certainly has a right to appeal. Mr. Daige called for a Point of Order. He said that they have heard from people here that obviously have a lot of things important to them and want to speak under public comments. Mr. Daige reserves the right to make a comment once they are finished with the public comment section of the agenda. He said that Mr. Heady is entitled to his opinions and he has made statements on who he is supporting in the Election. He is in agreement with the Mayor that they do need to move on. He felt that Mr. Benkert stood before them and told them his thoughts which he is entitled to do. Mayor Sawnick called the vote on the appeal. It died for lack of a second.

At this time, there was no one else wishing to speak under Public Comments so Mr. Daige was given some time to speak.

Mr. Daige referred to some material that he read from concerning FP&L (all correspondence is on file in the Clerk's office). He mentioned that there was a Public Service Commission Chairwoman who stepped down voluntarily from the Public Service Commission (article also on file in the Clerk's office).

Mr. Heady still had some comments to make.

Mayor Sawnick told Mr. Heady that at this time he stated all of his comments. He then moved on with the agenda.

D. Adoption of Consent Agenda

1. **Regular City Council Minutes – October 5, 2010**
2. **Regular City Council Minutes – September 21, 2010**
3. **Regular City Council Minutes – September 7, 2010**
4. **Special Call City Council Minutes – September 21, 2010**
5. **Request for Vehicle Purchase – Police Department**
6. **2010 Amendment to Lease Agreement for Fire Station #2 Boat Dock**
7. **Request Approval of Florida Inland Navigation District (FIND) Project Agreement for the City Marina South Complex – Part 3 – Project #1R-VB-10-51**
8. **Change Order No. 4 to Work Order No. 1371-1 between Wilbur Smith Associations and the City of Vero Beach (RFQ 340-06/CSS)**
9. **Monthly Capital Projects' Status Reports**

Mr. White made a motion to approve the consent agenda items. Mr. Abell seconded the motion.

Mr. Heady presented the Clerk with some changes that he requested be made to the minutes. The Clerk assured him that those changes had been made. Because Mr. Heady did not have the time to review those changes before tonight's meeting he asked to reserve the right to make changes to the minutes if he needed to. He then asked that item 2D-1) Regular City Council Minutes of October 5, 2010 be pulled off of the agenda because he has not had time to review those minutes yet.

Mr. White had some problems with Mr. Heady not reading the minutes when he has had his agenda packet for almost a week.

The motion passed 4-1 to approve all of the items on the consent agenda except for item 2D-1) with Mr. White voting no.

3. PUBLIC HEARINGS

None

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

None

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

None

6. CITY CLERK'S MATTERS

None

7. CITY MANAGER'S MATTERS

A) Update on action of the Minor League Baseball (MiLB) Issue

Mr. Falls reported that at their September 21st Special Call City Council meeting, Council voted to approve the concept presented by Mr. Craig Callan, of Minor League Baseball (MiLB), to construct athletic fields on the City owned land located South of Holman Stadium. This location is the first choice of Minor League Baseball because of its proximity to their other facilities. Council indicated that they preferred a transfer of deeds, but were okay with a lease exchange as discussed by Mr. Callan. Staff is of the opinion that either option is fine because they both give MiLB what they need to do to enhance their operation. They also provide regularly shaped parcels to the County and City, which make utilization of the properties easier. Last Friday he received a copy of the County staff's recommendation to construct the athletic fields on the land known as the "Parking Property: located immediately West of Holman Stadium." The recommendation was different than Mr. Callan's proposal. This is the land the City currently leases from the County. Since there was no mention of parking, he assumed that they would use the athletic fields for overflow parking if no other areas were available. After the close of business on Friday, he received an addendum to the County staff's recommendation. This addendum supported the site located South of Holman Stadium with conditions for parking. Today, the County approved the exchange of leases with the condition that all currently required parking be able to be provided on the site, and if that is not possible, that the City make land available to meet the current parking requirements. They are presently working to determine if the parking requirement can be met on site and they feel that it can. In the past the City has always made available any unencumbered City property for overflow parking at Holman Stadium. Once they determine if the parking can be provided on site, he will prepare the lease exchange documents and bring them to Council for their approval.

Mr. Craig Callan, Vero Beach Sports Village, commented that everything that Mr. Falls just said is similar to what was stated at the County Commission meeting this morning. Mr. Joe Baird, County Administrator, has recused himself from further negotiations and has asked the County Attorney to work with the City to facilitate Vero Beach Sports Village in being able to expand. He stated that he is not represented by the County when he is talking to the City; as he did not represent the City while talking with the County. The impression he has is that the County would prefer the City continue to cooperate with the County or with Vero Beach Sports Village as long as existing land is undevelopable to utilize as they have in the past whether it be across the street (where they parked for many years) or even the golf course land before the City decides to do something with the land. In the event over the next 30 years the economy turns for the better and the land is not available anymore, his comment to the County Commission was

that should not stop them from moving forward because they know they can still park cars for any future event at the stadium. He believes the County's feelings are to continue to work with Vero Beach Sports Village in allowing them to park on the unencumbered land or the land that is not being utilized by the City. When that land is no longer available they would be able to park cars on their property on the fields. He doesn't see any problems with staff looking at that especially if it has been done in the past. In the interim what he would like to see happen is that the County Attorney gets with the City Attorney and Interim City Manager to work out the language so that they can move forward and the County and City are both satisfied.

Mayor Sawnick told Mr. Callan that they will work together on this and the document will be brought back to Council for final approval.

Mr. White added that there is still parking across the street and he doesn't foresee anything going on with that property either.

Mr. Callan commented that the worse case scenario would be that people have to be shuttled from one parking area to another.

Mr. White asked Mr. Callan if this will be a lease instead of a land swap. Mr. Callan answered yes. Mr. Falls added that the County did not want to swap land because there may be some disparity in the value of the land. Mr. White asked if that will stop them in the future if they decide to do something with this property. Mr. Falls said that this will be a long-term lease and they will work on some renewals at the end. Mr. White wanted to make it clear that if the City wanted to do something with this rectangular piece of property that they could put in whatever they wanted to. Mr. Callan explained that as long as Vero Beach Sports Village can show that they can accommodate the overflow parking then it benefits the community.

Mr. Daige mentioned that in the newspaper today (on-line) there was an article written by Mr. Henry Stephens which said that the County Commissioners agreed to consider swapping the land. He needed some clarity on this.

Mr. Callan stated if that is what the article says then it is one-hundred percent incorrect. He said that is why he has met with each County Commissioner, with the exception of Mr. Solari, to make it clear that this is a lease agreement and the positive to the City is that it pulls the restrictions and allows them to have a rectangular shape and the positive to the County is having the land adjacent to the existing facilities.

Mr. Daige continued by saying that one of the things that he is in agreement with is that the land will be unencumbered. It has been explained as to why the County is not interested in doing the land swap. The County feels that their land is worth a little bit more than ours (the City) which is the reason that they don't want to do the land swap. He asked the City Attorney to make sure that the land is unencumbered. Also, the City will be helping Vero Beach Sports Village by allowing them to park on this land if they

need to. However, in the future if they wish to do something with that land they have the right to do so, but right now they will be helping Vero Beach Sports Village.

Mr. Falls added that what they are trying to do is find out and show that there is enough room on the old Dodgertown site to park all of the necessary cars. He said that he is not implying that will be the first place that they are going to ask them to park.

Mr. Heady commented that Mr. Callan stated that Mr. Baird stepped down from doing the negotiations and it will now be the County Attorney. He said that typically when someone recuses themselves from negotiations it is because of financial interests. He asked Mr. Callan if he knew what Mr. Baird's financial interest in this is. Mr. Callan answered no that he did not. Mr. Heady realized that Mr. Callan was not able to meet with Mr. Solari, but all the four other County Commissioners have agreed to this. Mr. Callan explained that it was a 4-1 vote. Commissioner O'Bryan commented that if the agreement came back after the City and County staff worked together and there was no guarantee from the City that parking could be off-site (not on-site) that he would not vote for the agreement. However, today the County Commission voted 4-1 to move forward with working with the City to accomplish what is needed. They are looking at bringing the contract back before the County Commission at their November 2nd meeting. Mr. Heady did not understand why Mr. Callan has a call in to Mr. Solari if he has already voted. Mr. Callan wanted to give him the courtesy to discuss this since he has not had a chance to discuss it with him. He wanted to ask him if there were any other questions that he might have. He has done this with all the other County Commissioners and City Council.

Mr. Abell asked if this delay was going to hold them up and they were going to lose a season because they can't start building these fields.

Mr. Callan explained that if they keep going back and forth then they would lose a season. The one proposal that they received said that it could take eight to nine months for construction to take place from when he says start. He felt that in his opinion if they continue on for a month or two that will put them out to 2012, which would sink the ship.

Mr. Abell asked if it might behoove them to have a Special Call meeting to sign any agreements that they might come up within a week or two.

Mr. Callan would be appreciative of any courtesies extended to them. He would leave this up to the Council with the comment that the longer they go the more they continue to lose money.

Mr. Abell wanted to do everything that they could do to make it easier for MiLB.

Mr. Vitunac reported that he has been in contact with the County Attorney and possibily they will be meeting tomorrow. He said that the surveys have already been done and the legal work can be completed very quickly. They will have to wait for the parking

determination from the Planning and Zoning, but he feels that they will be able to have an agreement in place by November 2nd.

Mr. Abell's thoughts were if there was any way to get this done before then, then they need to get it done.

Mr. Daige was in agreement with Mr. Abell. He said that if they could meet sooner and staff could get all the details worked out to let Council know and they could hold a Special Call meeting with this being the only item on the agenda. He did not want to see the Vero Beach Sports Village miss out on their season.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

1. **The playing in the public of a video of the 8/12/08 County Commission meeting which I supplied to the City Clerk several months ago. Discussion to follow – Requested by Councilmember Brian Heady**
2. **An overview of the documents supplied by the City Attorney of the Honest Services requirements under Federal Law and Supreme Court decisions – Requested by Councilmember Brian Heady**
3. **Update of Federal lawsuit – Requested by Councilmember Brian Heady**
4. **Interim City Manager – Requested by Councilmember Brian Heady**
5. **Repeal of restrictions on Councilmembers – Requested by Councilmember Brian Heady**
6. **Downtown Parking – Requested by Councilmember Brian Heady**
7. **Advisory Committees – Requested by Councilmember Brian Heady**
8. **Speed Bumps on City streets – Requested by Councilmember Brian Heady**

These items were removed from the agenda.

B. New Business

None

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Kevin Sawnick's Matters

1. **Correspondence**
2. **Committee Reports**

3. Comments

Mayor Sawnick reported that Downtown Friday will be held this Friday night and that the Mayor's cleanup will be this Sunday at the Disney Resort.

B. Vice Mayor Sabin Abell's Matters

1. Correspondence
2. Committee Reports
3. Comments

Mr. Abell reported that he attended Coffee with the Council and then on October 12th himself, staff, and a local developer met to discuss the problems that are occurring at the Building Department that have delayed the streamlining of project opportunities. He also attended an MPO meeting and the Treasure Coast Regional Planning Counsel meeting.

C. Councilmember Tom White's Matters

1. Correspondence
2. Committee Reports

Mr. White read a letter from Mr. Thomas Walsh regarding the assistance given to him and his wife by Mr. Robert Shaw a City employee (please see attached letter).

3. Comments

Mr. White told Mr. Heady that it was not a violation of freedom of speech, it is called backup, backup, backup. It means that there are rules in the Constitution that they go by and in order to get things on the agenda backup needs to be provided. He then told Mr. Benkert that several things included in his memo have been completed. They sent letters to other electric companies and no one other than FP&L was interested. He didn't want to get into a debate with some of the citizens who spoke. But wanted to express that if anyone has any questions that they can call him or the Council. He also mentioned that there is a letter on file from their auditor where he estimates that taxes will go up if the Power Plant is sold.

D. Councilmember Brian Heady's Matters

1. Correspondence
2. Committee Reports
3. Comments

Mr. Heady commented that the Constitution of the United States contains principles that are important to the function of Government and to the rights of the people. At this time he noticed that some staff was leaving the meeting. He said that they must not care what he has to say. He brought up the removal of all eight items that he placed on the agenda because there is not any backup which is a flat out lie, but then they add under City Manager's Matters something that has no backup. He said that is not equal opportunity and that is how they wind up in lawsuits. When they tell him that he can't respond and

then they allow Mr. Daige the opportunity to make comments that is not equal opportunity. Again, he said that is why they wind up having Federal lawsuits. He hoped that this will only go on for two more weeks at which point there will be a Council that understands the Constitution and that is willing to uphold the oath that they took to preserve, protect, and defend the Constitution.

E. Councilmember Ken Daige's Matters

1. Correspondence

2. Committee Reports

3. Comments

Mr. Daige mentioned that Mr. Heady is entitled to his opinion and he gives a number of them. He has an update on the report that he did last week with some changes that he will give to the Clerk. He then went over his prepared statement on the activities that he has recently attended (please see attached).

Mr. Daige felt that the public is being misled on some issues that include the City's finances, the water and sewer funds, that the Power Plant never operates, and that electric rates can never be lowered. He discussed each one of these items (memo attached to these minutes).

11. ADJOURNMENT

Mr. White made a motion to adjourn the meeting at 7:38 p.m. Mr. Daige seconded the motion and it passed unanimously.

/tv

2D-5)

COUNCIL AGENDA REPORT
MEETING OF OCTOBER 19, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: October 7, 2010

SUBJECT: REQUEST FOR VEHICLE PURCHASE – POLICE DEPARTMENT

Attached is a recommendation from Chief Don Dappen, dated October 6, 2010, which requests approval to purchase three vehicles.

It is the recommendation of the City Manager's Office that Council approve the purchase of three 2011 Ford Crown Victoria's from Garber Automall for $22,731.00 each, for a total cost of $68,193.00. Funding will be from the one cent sales tax fund.

James M. Gabbard

James M. Gabbard

:jav
Attachments

xc: Chief Dappen
Stephen Maillet

N:\Agenda\Police\2010\Vehicle Purchase.doc

VERO BEACH POLICE DEPARTMENT

Memorandum (No. A-10-34)

TO: James M. Gabbard, City Manager

FROM: Donald A. Dappen, Chief of Police

SUBJECT: Request for Vehicle Purchase

DATE: October 6, 2010 **CANCELLATION:**

I respectfully request permission to purchase three 2011 Ford Crown Victoria's from Garber Automall for $22,731.00 each for a total cost of $68,193.00. These purchases were approved by council at the budget hearing and will be paid for out of the one cent sales tax fund.

DD/jp

CITY OF VERO BEACH, FLORIDA

REQUISITION NO.: D 0848

BILLING: P.O. BOX 1389
VERO BEACH, FL. 32961-1389

SHIPPING: 3455 AIRPORT WEST DR.
VERO BEACH, FL. 32960

PHONE: (772) 978-5470 FAX: (772) 770-6860

DATE: 9/23/2010
DEPT: POLICE
DIVISION SAFETY
DEL. DATE
DEL. LOC

THIS REQUISITION SERVES AS A CITY PURCHASE ORDER FOR GOODS OR SERVICES NOT IN EXCESS OF 7,500.00

VENDOR GARBER AUTOMALL
P.O. BOX 945
GREEN COVE SPRING, FL. 32043

DATE
P.O. NO.

SUGGESTED VENDOR

STOCK NO.— ACCOUNT NO.	QUANTITY	DESCRIPTION AND SPECIFICATIONS	UNIT PRICE	TOTAL
304.9900.521.611004	3	2011 FORD CROWN VICTORIA (FSA SPEC. #1 WITH OPTIONS PER CITY OF VERO BEACH PRICE QUOTE) FLORIDA SHERIFFS ASSOC. CONTRACT BID #09-17-0908 ONE-CENT SALES TAX MONEY 2010-2011 BUDGET	22731.00	68193.00
			TOTAL	68193.00

I CERTIFY THAT THE ABOVE SUPPLIES ARE NECESSARY TO PROPERLY CONDUCT THE ACTIVITIES OF THIS DEPARTMENT

ENCUMBERED

DEPARTMENT HEAD

PURCHASING AGENT - CITY MANAGER

FL. STATE TAX EXEMPT
NO. 85-8012621703C-3

VENDOR COPY

2D-6)

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: Mayor Sawnick and Members of the City Council

From: Charles P. Vitunac, City Attorney

Subject: 2010 Amendment to Lease Agreement for Fire Station #2 Boat Dock

Date: October 11, 2010

Attached for your consideration is a partially executed 2010 Amendment to the Lease Agreement between the City of Vero Beach and the Emergency Services District of Indian River County. This amendment would allow the Sheriff's Department to construct a boat lift on the District's dock adjacent to Riverside Park to keep one of the Sheriff's Department boats there.

On October 5, 2010, the Board of County Commissioners, sitting as the Emergency Services District Board of Commissioners, approved this Lease Agreement and now requests that the City Council do the same.

Staff recommends approval since an additional law enforcement boat would be in the public interest and there is enough space at the dock to accommodate this new vessel.

cc: City Manager

N:\CityAtny\Sti\Client Docs\City Council\Memos\CCL.Fire Station #2.Sheriff.dock.Amendment Lease.oct.10-cpv.doc

BOARD OF COUNTY COMMISSIONERS

OFFICE OF COUNTY ATTORNEY

Alan S. Polackwich, Sr., County Attorney
William K. DeBraal, Deputy County Attorney
Melissa P. Anderson, Assistant County Attorney

RECEIVED
OCT 11 2010
CITY ATTORNEY'S OFFICE

October 5, 2010

Charles P. Vitunac, City Attorney
CITY OF VERO BEACH
1053 20th Place
Vero Beach, FL 32960

Re: 2010 Amendment to Lease Agreement for Fire Station #2 Boat Dock

Dear Charlie:

On October 5, 2010 the Board of County Commissioners approved the 2010 Amendment to Lease Agreement regarding use by the Sheriff's Department of the Fire Station #2 boat dock.

I am enclosing the partially executed original of the amendment so that you may schedule this matter before the City of Vero Beach Council for consideration and approval.

In anticipation of your Council's approval, would you please instruct your City Clerk to retain the original for the City's records and return a *certified copy* to me for the County Clerk's records.

Thank you for your assistance.

Yours truly,

William K. DeBraal
Deputy County Attorney

nhm
enclosure

1801 27th Street, Vero Beach, Florida 32960-3365 · (772) 226-1424 · Fax (772) 569-4317

Emergency Services District Agenda 10/5/10

Office of
INDIAN RIVER COUNTY ATTORNEY

Alan S. Polackwich, Sr., County Attorney
William K. DeBraal, Deputy County Attorney
Melissa P. Anderson, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners

FROM: William K. DeBraal, Deputy County Attorney WKD

DATE: September 27, 2010

RE: Approval of Lease Amendment for Fire Station #2 Boat Dock

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The City has leased property on the South side of the Barber Bridge to the Emergency Services District for Fire Station #2. The parties executed a new lease in 2004 for a term of 45 years. Hurricanes Jeanne and Francis severely damaged the old fire station necessitating its demolition and replacement. After the new station was built in 2006, the lease was amended to include:

- additional 0.71 acres of leased property to accommodate large firefighting equipment
- the County granted the City an exclusive license for use of the District's boat dock for the City's Police Department boat
- an easement for a pedestrian walkway across the leased premises.

The County Sheriff's Department now desires to install a boat lift of its own on the District's dock to store one of the Sheriff's Department boats. This will mean that the City will no longer have an exclusive license to use the District's dock and therefore, City permission is needed in order for the Sheriff to share usage of the dock. The Sheriff, the City and the District all agree that adding one more boat will not affect the boat operations of any of the parties.

Recommendation: Staff recommends approval of the attached 2010 Amendment to Lease Agreement to provide use of the District boat dock by one of the Indian River County Sheriff's Department boats.

APPROVED FOR 10-5-10
B.C.C. MEETING Special Districts and Boards(ESD)
COUNTY ATTORNEY

Indian River Co.	Approved	Date
Admin.		
Legal	ASP	9.27.10
Budget		
Dept.		
Risk Mgr.		

2010 AMENDMENT TO LEASE AGREEMENT

THIS AGREEMENT, made this 5th day of October, 2010, by and between the **CITY OF VERO BEACH**, a municipal corporation organized and existing under the laws of the State of Florida, whose mailing address is Post Office Box 1389, Vero Beach, Florida 32961-1389 (hereinafter "**CITY**"), and the **EMERGENCY SERVICES DISTRICT OF INDIAN RIVER COUNTY**, a dependent special district of Indian River County, operating by and through its Board of Commissioners, whose mailing address is 1801 27th Street, Vero Beach, Florida, 32960 (hereinafter "**DISTRICT**"),

WITNESSETH:

WHEREAS, in 1956, **CITY** and the **VERO BEACH VOLUNTEER FIRE DEPARTMENT, INC.** (hereinafter "**VOLUNTEERS**") entered into a lease of City-owned land near the new Barber Bridge for the purpose of constructing a volunteer fire department building; and

WHEREAS, the lease was for a term of forty-five (45) years with the exclusive right, option and privilege in **VOLUNTEERS** to renew the lease for an additional term of forty-five (45) years; and

WHEREAS, in 1994, **CITY** and **VOLUNTEERS** amended the lease to reflect that they had consented to the assignment to and joint use of the leased premises by "the Indian River County Fire District, the Indian River County Department of Emergency Services, and the **VOLUNTEERS**; and also added additional property to the east of the land leased in 1954; and

WHEREAS, by letter dated June 11, 2002, the **VERO BEACH VOLUNTEER FIRE DEPARTMENT, INC.** acknowledged that it had no further interest in the lease, with the result that the **EMERGENCY SERVICES DISTRICT OF INDIAN RIVER COUNTY** could deal directly with **CITY**; and

WHEREAS, on February 17, 2004, the **DISTRICT** and the **CITY** agreed to renew the lease for an additional term of forty-five (45) years; and

WHEREAS, in September 2004, Hurricanes Jeanne and Francis, severely damaged the fire station necessitating its demolition and replacement with a new structure; and

WHEREAS, the new fire station required an additional 0.71 acres of real property to be added to the lease agreement in order to accommodate newer and larger fire fighting and emergency equipment, resulting in a total leased space of 1.81 acres; and

WHEREAS, the 2006 amendment to the lease also included an "irrevocable and exclusive" license issued to the City for use of the District boat dock for the City's Police Department Boat and an easement for a pedestrian walkway across the leased premises; and

WHEREAS, the County Sheriff's Department also desires to install a boat lift on the District's dock and utilize the dock to store one of the Sheriff's Department Police Boats, which will mean the City will no longer have an exclusive license to use the District's dock; and

WHEREAS, CITY and **DISTRICT** agrees that adding another boat and lift to the District's dock will not affect the boat operation of the Sheriff, the City or the District, rather it will increase the health, safety and welfare of the general public.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, **CITY** and **DISTRICT** do agree as follows:

1. Lease Amendment of Legal Description: Use of District Boat Dock by Indian River County Sheriff's Department Boat

The District hereby grants a nonexclusive license to the Sheriff of Indian River County for the use of the District's boat dock to house one of the Sheriff's police boats, which shall be restricted to being no more than 26 feet in length and no more than 6,500 pounds in weight. The Sheriff may cause to be installed a boat lift suitable and recommended for the Sheriff's existing boat The District does not provide any warranty associated with the lift equipment to the Sheriff but the Sheriff shall be responsible for all maintenance of the lift. Likewise, the Sheriff shall be responsible for normal day to day upkeep and maintenance of their portion of the dock and any damages caused by their negligence/misuse. Use of the dock space shall be restricted to IRCSO official business and to the extent allowed by law, the Sheriff shall hold the District harmless from liability. The Sheriff can make any improvements to the dock (lighting or other necessary improvements needed for a police boat dock) upon first obtaining the consent of the District. The District shall provide 24 hr. access to the dock to the Sheriff. The parties reserve the right to enter into a more detailed agreement commensurate with the spirit of this paragraph.

2. Other Conditions to Remain In Effect

All other terms and conditions of the lease as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals on the day and year first above written.

ATTEST:

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

CITY OF VERO BEACH, FLORIDA

Sign: _____
Print: Kevin Sawnick
Title: Mayor

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Kevin Sawnick 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

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

[NOTARY SEAL]

Approved as to form and legal sufficiency:

_____
City Attorney

Approved as conforming to municipal policy:

_____
City Manager

Approved as to technical requirements:

_____
Director, Public Works and Engineering

EMERGENCY SERVICES DISTRICT OF INDIAN RIVER COUNTY, FLORIDA

Peter D. O'Bryan, Chairman

Approved by BCC October 5, 2010

Attest:
Jeffrey K. Barton Clerk of Circuit Court

By: Deputy Clerk

for: County Attorney:
Approved as to Form and Legal Sufficiency

Joseph A. Baird
County Administrator

SHERIFF'S DEPARTMENT OF INDIAN RIVER COUNTY

Deryl Loar, Sheriff

This instrument prepared in the
Office of the County Attorney
1801 27th Street
Vero Beach, FL 32960-3365

2D-7

COUNCIL AGENDA REPORT
MEETING OF OCTOBER 19, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: October 13, 2009

SUBJECT: **REQUEST APPROVAL OF FLORIDA INLAND NAVIGATION DISTRICT (FIND) PROJECT AGREEMENT FOR THE CITY MARINA SOUTH COMPLEX – PART 3 – PROJECT #IR-VB-10-51**

Please find attached a memorandum from Tim Grabenbauer, dated October 11, 2010, which requesting execution of the above-referenced agreement.

It is the recommendation of the City Manager's Office that Council approve the Florida Inland Navigation District Project Agreement in connection with the City Marina South Complex – Part 3 and request the Mayor execute the appropriate documents.

James M. Gabbard

:jav
Attachments

xc: Tim Grabenbauer
Stephen Maillet

N:\AGENDA\MARINA\2010\FIND PROJECT AGREEMENT - MARINA SOUTH COMPLEX - PART 3.DOC

Vero Beach City Marina

Memo

To: James Gabbard, City Manager

From: Tim Grabenbauer, Marina Director TG

CC:

Date: 10/11/2010

Re: CONSENT AGENDA ITEM FOR REGULAR CITY COUNCIL MEETING OCTOBER 19, 2010

Attached for execution is a Florida Inland Navigation District Project Agreement for $172,790.00. This is part 3 of a three year project with the South Complex. Total award was just under $758,000.

FLORIDA INLAND NAVIGATION DISTRICT

COMMISSIONERS

JERRY H. SANSOM
CHAIR
BREVARD COUNTY

S. NORMAN BRAY
VICE-CHAIR
NASSAU COUNTY

DONN R. COLEE, JR.
TREASURER
PALM BEACH COUNTY

GAIL KAVANAGH
SECRETARY
ST. LUCIE COUNTY

BRUCE D. BARKETT
INDIAN RIVER COUNTY

J. CARL BLOW
ST. JOHNS COUNTY

E. TYLER CHAPPELL
BROWARD COUNTY

T. SPENCER CROWLEY, III
MIAMI-DADE COUNTY

DONALD J. CUOZZO
MARTIN COUNTY

NANCY J. FREEMAN
VOLUSIA COUNTY

MICHAEL D. MESIANO
DUVAL COUNTY

JONATHAN S. NETTS
FLAGLER COUNTY

DAVID K. ROACH
EXECUTIVE DIRECTOR

MARK T. CROSLEY
ASSISTANT EXECUTIVE DIRECTOR

October 5, 2010

Mr. Tim Grabenbauer
Marina Director
City Marina
City of Vero Beach
3611 Rio Vista Blvd.
Vero Beach, FL 32963

RE: City Marina South Complex - Part 3
Project # IR-VB-10-51

Dear Mr. Grabenbauer:

Enclosed, for signature, are two original project agreements for your approved Waterways Assistance Program project for fiscal year 2010-2011. Once they have been executed, please return **both** originals to me for execution by the District. When returning the agreements, you **MUST include an executed Exhibit C, Matching Funds Form**. DO NOT SEPARATE THE ATTACHMENTS FROM THE AGREEMENT. Incomplete agreements will not be executed.

I will return one fully executed complete original agreement to you for your files. Please be sure to refer to the listed project number in all future correspondence and communication regarding this project. Should you have any questions please contact me.

Sincerely,

Mark Crosley
Assistant Executive Director

ADMINISTRATIVE OFFICE ON THE INTRACOASTAL WATERWAY IN PALM BEACH COUNTY
1314 MARCINSKI ROAD, JUPITER, FLORIDA 33477-9427 TELEPHONE 561-627-3386 FAX No. 561-624-6480
www.aicw.org

FLORIDA INLAND NAVIGATION DISTRICT
PROJECT AGREEMENT

PROJECT NO. IR-VB-10-51

This PROJECT AGREEMENT made and entered into this _____ day of _____, 20___ by and between the Florida Inland Navigation District (hereinafter the "DISTRICT"), and the City of Vero Beach, (hereinafter the "PROJECT SPONSOR").

In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **PROJECT** - Subject to the provisions of this Agreement and Rule 66B-2 of the Florida Administrative Code (Exhibit "B"), the DISTRICT has determined to provide assistance funding to the PROJECT SPONSOR in furtherance of an approved project ("PROJECT") consisting of the City Marina South Complex - Part 3 . Said project is more specifically described in the PROJECT SPONSOR'S Waterways Assistance Application, which is on file at DISTRICT headquarters.

Any modifications to the PROJECT shall require written advance notice and justification from the PROJECT SPONSOR and the prior written approval of the DISTRICT.

2. **TERM** - The PROJECT SPONSOR shall not commence work on the PROJECT prior to the execution of this Agreement unless specifically authorized by the DISTRICT Board and **shall complete the PROJECT and submit all required payment reimbursement information on or before September 1, 2012,** unless the PROJECT period has been extended with the prior written approval of the DISTRICT. In no event other than a declared state of emergency that affects the project completion shall the PROJECT period extend beyond three (3) years from October 1, 2010. The PROJECT SPONSOR acknowledges this is the only provision to carry over the DISTRICT assistance funding under this Agreement beyond September 30, 2013, and that any extension of funding beyond this date shall be at the sole discretion of the DISTRICT.

Any request for extension of funding beyond the dates set forth in the preceding paragraph shall require submittal by the PROJECT SPONSOR of a request for extension to the DISTRICT no later than 60 days prior to the original project agreement expiration. This request will then be considered by the DISTRICT Board, whose decision shall be final.

3. **ASSISTANCE AMOUNT** - The DISTRICT shall contribute no more than Twenty-five percent (25%) of the PROJECT SPONSOR'S out-of-pocket costs for completion of this PROJECT ("PROJECT AMOUNT"). Payment of funds by the DISTRICT to the PROJECT SPONSOR (the "ASSISTANCE AMOUNT") will be on a reimbursement basis only, and only for those authorized PROJECT COSTS as shown in Exhibit B and meeting the requirements of Paragraph 5 below and shall not, in any event, exceed $172,790.00.

4. **MATCHING FUNDS** - The PROJECT SPONSOR warrants and represents that it has the PROJECT SPONSOR Match Amount (the PROJECT AMOUNT less the ASSISTANCE AMOUNT) available for the completion of the PROJECT and shall, prior to the execution of this Agreement, have provided the DISTRICT with suitable evidence of the availability of such funds using DISTRICT Form #95-01 (Exhibit C), and including upon request, providing the DISTRICT with access to applicable books and records, financial statements, and bank statements.

5. **PROJECT COSTS** - To be eligible for reimbursement under the Project Agreement, PROJECT COSTS must be necessary and reasonable for the effective and efficient accomplishment of the PROJECT and must be directly allocable thereto. PROJECT COSTS are generally described in Exhibit B. PROJECT COSTS must be incurred and work performed within the PROJECT period, with the exception of pre-agreement costs, if any, consistent with Paragraph 6 below, which are also eligible for reimbursement by the DISTRICT.

6. **PRE-AGREEMENT COSTS** - The DISTRICT and the PROJECT SPONSOR fully understand and agree that there shall be no reimbursement of funds by the DISTRICT for any obligation or expenditure made prior to the execution of this Project Agreement unless previously delineated in Exhibit A, consistent with Exhibit B, and previously approved by the DISTRICT Board during the grant review process.

7. **REIMBURSEMENT PROCEDURES** - PROJECT COSTS shall be reported to the DISTRICT and summarized on the Payment Reimbursement Request Form (Form #90-14) attached as Exhibit D. Supporting documentation including bills and canceled payment vouchers for expenditures shall be provided to the DISTRICT by the PROJECT SPONSOR or LIAISON AGENT with any payment request. All records in support of the PROJECT COSTS included in payment requests shall be subject to review and approval by the DISTRICT or by an auditor selected by the DISTRICT. Audit expenses shall be borne by the PROJECT SPONSOR.

Project funds may be released in installments, at the discretion of the DISTRICT, upon submittal of a payment request by the PROJECT SPONSOR or LIAISON AGENT. The DISTRICT shall retain ten percent (10%) of each installment payment until the completion of the PROJECT.

The following costs, if authorized in the attached Exhibit A, shall be reimbursed only upon completion of the PROJECT to the reasonable satisfaction of the DISTRICT and in accordance with Exhibit B: personnel, equipment, project management, administration, inspection, and design, permitting, planning, engineering, and/or surveying costs. Assuming the PROJECT SPONSOR has otherwise fully complied with the requirements of the Agreement, reimbursement for all PROJECTS approved as Phase I projects will be made only upon commencement of construction of the PROJECT for which the Phase I planning, designing, engineering and/or permitting were directed, which may or may not involve further District funding. Procedures set forth below with respect to reimbursement by the District are subject to this requirement of commencement of construction.

The DISTRICT shall have the right to withhold any payment hereunder, either in whole or part, for non-compliance with the terms of this Agreement.

8. **FINAL REIMBURSEMENT** - The PROJECT SPONSOR, upon completion of the PROJECT, shall submit to the DISTRICT a request for final reimbursement of the PROJECT AMOUNT less any prior installment payments. The Payment amounts previously retained by the DISTRICT shall be paid upon (1) receipt of the Final Audit report of expenses incurred on the PROJECT by the DISTRICT, (2) full completion of the PROJECT to the reasonable satisfaction of the DISTRICT, (3) submission of Project Completion Certification Form No. 90-13 (Exhibit E), and (4) submission of a photograph of the PROJECT showing the sign required by Paragraph 17. Unless otherwise determined by the DISTRICT, the final reimbursement check shall be presented by a DISTRICT representative to the PROJECT SPONSOR during a public commission meeting or public dedication ceremony for the PROJECT facility.

9. **RECORDS RETENTION** - The PROJECT SPONSOR shall retain all records supporting the PROJECT COSTS for three (3) years after the end of the fiscal year in which the Final Payment is released by the DISTRICT, except that such records shall be retained by the PROJECT SPONSOR until final resolution of matters resulting from any litigation, claim, or special audit that starts prior to the expiration of the three-year retention period.

10. **NONCOMPLIANCE** - The DISTRICT shall have the right to reimbursement, either in whole or part as it may determine, of the funds provided hereunder for noncompliance by

the PROJECT SPONSOR with any of the terms of this Project Agreement. Upon notification from the DISTRICT, the PROJECT SPONSOR shall reimburse such funds directly to the DISTRICT. The provisions of this paragraph shall survive completion of the PROJECT.

11. **DISTRICT PROJECT MANAGER** - The Executive Director, or his designee, is hereby designated as the DISTRICT's Project Manager for the purpose of this Project Agreement and shall be responsible for monitoring performance of its terms and conditions and for approving all reimbursement requests prior to payment.

12. **SPONSOR'S LIAISON AGENT** - The PROJECT SPONSOR shall appoint a LIAISON AGENT, whose name and title shall be submitted to the DISTRICT upon execution of the Project Agreement, to act on behalf of the PROJECT SPONSOR relative to the provisions of the Project Agreement.

13. **STATUS REPORTS** - The PROJECT SPONSOR or LIAISON AGENT shall submit to the DISTRICT project status reports during the PROJECT term. These Quarterly Reports are to be on Form #95-02 (Exhibit F). Project design drawings, engineering drawings, and a copy of the Project bid award construction item cost list will be submitted as available. Photographs shall be submitted when appropriate to reflect the work accomplished. NON-COMPLIANCE by the PROJECT SPONSOR with the reporting schedule in Exhibit G may result in revocation of this Agreement.

14. **LAWS** - The PROJECT SPONSOR agrees to obtain and to abide by all federal, state and local permits and proprietary authorizations, and all applicable laws and regulations in the development of the PROJECT. The PROJECT SPONSOR agrees that all PROJECT facilities shall be designed and constructed in compliance with state and federal statutory requirements for accessibility by handicapped persons as well as all other federal, state and local laws, rules and requirements.

15. **NON-DISCRIMINATION** - The PROJECT SPONSOR agrees that when completed, the PROJECT shall be readily accessible, on a non-exclusive basis, to the general public without regard to age, sex, race, physical handicap, or other condition, and without regard to residency of the user in another political subdivision. When such is required, adequate parking shall be made available by the PROJECT SPONSOR to accommodate vehicles for the number of persons for which the PROJECT is being developed.

16. **SITE DEDICATION** - The PROJECT SPONSOR also agrees that the PROJECT site shall be dedicated for the public use for a minimum period of twenty-five (25) years prior to or

immediately following completion of the PROJECT, such dedication to be in the form of a deed, lease, management agreement or other legally binding document. Any change in such dedication shall require the prior approval of the DISTRICT. The PROJECT SPONSOR shall record evidence of such dedication within the Public Records of the County in which the PROJECT is located.

17. **ACKNOWLEDGMENT** – For construction projects, the PROJECT SPONSOR shall erect a permanent sign, approved by the DISTRICT, in a prominent location such as the project entrance of the completed project, which shall indicate that the DISTRICT contributed funds for the PROJECT. The wording of the sign required by this paragraph shall be approved by the DISTRICT's staff before construction and installation of said sign. This sign shall contain the DISTRICT logo (Exhibit H) unless otherwise stipulated by the DISTRICT. In the event that the PROJECT SPONSOR erects a temporary construction sign, it shall also indicate the DISTRICT's participation. For all other type projects, the PROJECT SPONSOR shall acknowledge the DISTRICT where feasible, in concurrence with the DISTRICT staff's recommendations.

18. **PROJECT MAINTENANCE** - When and as applicable, the PROJECT SPONSOR agrees to operate, maintain, and manage the PROJECT for the life of the PROJECT improvements and will pay all expenses required for such purposes. The PROJECT improvements shall be maintained in accordance with the standards of maintenance for other local facilities owned and operated by project sponsor, and in accordance with applicable health standards. PROJECT facilities and improvements shall be kept reasonably safe and in reasonable repair to prevent undue deterioration and to encourage public use. The PROJECT SPONSOR warrants and represents that it has full legal authority and financial ability to operate and maintain said PROJECT facilities and improvements.

19. **FEES** – Any fees charged for this PROJECT shall be reasonable and the same for the general public of all member counties. The PROJECT SPONSOR must demonstrate that a minimum of fifty percent (50%) of the PROJECT fees will be utilized for project maintenance and improvements throughout the anticipated 25-year life of a development project or the design life of other project types, as applicable

20. **SOVEREIGN IMMUNITY** - Each party hereto agrees that it shall be solely responsible for the wrongful acts of its employees, contractors and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity under Section 768.28, Florida Statutes. The PROJECT SPONSOR acknowledges that the DISTRICT, its

employees, commissioners and agents are solely providing funding assistance for the PROJECT and are not involved in the design, construction, operation or maintenance of the PROJECT.

21. **INSPECTIONS** - The DISTRICT reserves the right, upon reasonable request, to inspect said PROJECT and any and all records related thereto at any time.

22. **RIGHTS AND DUTIES** - The rights and duties arising under this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, and shall, unless the context clearly requires otherwise, survive completion of the PROJECT. The PROJECT SPONSOR may not assign this Agreement nor any interest hereunder without the express prior written consent of the DISTRICT.

23. **WAIVERS** - Waiver of a breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or different provision.

24. **NOTICE** - Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing, postage paid, and shall be sent by certified mail, return receipt requested, to the DISTRICT or PROJECT SPONSOR at the addresses below. The notice shall be effective on the date indicated on the return receipt.

To the DISTRICT at:

Florida Inland Navigation District
1314 Marcinski Road
Jupiter, Florida 33477-9498

To the PROJECT SPONSOR at:

City of Vero Beach
Attention: Marina Director, City Marina
3611 Rio Vista Blvd.
Vero Beach, FL 32963

25. **NO JOINT VENTURE** - The DISTRICT's role with respect to the PROJECT is that of a funding assistance authority only and the DISTRICT is not, and shall not be considered to be, an agent, partner, or joint venturer with the PROJECT SPONSOR.

26. **GOVERNING LAW** - The validity, interpretation and performance of this Agreement shall be controlled and construed according to the laws of the State of Florida.

27. **TRANSFERENCE** - It is the intent of the DISTRICT to issue this funding assistance to the PROJECT SPONSOR who has made application for this assistance. In the event the PROJECT SPONSOR transfers ownership or management of the PROJECT to a party or parties

not now a part of this document, other than another governmental entity that agrees to assume, in writing, PROJECTS SPONSOR'S obligation hereunder, the DISTRICT retains the right to full reimbursement from the PROJECT SPONSOR to the full extent of the funding assistance provided by the DISTRICT, including but not limited to any costs and reasonable attorney's fees (regardless of whether litigation ensues) incurred by the DISTRICT in collecting said reimbursement.

28. **ENTIRE UNDERSTANDING** - This Agreement, including any exhibits made a part hereof, embodies the entire Agreement and understanding of the parties and supersedes all prior oral and written communications between them. The terms hereof may be modified only by a written amendment signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day, month and year aforesaid.

WITNESSES:

_____

_____

FLORIDA INLAND NAVIGATION DISTRICT

By: _____
Director

DATE: _____

WITNESSES:

_____

_____

PROJECT SPONSOR

By: _____

Title: _____

DATE: _____

CITY OF VERO BEACH	APPROVED	DATE
City Manager		10/18/10
City Attorney		10.11.10
City Clerk		
Utilities		
Public Works		
Finance		
Human Resources		
Planning		

Exhibit A

FLORIDA INLAND NAVIGATION DISTRICT
ASSISTANCE PROGRAM

PROJECT COST ESTIMATE
(See Rule Section 66B-2.005 & 2.008 for eligibility and funding ratios)

PROJECT TITLE: Vero Beach City Marina South Complex

APPLICANT: City of Vero Beach

Project Elements *(Please list the MAJOR project elements and provide a general cost break out for each one. For Phase I Projects, please list the major elements and products expected)*	Quantity Estimated Cost (Number and/or Footage)	Applicant's Cost	FIND Cost
Purchase existing marina	**$4,600,000**	**$3,450,000**	$172,790 ~~$563,990~~

**** TOTALS =** $ 4,600,000 $ 3,450,000 $ ~~563,990~~ $172,790

Form No. 90-25 (New 10/14/92, Revised 04-24-06)

Exhibit B

CHAPTER 66B-2 — WATERWAYS ASSISTANCE PROGRAM (2010)

66B-2.001 Purpose.
66B-2.002 Forms.
66B-2.003 Definitions.
66B-2.004 Policy.
66B-2.005 Funds Allocation.
66B-2.006 Application Process.
66B-2.0061 Disaster Relief Applications.
66B-2.007 Application Form. (Repealed)
66B-2.008 Project Eligibility.
66B-2.009 Project Administration.
66B-2.010 Project Agreement. (Repealed)
66B-2.011 Reimbursement.
66B-2.012 Accountability.
66B-2.013 Acknowledgement.
66B-2.014 Small-Scale Spoil Island Restoration and Enhancement Projects.
66B-2.015 Small-Scale Derelict Vessel Removal Projects.

66B-2.001 - Purpose.

Recognizing the importance and benefits of inland navigation channels and waterways, as well as noting problems associated with the construction, continued maintenance and use of these waterways, the Florida Legislature created Section 374.976, F.S. This law authorizes and empowers each inland navigation district to undertake programs intended to alleviate the problems associated with its waterways. The purpose of this rule is to set forth the District's policy and procedures for the implementation of an assistance program under Section 374.976, F.S., for local governments, member counties and navigation related districts within the District. This program will be known hereafter as the Florida Inland Navigation District's Waterways Assistance Program.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Formerly 16T-2.001.

66B-2.002 - Forms.

All forms for the administration of this program are available from the District office located at 1314 Marcinski Road, Jupiter, Florida 33477.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Formerly 16T-2.002.

66B-2.003 - Definitions.

The basic terms utilized in this rule are defined as follows:

(1) "APPLICANT" means an eligible governmental agency submitting an application through this program.

(2) "APPLICATION" means a project proposal with the required documentation.

(3) "AUTHORIZED SUBMISSION PERIOD" means the established period for submitting applications to the District.

(4) "BEACH RENOURISHMENT" means the placement of sand on a beach for the

nourishment, renourishment or restoration of a beach.

(5) "BOARD" means the Board of Commissioners of the Florida Inland Navigation District.

(6) "DISTRICT" means the Florida Inland Navigation District (FIND).

(7) "ELIGIBLE GOVERNMENTAL AGENCY" means member counties, local governments and navigation related districts within the taxing boundaries of the District.

(8) "ENVIRONMENTAL PERMITS" means those permits, proprietary authorizations, exemptions, or general permits for construction below mean high water line of a navigable waterway required and issued by or on behalf of the U.S. Army Corps of Engineers, the Florida Department of Environmental Protection, and the South Florida or the St. Johns River Water Management Districts or their successors.

(9) "EXECUTIVE DIRECTOR" means the Executive Director of the Florida Inland Navigation District.

(10) "LIAISON AGENT" means the contact person officially designated to act on behalf of the applicant or the project sponsor.

(11) "LOCAL GOVERNMENTS" means municipalities, cities, or consolidated county governments, which are located within the member counties.

(12) "MATCHING FUNDS" means those funds provided by the local sponsor to the project.

(13) "MEMBER COUNTY" means a county located within the taxing boundaries of the District which includes Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Martin, Palm Beach, Broward and Miami-Dade Counties.

(14) "NAVIGATION RELATED DISTRICTS" means port authorities, inlet districts or any other agency having legally authorized navigation related duties in waterways of the District.

(15) "PRE-AGREEMENT COSTS" means project costs approved by the District Board which have occurred prior to the execution of the project agreement.

(16) "PROGRAM" means the Florida Inland Navigation District Waterways Assistance Program.

(17) "PROGRAM FUNDS" means financial assistance awarded by the Board to a project for release to the project sponsor pursuant to the terms of the project agreement.

(18) "PROJECT" means a planned undertaking consisting of eligible program facilities, improvements or expenses for the use and benefit of the general public.

(19) "PROJECT AGREEMENT" means an executed contract between the District and a project sponsor setting forth mutual obligations regarding an approved project.

(20) "PROJECT MAINTENANCE" means any usual action, activity, expense, replacement, adjustment or repair taken to retain a project or grant item in a serviceable, operational or normal condition, or the routine efforts and expenses necessary to restore it to serviceable or normal condition, including the routine recurring work required to keep the project or grant item in such condition that it may be continuously used at its original or designed capacity and efficiency for its intended purpose.

(21) "PROJECT MANAGER" means the District employee who is responsible for monitoring the performance of the Project and compliance with the project agreement.

(22) "PROJECT PERIOD" means the approved time during which costs may be incurred and charged to the funded project.

(23) "PROJECT SPONSOR" means an eligible governmental agency receiving

program funds pursuant to an approved application.

(24) "PUBLIC BUILDING" means a building or facility on government owned property that is owned or operated by a governmental entity, or operated by a third party operator. The building or facility must provide waterway related information, public meeting space, or educational services and be open to members of the public on a continual basis without discrimination.

(25) "PUBLIC MARINA" means a harbor complex used primarily for recreational boat mooring or storage, the services of which are open to the general public on a first come, first served basis without any qualifying requirements such as club membership, stock ownership, or differential in price.

(26) "PUBLICLY OWNED COMMERCIAL OR INDUSTRIAL WATERWAY ACCESS" means any publicly owned area specifically designed to be used for staging, launching, or off-loading by commercial or industrial waterway users on a first come, first served, short-term basis, to gain entry to or from the District's waterways to serve the infrastructure needs of the District's waterway users.

(27) "TRIM HEARING" means a public hearing required by Chapter 200, F.S., concerning the tax and budget of the District.

(28) "WATERWAYS" means the Atlantic Intracoastal Waterway, the Okeechobee Waterway, the Barge Canal in Brevard County west of the Port Canaveral Locks, those portions of the Dania Cut-Off Canal and the Hillsboro Canal east of the water control structures, all navigable natural rivers, bays, creeks or lagoons intersected by said waterways and all navigable natural creeks, rivers, bays or lagoons entering or extending from said waterways.

(29) "WATERWAY RELATED ENVIRONMENTAL EDUCATION" means an interdisciplinary holistic process by which the learner: develops an awareness of the natural and manmade environments of waterways; develops knowledge about how the environment of the waterways works; acquires knowledge about the technological, social, cultural, political, and economic relationships occurring in waterway related environmental issues; and, becomes motivated to apply action strategies to maintain balance between quality of life and quality of the environment of waterways.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Amended 9-2-92, 2-6-97, Formerly 16T-2.003, Amended 5-17-98, 3-21-01, 3-20-03, 3-3-04, 4-21-05, 4-24-06, 4-15-07, 3-25-08.

66B-2.004 - Policy.

The following constitutes the policy of the District regarding the administration of the program:

(1) Financial Assistance Eligibility: Financial assistance, support and cooperation may be provided to eligible governmental agencies for approved projects as follows:

(a) Member counties may be provided financial assistance, support or cooperation in planning, acquisition, development, construction, reconstruction, extension, improvement, operation or the maintenance of public navigation, local and regional anchorage management, beach renourishment, public recreation, inlet management, environmental education, and boating safety projects directly related to the waterways.

(b) Eligible local governments may also be provided financial assistance, support and cooperation in planning and carrying out public navigation, local and regional anchorage

management, beach renourishment, public recreation, inlet management, environmental education, and boating safety projects directly related to the waterways.

(c) Navigation related districts may be provided with financial assistance to pay part of the costs of the planning and acquisition of dredge material management sites if the Board finds that the site is required for the long-range maintenance of the Atlantic Intracoastal Waterway channel. All such sites must meet the development and operational criteria established by the District through a long-range dredge material management plan for that county. Navigation related districts may also be provided with assistance for waterway related access projects, environmental mitigation projects associated with waterway improvement related activities and inlet management projects if the Board finds that the project benefits public navigation in the Atlantic Intracoastal Waterway. All navigation related districts shall contribute at least equal matching funds to any District financial assistance provided. Seaports may also be furnished assistance and support in planning and carrying out environmental mitigation projects. All seaport projects shall benefit publicly maintained channels and harbors. Each seaport shall contribute matching funds for funded projects.

(d) Eligible projects shall include the acquisition and development of public boat ramps and launching facilities, including those in man-made, navigable waterways contiguous to "waterways" as defined in Rule 66B-2.003, F.A.C.

(2) Notification: The District will notify by direct mail and/or advertised public notice all eligible governmental agencies of the program and the upcoming authorized submission period. Funding allocations to navigation related districts, member counties and local governments shall be based upon the proportional share of the District's ad valorem tax collections from each county.

(3) Project Approval: Approval of projects by the District shall be in accordance with these rules.

(4) Project Accessibility: Facilities or programs funded in whole or in part by program funds shall be made available to the general public of all of the member counties on a non-exclusive basis without regard to race, color, religion, age, sex or similar condition. Additionally, facilities funded in whole or in part by program funds, shall not require a paid membership for the general public of all of the member counties as a condition to use the facilities. User or entrance fees may be charged for the use of facilities funded in whole or in part by program funds, however such fees shall be reasonable and shall be the same for the general public of all of the member counties.

(5) Waterway Impacts: All development projects must be designed so as not to impact navigation along the District's waterways through the placement of structures, attendant uses, or the necessity of a boating speed zone for safety purposes. Before applying for boating speed zone designation in District waterways because of a project funded by this program, the sponsor shall first receive approval from the Board. The Board will use the criteria found in Section 327.46(1), F.S., in determining whether to approve the proposed boating speed zone.

(6) Project Maintenance: The project sponsor shall be responsible for the operation, maintenance, and management of the project for the anticipated life of the project and shall be responsible for all expenses required for such purposes. The project shall be maintained in accordance with the standards of maintenance for other similar local facilities and in accordance with applicable health standards. Project facilities and

improvements shall be kept reasonably safe and in reasonable repair to prevent undue deterioration and to encourage public use. The project sponsor shall have full legal authority and financial ability to operate and maintain the project facilities.

(7) Education Facilities and Programs: Waterways related environmental education facilities and programs sponsored by the District shall occur at specially designated environmental education facilities located adjacent and contiguous to the waterways. It is the District's intent to consolidate its environmental education efforts in the least number of facilities within an area that will adequately serve the education needs of that area of the District.

(8) Public Information Availability: Public information produced with assistance from this program shall not be copyrighted and shall be provided free of cost, except for the cost of reproduction, to the public.

(9) Third-Party Project Operators: Projects that are being operated by a third party shall have sufficient oversight by the eligible project sponsor as determined by the Board. Such oversight, at a minimum, will include a project liaison that is a staff member of the eligible project sponsor, and oversight of the operating hours and admission fees of the facility by the eligible project sponsor through a legal agreement. All third party projects shall be open to the public in accordance with this rule.

(10) Non-compliance: The District shall terminate a project agreement and demand return of program funds disbursed to the project sponsor for non-compliance with any of the terms of the project agreement or this rule, if such non-compliance calls into question the ability of the applicant to complete the project. Failure of a project sponsor to comply with the provisions of this rule or the project agreement shall result in the District declaring the project sponsor ineligible for further participation in the program until such time as compliance has been met to the satisfaction of the District.

(11) Fees: Any public project eligible for District program funds that charges a fee or will charge a fee must demonstrate that the facility will utilize 50% or greater of the collected funds for project maintenance and improvements throughout the anticipated 25-year life of a development project or the design life of other project types, as applicable.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1), (2) FS. History–New 12-17-90, Amended 2-3-94, 2-6-97, Formerly 16T-2.004, Amended 5-18-98, 3-31-99, 5-25-00, 3-21-01, 7-30-02, 3-3-04, 4-21-05, 4-1-09, 2-22-10.

66B-2.005 - Funds Allocation.

The Board will allocate funding for this program based upon the District's overall goals, management policies, fiscal responsibilities and operational needs for the upcoming year. If funds are determined to be available for the program, the District will notify potential eligible governmental agencies of the availability of program funding. Applications will be reviewed by the Board utilizing District Forms No. 91-25 and 91-25 (a thru f) Waterways Assistance Program Application Evaluation and Rating Worksheet (effective date 4-24-06); and 93-25 and 93-25 (a, b and c) Waterways Assistance Program Navigation Districts Application Evaluation and Rating Worksheet (effective date 4-24-06), hereby incorporated by reference and available from the District office.

(1) Funding Assistance Availability: In as much as the District has other fiscal responsibilities and operational needs, financial assistance to eligible government agencies shall not exceed an amount equal to eighty (80) percent of the proportional share

of the District's ad valorem tax collections from each county in which such agencies are located. The District may make an exception to this funding limitation, if funds are determined to be available based upon the District's overall goals, management policies, fiscal responsibilities and operational needs, or in counties that are recovering from a state of emergency declared under Chapter 252, F.S.

(2) Project Funding Ratio: All financial assistance and support to eligible governmental agencies shall require, at a minimum, equal matching funds from the project sponsor, with the exception of public navigation projects that meet the provisions of subsection 66B-2.005(7), F.A.C., land acquisition projects in accordance with subsection 66B-2.005(8) and Rule 66B-2.008, F.A.C., and small-scale spoil island restoration and enhancement projects that meet the provisions of Rule 66B-2.014, F.A.C. Applicant's in-house costs are limited pursuant to paragraph 66B-2.008(1)(c), F.A.C. All financial assistance to seaports shall require equal matching funds. The District shall contribute no more than fifty percent (50%) of the local share of the cost of an inlet management or beach renourishment project. The District shall not contribute funding to both the state and local shares of an inlet management or beach renourishment project.

(3) Pre-agreement Expenses: The project sponsor shall not commence work on an approved project element prior to the execution of the project agreement unless authorized by the Board during the review and funding approval process. Board authorization of pre-agreement expenses will be given for the commencement of work prior to the execution of a project agreement if the Board determines that there is a benefit to the District, its waterways or its constituents. All project costs must be incurred and work performed within the project period as stipulated in the project agreement unless pre-agreement costs are approved by the Board. Pre-agreement expenses will be approved if they are consistent with the provisions of Rule 66B-2.008, F.A.C., and occur within the fiscal year of the grant application submission (October 1st to September 30th). Pre-agreement expenses, except for projects approved by the Board as multi-year projects, will be limited to fifty (50) percent of the project's total cost and if the expenses are eligible project expenses in accordance with this rule. Only one-half (1/2) or less of the approved pre-agreement expenses will be eligible for reimbursement funding from the District, except for projects approved by the Board as multi-year projects. The Board shall consider a waiver of the limitation on pre-agreement expenses for Small-Scale Derelict Vessel grants and land acquisition projects when the applicant demonstrates a direct need and benefit and the project is in accordance with the applicable provisions of Chapter 66B-2, F.A.C.

(4) Multi-Year Funding: The construction phase of projects that are large scale, involve multiple phases, have a construction time line of one year or longer, or are requesting a significant amount of assistance funding in relation to the total assistance available for the county where the project is located, will be reviewed and approved by the District Board for a multiple year period subject to budgeting and allocation pursuant to the provisions of Chapter 200, F.S. The determination by the Board to provide assistance funding on a multi-year basis can be made at any time during the application review process.

(5) Seaport Funding Eligibility: Financial assistance to seaports may exceed the proportional share of the District's ad valorem tax collections as set forth in subsection 66B-2.005(1), F.A.C., from the county in which such seaport is located if the seaport can

demonstrate that a regional benefit occurs from the port's activities. Financial assistance to a seaport project that demonstrates a regional benefit shall not exceed an amount equal to (i) the proportional share of the District's ad valorem tax collections as set forth in subsection 66B-2.005(1), F.A.C., from the counties where the benefit is demonstrated less (ii) funding allocated in the same fiscal year to all other local government projects funded in those counties.

(6) Inlet Management and Beach Renourishment: Projects and project elements in the categories of inlet management and beach renourishment shall be subject to the following provisions. The District shall contribute no more than fifty percent of the local share of the cost of the project. The District shall not contribute funding to both the state and local shares of an inlet management or beach renourishment project. Funding for the construction phase of an inlet management or beach renourishment project may be approved by the District Board for a multiple year period subject to budgeting and allocation pursuant to the provisions of Chapter 200, F.S. Additionally the following provisions shall be met for inlet management or beach renourishment projects:

(a) Inlet Management: Inlet management projects shall benefit public navigation within the District and shall be consistent with Department of Environmental Protection approved inlet management plans and the statewide beach management plan pursuant to Section 161.161, F.S. Inlet management projects that are determined to be consistent with Department of Environmental Protection approved inlet management plans are declared to be a benefit to public navigation.

(b) Beach Renourishment: All projects in this category shall be consistent with the statewide beach management plan. Beach renourishment projects shall only include those beaches that have been adversely impacted by navigation inlets, navigation structures, navigation dredging, or a navigation project. The determination of beach areas that are adversely impacted by navigation for the purposes of this program shall be made by Department of Environmental Protection approved inlet management plans. If state funding is not provided for a beach project, public access with adequate parking must be available in accordance with Chapter 161, F.S.

(7) Public Navigation: Projects or project elements in the category of public navigation that will qualify for up to seventy-five percent (75%) program funds must provide public navigation channel access to public launching, mooring or docking facilities. In addition, the following shall apply:

(a) Navigation channel dredging: The project sponsor must demonstrate that the source of channel sedimentation has been identified and is in the process of, or has been controlled, or that the frequency and amount of shoaling is such that dredging will provide an improvement to the channel that will last for twenty (20) years or more and therefore is more cost effective than identifying and correcting the cause of shoaling, or that the cost of identifying the source of channel sedimentation exceeds the cost of the dredging project.

(b) Navigation channel lighting and markers must be located on primary or secondary public navigation channels.

All other public navigation projects or project elements will only qualify for up to fifty percent (50%) program funding. Dredging that is associated or ancillary to another use (such as a boat ramp, marina or pier) will be prioritized according to the associated use.

(8) Land Acquisition: All land acquisition projects shall qualify for a maximum of

twenty-five (25) percent program funding. All pre-agreement expenses for land acquisition must be completed within one-year of the date of application for funding.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1), (3) FS. History–New 12-17-90, Amended 6-24-93, 9-5-96, 2-6-97, Formerly 16T-2.005, Amended 5-17-98, 8-26-99, 3-21-01, 7-30-02, 3-3-04, 4-21-05, 4-24-06, 4-15-07, 3-25-08, 4-1-09.

66B-2.006 - Application Process.

(1) Application Period: With the exception of eligible Disaster Relief Projects, eligible Small-Scale Spoil Island Restoration and Enhancement Project and eligible Small-Scale Derelict Vessel Applications, all applications for assistance through this program will be submitted during the authorized submission period that shall be established by vote of the Board at a scheduled meeting.

(2) Application Forms: Florida Inland Navigation District Waterways Assistance Program Project Application FIND Form Number 90-22 (effective date 4-24-06) and 93-22a, Project Information – Navigation Related Districts (effective date 4-24-06) are hereby incorporated by reference and available from the District office. With the exception of projects eligible under the Small-Scale Spoil Island Restoration and Enhancement program, and the Small-Scale Derelict Vessel program, all applications for financial assistance and support through this program from member counties and local governments shall be made on Form Number FIND 90-22 and shall include a detailed cost estimate submitted on FIND Form No. 90-25, Florida Inland Navigation District Assistance Program Project Cost Estimate, (effective date 4-24-06), hereby incorporated by reference and available from the District office. All applications for financial assistance and support through this program from navigation related districts shall be made on FIND Form Number 93-22 (effective date 4-24-06), hereby incorporated by reference and available from the District office, and shall include a detailed cost estimate submitted on FIND Form No. 90-25. In addition, all applicants shall submit a complete and detailed Project Timeline (FIND FORM No. 96-10) (effective date 4-15-07).

(3) Sponsor Resolution: The project sponsor shall approve the submission of an application by official resolution from its governing board or commission. Said resolution shall be made on FIND Form No. 90-21, Resolution for Assistance Under the Florida Inland Navigation District Waterways Assistance Program (effective date 10-14-92), hereby incorporated by reference and available from the District office.

(4) Attorney's Certification: If the application is for a project that is a land based development project the applicant shall submit an Attorney's Certification of Title, FIND Form Number 94-26 (effective date 5-25-00), hereby incorporated by reference and available from the District office.

(5) Application Review: Applications will be reviewed by the local FIND Commissioner before being submitted to the District office. Upon receipt in the District office, staff will review the applications for completeness of the informational requirements identified in the Application Checklist, FIND Form Number 90-26 (effective date 7-30-02), and for compliance with the eligibility requirements of this rule. When an application is determined by staff to be incomplete or ineligible, staff will immediately inform the applicant by mail. The applicant will then have until the date established by the Board in the application package to bring the application into

compliance. If the applicant fails to provide a complete application in compliance with these rules, the application will not be considered for funding. In order to have a complete application, the applicant shall not only submit the forms required under Rule 66B-2.006, F.A.C., and any other information requirements identified in the Application Checklist (FIND Form Number 90-26), but such forms and other submitted information must be completely filled out, executed as applicable, and also establish compliance with Chapter 66B-2, F.A.C.

(6) Interlocal Agreements: Applications that the Board determines will directly benefit the maintenance of the Atlantic Intracoastal Waterway channel as documented by the District's long range dredged material management plans, will directly benefit the maintenance of the Okeechobee Waterway channel as documented by the District's long range dredged material management plan, will directly benefit the maintenance or improvement of District property, right-of-way or navigation interests, or have multiple funding partners including the Corps of Engineers as the project manager can qualify for project assistance through an interlocal agreement pursuant to Chapter 163, F.S., or Section 374.984(6)(a), F.S. District staff will identify these applications and present them to the Board for their determination as to funding. Interlocal agreement projects shall comply with all other provisions of this rule, except for pre-agreement expenses, permitting and property control requirements.

(7) Application Presentations: Applications determined to be complete and in compliance with this rule will be forwarded to the Board for review and then scheduled for presentation to the Board at a scheduled meeting of the Board. Applicants can decline to make a presentation to the Board by submitting a written request.

(8) Application Evaluation and Rating Score: Following the presentations, the Board will review the applications and evaluate them using the Waterways Assistance Program Application Evaluation and Rating Worksheets No. 91-25 (a thru f) for Waterways Assistance Program applications, and 93-25 (a, b and c) Waterways Assistance Program Navigation Related Districts applications. The total points awarded to each application by the Commissioners will be averaged to determine an application's final rating score. The final rating score for each application must equal or exceed 35 points for the application to be considered for funding assistance. Reconsideration of any application with a final rating score of less than 35 points will only occur if the majority of the Commissioners evaluating the project rated the project equal to or exceeding 35 points and two-thirds of the Commissioners vote for reconsideration of the application. Only Applicants that are eligible under Rule 66B-2.0061, F.A.C., "Disaster Relief Applications", shall complete FIND Form No. 91-25F Emergency Re-Construction (effective date 4-24-06).

(9) Funding Determination: The Board will hold a funding allocation meeting at which time the Board will determine the allocation of funds, if any, to each project and the projects will be ranked by overall average score to facilitate final funding decisions by the Board. Allocations will be based in part upon the cumulative score of the applications as calculated from the Project Evaluation and Rating Form. Allocations will also be based upon the specific needs of the individual counties.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Amended 9-2-92, 6-24-93, 4-12-95, Formerly 16T-2.006, Amended 5-25-00, 3-21-01, 7-30-02, 3-20-03, 4-21-05, 4-24-06, 4-15-07, 3-25-08.

66B-2.0061 - Disaster Relief Applications.

Disaster Relief applications may be submitted to the District and considered by the Board at any time during the year to provide assistance to an eligible applicant for the removal of navigation obstructions and repair or replacement of waterway facilities damaged by a declared natural disaster. The District shall consider these applications in accordance with these rules.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 6-24-93, Amended 2-6-97, Formerly 16T-2.0061, Amended 4-24-06.

66B-2.008 — Project Eligibility.

(1) Eligible Projects: Financial assistance and support through this program shall be used to plan or carry out public navigation and anchorage management, public recreation, environmental education, boating safety, acquisition and development of spoil sites and publicly owned commercial/industrial waterway access directly related to the waterways, acquisition and development of public boat ramps, launching facilities and boat docking and mooring facilities, inlet management, environmental mitigation and beach renourishment.

(a) Program funds may be used for projects such as acquisition, planning, development, construction, reconstruction, extension, or improvement, of the following types of projects for public use on land and water. These project types will be arranged into a priority list each year by vote of the Board. The priority list will be distributed to applicants with the project application.

1. Public navigation channel dredging;
2. Public navigation aids and markers;
3. Inlet management projects that are a benefit to public navigation in the District;
4. Public shoreline stabilization directly benefiting the District's waterway channels;
5. Acquisition and development of publicly owned spoil disposal site and public commercial/industrial waterway access;
6. Waterway signs and buoys for safety, regulation or information;
7. Acquisition, dredging, shoreline stabilization and development of public boat ramps and launching facilities;
8. Acquisition, dredging, shoreline stabilization and development of public boat docking and mooring facilities;
9. Derelict Vessel Removal;
10. Waterways related environmental education programs and facilities;
11. Public fishing and viewing piers;
12. Public waterfront parks and boardwalks and associated improvements;
13. Waterways boating safety programs and equipment;
14. Beach renourishment on beaches adversely impacted by navigation inlets, navigation structures, navigation dredging, or a navigation project; and
15. Other waterway related projects.

(b) Ineligible Projects or Project Elements. Project costs ineligible for program funding or matching funds will include: contingencies, miscellaneous, reoccurring personnel related costs, irrigation equipment, ball-courts, park and playground equipment, and any extraneous recreational amenities not directly related to the waterway

such as the following:

1. Landscaping that does not provide shoreline stabilization or aquatic habitat;
2. Restrooms for non-waterway users;
3. Roadways providing access to non-waterway users;
4. Parking areas for non-waterway users;
5. Utilities for non-waterway related facilities;
6. Lighting for non-waterway related facilities;
7. Project maintenance and maintenance equipment;
8. Picnic shelters and furniture;
9. Vehicles to transport vessels; and
10. Operational items such as fuel, oil, etc.
11. Office space that is not incidental and necessary to the operation of the main eligible public building; and
12. Conceptual project planning, including: public surveys, opinion polls, public meetings, and organizational conferences.

(c) Project Elements with Eligibility Limits: Subject to approval by the Board of an itemized expense list:

1. The following project costs will be eligible for program funding or as matching funding if they are performed by an independent contractor:

a. Project management, administration and inspection;

b. Design, permitting, planning, engineering or surveying costs for completed construction project;

c. Restoration of sites disturbed during the construction of an approved project;

d. Equipment costs.

Before reimbursement is made by the District on any of the costs listed in subparagraph 1. above, a construction contract for the project, approved and executed by the project sponsor and project contractor must be submitted to the District.

2. Marine law enforcement and other vessels are eligible for a maximum of $30,000 in initial District funding. All future replacement and maintenance costs of the vessel and related equipment will be the responsibility of the applicant.

3. Waterway related environmental education facility funding will be limited to those project elements directly related to the District's waterways.

(d) Phasing of Projects: Applications for eligible waterway projects may be submitted as a phased project where Phase I will include the design, engineering and permitting elements and Phase II will include the construction of the project. A description and cost estimate of the Phase II work shall be submitted along with the Phase I application for Board review.

(2) Property Control: The site of a new proposed land-based development project, with the exception of those projects requesting Small-Scale Spoil Island Restoration and Enhancement funding, shall be dedicated for the public use for which the project was intended for a minimum period of 25 years after project completion. Such dedication shall be in the form of a deed, lease, management agreement or other legally binding document and shall be recorded in the public property records of the county in which the property is located. This property control requirement also applies to a project site owned by another governmental entity. The governmental entity that owns the project site may be joined as a co-applicant to meet this property control requirement. Existing land based

development projects that are being repaired, replaced or modified must demonstrate that the project site has been dedicated for public use for at least 25 years with at least 10 years remaining on the dedication document. Property shall also be deemed dedicated for public use if:

(a) The property has been designated for the use for which the project is intended (even though there may have been no formal dedication) in a plat or map recorded prior to 1940, or

(b) The project sponsor demonstrates that it has had exclusive control over the property for the public use for which the project is intended for a period of at least 30 years prior to submission of the application, or

(c) There is no ongoing litigation challenging the designated use of the property as shown on the plat or map, nor has there been any judicial determination contrary to the use by the public for the use shown on the plat or map.

(3) Permits: The project sponsor is responsible for obtaining and abiding by any and all federal, state and local permits, laws, proprietary authorizations and regulations in the development and operation of the project. Applicants for construction projects that include elements that require state or federal environmental permits or proprietary authorizations will demonstrate that all required environmental permitting and authorizations will be completed by the District's final TRIM hearing. This demonstration will be by submission of the required environmental permit(s) and authorizations, or by submission of a letter from the agency(s) stating that a permit or authorization is not required. Should the environmental permitting element of an application that has construction elements requiring state or federal environmental permits or authorizations not be completed by the District's final TRIM hearing, the construction portion of the project will not be considered for funding. Whereby funding decisions are completed at the final TRIM hearing, the District will not deviate from the funding schedule to accommodate any application deficiency.

(4) Public Marina Qualifications: All public marina projects funded through this program shall include sewage pumpout facilities for vessels, unless the applicant can demonstrate that inclusion of such a facility is physically, operationally or economically impracticable. All public marina projects funded through this program shall have at least ten percent (10%) of their slips or mooring areas available for transient vessels. Public marina dockage rates shall be within market comparison of the dockage rates of other area marinas. Program funds to public marina projects shall not be utilized for replacement of the facilities if revenues generated by the facility are not allocated to the operation, maintenance and improvement of the public marina facility in accordance with subsection 66B-2.004(10), F.A.C.

(5) Final Decisions: The Board will make all final decisions on the eligibility of a Project or specific project costs.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1)-(3) FS. History–New 12-17-90, Amended 9-2-92, 6-24-93, 2-3-94, 4-12-95, 9-5-96, 2-6-97, Formerly 16T-2.008, Amended 5-17-98, 3-31-99, 5-25-00, 3-21-01, 7-30-02, 3-20-03, 3-3-04, 4-15-07, 3-25-08, 4-1-09, 2-22-10.

66B-2.009 — Project Administration.

The District will appoint a project manager who shall be responsible for monitoring

the project and the project agreement. The project manager shall also be responsible for approving all reimbursement requests. The project sponsor shall appoint a liaison agent, who will be a member of the eligible applicant's staff, to act on its behalf in carrying out the terms of the project agreement. Administration of the project will be as follows:

(1) Project Agreement: For each funded project, the District and the project sponsor will enter into a project agreement, prior to the release of program funds, setting forth the mutual obligations of the parties concerning the project. The project agreement shall incorporate the applicable policies and procedures of the program as outlined in this rule. Project agreements will be for a two-year period with the possibility for one, one-year extension. Any request for a one-year extension of funding shall require submittal by the PROJECT SPONSOR of a request for extension to the DISTRICT no later than July of fiscal year two of the approved project. This request will then be considered by the DISTRICT Board, whose decision shall be final. In review of these requests, the Board will take into consideration the current status and progress of the project and the ability of the applicant to complete the project within one additional year.

(2) Matching Funds: The project sponsor shall clearly identify and enumerate the amount and source of the matching funds it will be using to match the program funds supplied by the District for an approved project. The project sponsor shall provide suitable evidence that it has the matching funds available at the time the project agreement is executed.

(3) Agreement Modification: All proposed changes to the project agreement must be submitted to the District in writing by the project sponsor accompanied by a statement of justification for the proposed changes. All project agreement amendments shall be approved by the District Board, except that the Executive Director may approve a minor project agreement amendment for a project within a county with the local District commissioner's concurrence. A minor project amendment shall not change the approved project's category nor result in a reallocation of more than 35% of the approved funding of the project among project elements. Project agreement amendments will not include a change to the approved project's location or a change in the approved project's purpose or project type. Agreed changes shall be evidenced by a formal amendment to the project agreement and shall be in compliance with these rules.

(4) Project Reporting: The liaison agent will submit quarterly reports to the project manager summarizing the work accomplished since the last report, problems encountered, percentage of project completion and other appropriate information. These reports shall continue throughout the length of the project period until completion of the project. The report shall be submitted on Form 95-02, "Assistance Program Project Quarterly Status Report", dated 7-30-02, hereby incorporated by reference and available at the District office.

(5) Reimbursement Requests: The liaison agent may submit periodic reimbursement requests during the project period in accordance with Rule 66B-2.011, F.A.C. The project manager will approve or disapprove all reimbursement requests. The final payment of program funds will be made upon certified completion of the project by the District.

(6) Project Inspection: Upon reasonable request, the project manager shall have the right to inspect the project and any and all records relating to the project.

(7) Project Completion: The project shall be completed within three (3) years of the date of the beginning of the District's first fiscal year for which the project was approved.

If the completion of a project is impacted by a declared state of emergency and the Board waives this rule section, the extension of time granted shall not exceed one additional three (3) year period.

(8) Project Completion Requirements: Upon completion of the project, the liaison agent shall provide the following to the project manager:

(a) A Project Completion Certificate, FIND Form No. 90-13 (effective date 7-30-02), hereby incorporated by reference and available from the District office, which certifies that the project was completed in accordance with the project agreement and the final project plans.

(b) A final reimbursement request accompanied by all required billing statements and vouchers.

(c) Photograph(s) showing the installation of the sign required by Rule 66B-2.013, F.A.C.

(d) Photograph(s) of the completed project clearly showing the program improvements.

(9) Project Completion Review: The project manager will review the project completion package and will authorize or reject the final reimbursement payment which will include all retained funds from previous requests.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Formerly 16T-2.009, Amended 3-21-01, 7-30-02.

66B-2.011 - Reimbursement.

The District shall release program funds in accordance with the terms and conditions set forth in the project agreement. This release of program funds shall be on a reimbursement only basis. The District shall reimburse the project sponsor for project costs expended on the project in accordance with the project agreement. Project funds to be reimbursed will require the submission of a Reimbursement Request Form and required supporting documents, FIND Form No. 90-14 (effective date 7-30-02) hereby incorporated by reference and available from the District office.

(1) Authorized Expenditures: Project funds shall not be spent except as consistent with the project agreement cost estimate that was approved by the Board, which shall be an attachment to the project agreement. This cost estimate will establish the maximum funding assistance provided by the District and the percentage of funding provided by each party to the project. The District will pay the lesser of:

(a) The percentage total of project funding that the Board has agreed to fund, or

(b) The maximum application funding assistance amount.

(2) Phase I Reimbursement: In accordance with these rules, reimbursement cannot be made on a Phase I application until a construction contract is executed by the applicant for the construction phase of the project. If the Phase I project is completed but a construction contract is not executed by the three (3) year project deadline, then the District shall only allow one (1) year from the Phase I project deadline to enter into the required construction contract before the Phase I funding is cancelled.

(3) Reimbursement Requests: All project costs shall be reported to the District and summarized on the Reimbursement Request Form. All requests for reimbursement shall include supporting documentation such as billing statements for work performed and

cancelled payment vouchers for expenditures made.

(4) Retainage: The District shall retain ten percent (10%) of all reimbursement payments until final certification of completion of the project. The District shall withhold any reimbursement payment, either in whole or part, for non-compliance with the terms of this agreement.

(5) Check Presentations: A District representative shall present the final reimbursement check to the project sponsor during a public commission meeting or public dedication ceremony for the project facility.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Amended 6-24-93, Formerly 16T-2.011, Amended 3-31-99, 7-30-02.

66B-2.012 - Accountability.

The following procedures shall govern the accountability of program funds:

(1) Accounting: Each project sponsor is responsible for maintaining an accounting system which meets generally accepted accounting principles and for maintaining such financial records as necessary to properly account for all program funds.

(2) Quarterly Reports: The project sponsor shall submit quarterly project status reports to FIND in accordance with subsection 66B-2.009(4), F.A.C.

(3) Completion Certification: All required final completion certification documents and materials as outlined in subsection 66B-2.009(8), F.A.C., of this rule shall be submitted to the District prior to final reimbursement of program funds.

(4) Auditing: All project records including project costs shall be available for review by the District or by an auditor selected by the District for 3 years after completion of the project. Any such audit expenses incurred shall be borne entirely by the project sponsor.

(5) Project Records: The project sponsor shall retain all records supporting project costs for three years after either the completion of the project or the final reimbursement payment, whichever is later, except that should any litigation, claim, or special audit arise before the expiration of the three year period, the project sponsor shall retain all records until the final resolution of such matters.

(6) Repayment: If it is found by any State, County, FIND, or independent audit that program funds have not been used in accordance with this rule and applicable laws, the project sponsor shall repay the misused program funds to the District.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Formerly 16T-2.012, Amended 7-30-02

66B-2.013 - Acknowledgement.

The project sponsor shall erect a permanent sign, approved by the District, at the entrance to the project site which indicates the District's participation in the project. This sign shall contain the FIND logo. In the event that the project sponsor erects a temporary construction sign, this sign shall also recognize the District's participation. If the final product of the project is a report, study or other publication, the District's sponsorship of that publication shall be prominently indicated at the beginning of the publication. If the project results in an educational display, the District's logo and a statement of the

District's participation in the project shall be contained in the display.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 12-17-90, Formerly 16T-2.013, Amended 2-22-10.

66B-2.014 - Small-Scale Spoil Island Restoration and Enhancement Projects.
Proposals shall be accepted for the restoration or enhancement of spoil islands and natural islands within the District's waterways for recreational, navigational, educational, and environmental purposes. The applicable provisions of this rule apply to these applications with the following additions or exceptions:

(1) Application Procedure – A Request for Proposals procedure will be used to request proposals for consideration. Proposals shall follow the format described in FIND Document #03-02, Call for Proposals – Small-Scale Spoil Island Restoration and Enhancement Program (effective date 7-30-02), hereby incorporated by reference and available from the District office. Proposals may be submitted to the District and considered by the Board at any time during the year.

(2) Matching Funds: Small-scale spoil island restoration and enhancement may qualify for up to ninety percent (90%) program funds. The applicant's ten percent (10%) matching funds may include in-kind contribution pursuant to paragraph 66B-2.014(4)(b), F.A.C.

(3) Eligibility: All proposals must meet the following eligibility criteria to be considered for funding:

(a) Management Plan Compliance: Projects shall be in compliance with the provisions of any Spoil Island Management Plans or other management plans that govern the Project site.

(b) Property Control: The Project Sponsor must have written property rights on the Project site to construct and maintain the Project for a minimum of five years. Such property rights can be in the form of a lease, interlocal agreement, use agreement or other legal form approved by the District.

(4) Funds Allocation: Funds shall be allocated pursuant to Rule 66B-2.005, F.A.C., subject to the exceptions identified in this rule, and with the following additions:

(a) The District shall fund a maximum of up to $7,500 per project, not to exceed $22,500 per County, per fiscal year.

(b) The Project Sponsor may contribute in-kind construction labor; such in-kind construction labor costs will not be counted by the District as exceeding $10.00 per hour. No administrative costs can be incorporated into the Project as Project costs.

(c) The funding provided by the District shall only be allocated for specific Project expenses such as construction materials, plant materials, herbicides, etc. The funding provided by the District shall not be allocated for parties, food or beverages.

(5) Hold Harmless Waiver: All volunteers, who are not government employees, shall sign a hold harmless waiver Form No. 02-01 (New 7-30-02) as approved by the District and hereby incorporated by reference and available from the District office.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 7-30-02, Amended 4-24-06.

66B-2.015 - Small-Scale Derelict Vessel Removal Projects.

Exhibit B

Proposals shall be accepted for financial assistance for the removal of derelict vessels within the District's waterways. The applicable provisions of this rule apply to these applications with the following additions or exceptions:

(1) Application Procedure – Applications shall be submitted on a completed FIND Form No. 05-01 (Small-Scale Derelict Vessel Removal Program) (effective date 4-24-06), and FIND Form No. 01-06 (Small-Scale Derelict Vessel Removal Program – Project Cost Estimate), (effective date 4-24-06), hereby incorporated by reference and available from the District office. Applications may be submitted to the District and considered by the Board at any time during the year.

(2) The District shall only fund applicants that have identified derelict vessels to be removed and have a current bid for removal for such vessels, or have completed the removal of such vessels within the 6 months preceding the application, subject to eligibility under these program rules.

(3) The program must be sponsored by an eligible government agency or not-for-profit organization.

(4) District funding shall be limited to $20,000.00 per county, per year, provided on a reimbursement basis only. The limitation on pre-agreement expenses may be waived by the Board in accordance with subsection 66B-2.005(3), F.A.C.

(5) The eligible applicant must provide the remaining matching funds for project completion. In no case shall the District's cost-share contribution exceed 75% of the total project costs. In-house project management or administration costs are not eligible costs or matching costs.

(6) The derelict vessel must be located in the District's Waterways, as defined in Rule 66B-2.003, F.A.C.

(7) The District shall be recognized when possible in all written, audio or video advertising and promotions as a participating sponsor of the program.

(8) The funding provided by the District shall only be allocated for removal of derelict vessels. The District is providing program reimbursement funds only and shall be held harmless with regards to the activities initiated by the applicant.

(9) The applicant shall be responsible for all maintenance, management, disposal and operating expenses associated with the program.

(10) Funds derived from the sale of any derelict vessels or vessel parts removed through this grant program must be reinvested into the applicant's derelict vessel removal program.

(11) The District Board shall make all final decisions concerning the provision of funding for this program.

Specific Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History–New 4-24-06, Amended 4-15-07, 3-25-08.

EXHIBIT C

FLORIDA INLAND NAVIGATION DISTRICT

ASSISTANCE PROGRAM

Matching Funds Certification

Sponsor:_____

Project Title:_____ Project #:_____

I hereby certify that the above referenced project Sponsor, as of October 01, 20__, has the required matching funds for the accomplishment of the referenced project in accordance with the Waterways Assistance Program Project Agreement between the Florida Inland Navigation District and the Sponsor, dated _____.*

Project Liaison Name:_____

Project Liaison Signature:_____

Date:_____

*S. 837.06 Florida Statutes, False official statements. - Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 F.S.

EXHIBIT D

FLORIDA INLAND NAVIGATION DISTRICT
ASSISTANCE PROGRAM
PAYMENT REIMBURSEMENT REQUEST FORM

PROJECT NAME: _____ PROJECT #:_____

PROJECT SPONSOR: _____ BILLING #:_____

Amount of Assistance		_____
All Funds Previously Requested	-	_____
Balance Available	=	_____
Funds Requested		_____
Less Retainage (-10% unless final)	-	_____
Check Amount	=	_____
Balance Available		_____
Less Check Amount	-	_____
Balance Remaining	=	_____

SCHEDULE OF EXPENDITURES

Expense Description (Should correspond to Cost Estimate Sheet Categories in Exhibit "B")	Vendor Name	Check No. and Date	Total Cost	Applicant Cost	FIND Cost

(NOTE: Signature Required on Page 2)

EXHIBIT D (CONTINUED)

SCHEDULE OF EXPENDITURES

Expense Description (**Should correspond to Cost Estimate Sheet Categories in Exhibit "B"**)	Vendor Name	Check No. and Date	Total Cost	Applicant Cost	FIND Cost

Certification for Reimbursement: I certify that the above expenses were necessary and reasonable for the accomplishment of the approved project and that these expenses are in accordance with Exhibit "B" of the Project Agreement. *

Project Liaison

Date

*S. 837.06 Florida Statutes, False official statements. - Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 F.S.

EXHIBIT E

FLORIDA INLAND NAVIGATION DISTRICT

ASSISTANCE PROGRAM

Project Completion Certification

Sponsor:_____

Project Title:_____ Project #:_____

I hereby certify that the above referenced project was completed in accordance with the Assistance Program Project Agreement between the Florida Inland Navigation District and _____, dated _____, 20_____, and that all funds were expended in accordance with Exhibit "B" and Paragraph 1 of the Project Agreement. *

Project Liaison Name:_____

Project Liaison Signature:_____

Date:_____

*S. 837.06 Florida Statutes, False official statements. - Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 F.S.

EXHIBIT F

ASSISTANCE PROGRAM PROJECT
QUARTERLY STATUS REPORT
http://www.aicw.org/wapapp_pdf.jhtml?method=view&wapapp_pdf.id=1

PROJECT NO. _____

PROJECT TITLE: _____

PROJECT SPONSOR: _____

REPORT PERIOD			
Oct 1-DEC 15____;	Dec 15-Mar 1___ ;	Mar 1-June 15___ ;	June 15-Sep 1___
Report Due: (Dec 30)	**(March 15)**	**(June 30)**	**(Sep 15)**

WORK ACCOMPLISHED:

PROBLEMS ENCOUNTERED:

PERCENTAGE COMPLETION:

OTHER NOTABLE ITEMS:

Form No. 95-02
(Effective Date: 7-30-02)

EXHIBIT G

WATERWAYS ASSISTANCE PROJECT SCHEDULE

OCTOBER 2010 - Project Agreement Executed, Project Initiates.

DECEMBER 30, 2010 - First Quarterly Report Due.

MARCH 15, 2011 - Second Quarterly Report Due.

JUNE 30, 2011 - Third Quarterly Report Due.

SEPTEMBER 15, 2011 - Fourth Quarterly Report Due.

DECEMBER 30, 2011 - Fifth Quarterly Report Due.

MARCH 15, 2012 - Sixth Quarterly Report Due.

JUNE 30, 2012 - Seventh Quarterly Report Due.

NOTE: If the project will not be completed and all close out paperwork submitted by September 1st, a request for a 1-year extension of the completion date of the project should be submitted with the quarterly report.

SEPTEMBER 01, 2012 - Closeout paperwork due.

SEPTEMBER 30, 2012 - District finishes processing closeout paperwork, performs project inspection and submits final reimbursement check with check presentation to sponsor.

NOTE: ANY MODIFICATIONS to the PROJECT shall require advance notice and prior written approval of the District. The appropriate timing for modifications to the project cost estimate, Exhibit B, would be after receipt of bids.

***NON-COMPLIANCE by the PROJECT SPONSOR with the reporting schedule in Exhibit B may result in revocation of this agreement pursuant to Paragraph 13 of the project agreement.**

EXHIBIT H

http://www.aicw.org/bids.jhtml?method=listByCat_id&bids.cat_id=4

2D-8)

COUNCIL AGENDA REPORT
MEETING OF OCTOBER 19, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: October 12, 2010

SUBJECT: **CHANGE ORDER NO. 4 TO WORK ORDER NO. 1371-1 BETWEEN WILBUR SMITH ASSOCIATES AND THE CITY OF VERO BEACH (RFQ 340-06/CSS)**

Attached is a memorandum from Ericson Menger, Airport Director, dated October 12, 2010, which provides background information and a recommendation on the above-referenced project.

It is the recommendation of the City Manager's Office that Council approve Change Order No. 4 to Work Order No. 1371-1 with Wilbur Smith Associates, in the amount of $70,829.25. Funding is outlined in the attached back-up information.

James M. Gabbard

James M. Gabbard

:jav
Attachments

xc: Ericson Menger
Stephen Maillet

N:\AGENDA\AIRPORT\2010\WILBUR SMITH ENGINEERING SERVICES - WO 1371-1 -CO4.DOC

MEMORANDUM

TO: Monte K. Falls, Interim City Manager

VIA: Charles P. Vitunac, City Attorney

FROM: Ericson W. Menger, Airport Director

DATE: October 12, 2010

SUBJECT: **CHANGE ORDER NO. 4 TO WORK ORDER NO. 1371-1 BETWEEN WILBUR SMITH ASSOCIATES AND THE CITY OF VERO BEACH (RFQ 340-06/CSS)**

Attached are four (4) originals of the above-referenced Change Order. This Change Order is to authorize additional Resident Project Representative (RPR) inspection, materials testing, on-site project management, and construction administration services in conjunction with the proposed rehabilitation of Runway 11L-29R, Taxiway F and Connectors, and Lighting at the Vero Beach Municipal Airport.

BACKGROUND

On March 12, 2007, the City entered into a Professional Services Master Agreement with Wilbur Smith Associates for professional engineering services relating to Airport capital improvement projects. Subsequently, on June 17, 2008, City Council approved Work Order No. 1371-1 between the City and Wilbur Smith Associates to provide professional engineering services for the Rehabilitation of Runway 11L-29R project for the design and bidding phase. FDOT later funded work on the adjacent Taxiway F, and the City approved Change Order No. 1 for the additional engineering work and Change Order No. 2 for Resident Project Representative services for the entire project. Total contract cost for Wilbur Smith was approved at $327,085.00.

Due to additional funding available from FDOT, and because the overall project came in about $500,000 under budget, the City approved additional work on this runway and taxiway system, including replacing the Runway 11L/29R lighting system with LED lighting, upgrading the airport lighting control and monitoring system, Florida Fish and Wildlife permitting and removal of gopher tortoises, and drainage improvements which were discovered after the project was underway. The additional engineering work for these improvements was approved under Change Order No. 3 to the original Wilbur Smith contract for $32,676.39.

With money still left in the budget, the City and FDOT recently approved modifying the scope of work to include replacement of the entire airport's taxiway lighting system with LED lighting. This modification to the scope required an additional 48 days of work while the contractors were mobilized, but will give the airport a lighting system which will be much more energy efficient and reliable. Accordingly, the attached Change Order Number 4 at $70,829.25 authorizes Wilbur Smith to provide the additional 48 days of on-site Resident Project Representative inspection, project management, construction materials testing, and construction administration, due to the replacement of the taxiway lighting system for the entire airport. With this Change Order, the total fee to Wilbur Smith for the overall project will increase to $430,590.64, or approximately 14.35% of the total project budget (Runway 11L-29R and Taxiway F):

Construction:	$2,505,461.82
Engineering & RPR (Wilbur Smith):	$ 430,590.64<< if this request is approved
Administration/Contingency:	$ 63,947.54
TOTAL:	**$3,000,000.00 << current budget**

RECOMMENDATION

I respectfully request that this item be placed on the October 19, 2010, City Council Agenda. Staff recommends approval of the Change Order with Wilbur Smith in the amount of $70,829.25.

EWM:drg
Attachments (4)

cc: Airport Commission Members (email and US mail)
James Gabbard, City Manager (email)
John O'Brien, Purchasing Manager (email)
Joyce Vonada (email)

CITY OF VERO BEACH, FLORIDA
DEPARTMENT: AIRPORT
PROJECT: REHAB RUNWAY 11L-29R
CHANGE ORDER NO. 4
TO WORK ORDER NO. 1371-1
TO PROFESSIONAL SERVICES MASTER AGREEMENT
DATED MARCH 12, 2007 BETWEEN CITY OF VERO BEACH
AND WILBUR SMITH ASSOCIATES

This Change Order is issued pursuant to and incorporates herein that certain Professional Services Master Agreement ("MASTER AGREEMENT") entered into on March 12, 2007, by and between the City of Vero Beach, Florida ("CITY") and Wilbur Smith Associates ("PROFESSIONAL").

CITY requests and PROFESSIONAL agrees to provide the services specified herein pursuant to the terms and conditions herein set forth and in the MASTER AGREEMENT and Change Order Number 4 to Work Order 1371-1.

The PROFESSIONAL services for this Change Order are listed below.

SECTION 1 - PROJECT DESCRIPTION FOR CHANGE ORDER NUMBER 4

The work included in this Change Order can generally be described as providing additional on-site Resident Project Representative (RPR) inspection, project management, construction materials testing, and construction administration for the added duration of the construction period, hereinafter called the PROJECT.

The additional construction components of the PROJECT are as follows:

a. Replace all existing incandescent (quartz) medium intensity taxiway light fixtures with more energy efficient light emitting diode (LED) technology light fixtures.

b. All remaining stake-mounted medium intensity taxiway lights will be replaced with a base-mounted light and conduit system.

GENERAL OVERVIEW OF CHANGE ORDER NUMBER 4

The additional work identified in this Change Order Number 4 will be accomplished in a similar manner as detailed in Section 1 - Project Description, General Overview of Work Order No. 1371-1.

GENERAL PROJECT UNDERSTANDING OF CHANGE ORDER NUMBER 4

The additional work identified in this Change Order Number 4 will be accomplished in a similar manner as detailed in Section 1 - Project Description, General Overview of Work Order No. 1371-1.

SECTION 2 - SCOPE OF SERVICES FOR CHANGE ORDER NUMBER 4

Project Management and Construction Administration

a. Office Support

i. Provide office support during construction, i.e., set up files, prepare correspondence, prepare change orders, review daily construction reports, etc.

ii. Review and monitor the Contractor's quality control for specification compliance.

iii. Assist the Resident Project Representative in the determination of test site locations in accordance with the specifications.

iv. Review and evaluate the contractor's quality control, and make recommendations through the CITY of any adjustments necessary.

v. Provide daily advice and assistance to the Resident Project Representative for the consideration of the PROFESSIONAL's and contractor's separate testing programs, phasing and safety as required.

c. Process Shop Drawings

Receive shop drawings supplied by the contractor for determination of conformance with the design concept of the project and information given in the technical specifications. Determine the acceptability, subject to CITY, FAA and FDOT approval, of substitute materials and equipment proposed by the contractor and receive and review (for general content as required by the specifications) maintenance and operation instruction, schedules, guarantees, and certificates of inspection which are to be assembled by the contractor in accordance with the contract documents. Provide a copy of all approved submittals to CITY.

e. Interpret Plans

Issue necessary interpretations and clarifications of the contract documents. Review and prepare change orders as required and as may be initiated or recommended by the CITY, PROFESSIONAL, or the contractor.

f. Review Pay Requests

Review the contractor's applications for payment and accompanying data and schedules. Based on on-site observations as a professional, experienced and qualified in construction observation, PROFESSIONAL shall determine the amount owing to the contractor and recommend in writing, payments to the contractor in such amounts; such recommendations of payment will constitute a representation to the CITY based on such observations and review, that the work has progressed to the point indicated and that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. PROFESSIONAL will review requests for payment for materials stored and monthly submittals of releases of liens, but will not be deemed to have represented that he has made examination to determine how or for what purposes the contractor has used the monies on account of the Contract Price, or that title to any of

the contractor's work, materials or equipment has passed to the CITY free and clear of any lien, claims, security interests and encumbrances.

g. Perform Final Inspection and Prepare Summary Report of the completed PROJECT.

Attend final inspection and prepare PROJECT closeout summary report to include: Certificate of Substantial Completion, Construction Contract Time Summary and Construction Cost Summary, DBE Summary, etc.

h. Review Contractor's Record Information

Review record information prepared by the contractor, and signed and sealed by a professional land surveyor on behalf of the contractor.

Special Services

a. RPR Services and Quality Assurance Testing

Resident Project Representative (RPR) Services will consist of providing a full-time PROFESSIONAL's RPR during the remaining construction period of the PROJECT (based on an additional inspection period from September 29th to November 28th of 2010). Quality Assurance Testing will be performed by a specialty firm designated by the PROFESSIONAL. (See Page One Consultants materials testing fees and testing schedule as attached to Exhibit "A").

b. RPR Services:

i. Review the Contract Drawings and Technical Specifications to the extent necessary to become familiar with the project requirements and to understand the design intent.

ii Meet with the CITY to coordinate the construction of the project.

iii. Become familiar with the contractor's construction work schedule which identifies the various items of work required to complete the PROJECT.

iv. Attend preconstruction conference.

v. Review and become familiar with contractor's approved quality control plan.

vi. Review and become familiar with the acceptance testing requirements for various phases of work.

vii. Monitor performance of the contractor; require correction of work that does not meet plans and specifications, and to report serious problems to PROFESSIONAL and CITY.

viii. Determine test sites and coordinate and monitor testing.

ix. Interpret plans and specification details.

x. Resolve minor field problems.

xi. Maintain project records.

xii. Review and approve requests for payment to the contractor.

xiii. Conduct construction observations when required to be on site.

xiv. Prepare weekly construction progress reports and submit to applicable parties.

xv. Maintain a project diary when on site.

xvi. Maintain up-to-date records on quantities of work performed and quantities of materials in place.

xvii. Review payrolls and, through interviews with work force, determine if correct wages are being paid.

xviii. Prepare and recommend a change order to the CITY, if required.

xix. Conduct final walk-through and assist in the preparation of final "punch list".

xx. If required, attend construction coordination meetings.

xxi. Conduct safety meetings as required.

c. Construction Acceptance Testing Services

i. Perform acceptance testing for the applicable FAA and FDOT specifications and prepare report(s) for areas denoting passing or failing areas.

ii. Review and monitor the contractor's Quality Control.

d. Construction Surveying

The contractor will provide as-builts of the completed PROJECT to the PROFESSIONAL for evaluation.

e. Record Drawings

Prepare record drawings based upon record information submitted by the contractor, and submit to the CITY. The formats will include electronic (PDF and CADD files on CD), blackline (1 set) and reproducibles (1 set).

f. Grant Administration

Assist the CITY with the grant administration of the PROJECT. All information provided will be in support of the CITY's records.

Additional Services

When required by the CITY or the Contract Documents in circumstances beyond PROFESSIONAL's control, PROFESSIONAL shall furnish or obtain from others, as circumstances require during construction, additional services associated with the following:

a. Services in connection with work directive changes and change orders requested by CITY not covered by the Basic Services or Special Services.

b. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by contractor(s); and services after the award of the construction contract(s) in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor.

c. Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

d. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction (2) a significant amount of defective or neglected work of any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, and (4) default by any contractor.

e. Evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the work.

f. Services resulting from the contractor's failure to complete his work in the number of days allowed in the contract between the CITY and the selected contractor.

These services are not included as part of Basic Services. PROFESSIONAL shall advise CITY promptly prior to starting any such Additional Services which will be paid for by CITY in accordance with the Agreement.

DBE Goal

The PROFESSIONAL will make a good faith effort to provide DBE participation.

Basic Assumptions

The following is a list of assumptions which forms the basis of PROFESSIONAL'S fees for providing the services for the PROJECT outlined herein.

a. Reports and other word processing letters/memorandums, etc. shall be created in Microsoft Office Word (version 2007) and portable document format (PDF).

b. RPR time on-site during construction is estimated to be 8 hours/calendar day and 5 calendar days/week or 45 contract calendar days. 3 additional days were factored in during project close-out for a total of 48 contract calendar days.

SECTION 3 - SPECIFICATIONS

N/A

SECTION 4 - CITY's RESPONSIBILITIES

The responsibilities of the CITY are detailed in Section 4 - City's Responsibilities of Work Order No. 1371-1.

SECTION 5 - TIME OF PERFORMANCE

PROFESSIONAL shall commence working after issuance of a written notice-to-proceed for the additional work associated with Change Order Number 4. All work (Change Order No. 4) shall be completed no later than the construction contractor's (Ranger Construction) Substantial Completion Date of November 28, 2010.

The provisions of the Agreement and the various rates of compensation for PROFESSIONAL's services provided for elsewhere in this Change Order have been agreed to in anticipation of the orderly and continuous progress of the PROJECT through completion of the Construction Phase. PROFESSIONAL's obligation to render services herein will extend for a period which may reasonably be required for the construction of the PROJECT including extra work and required extensions thereto. If specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in this agreement and if such dates or schedules are exceeded or extended through no fault of PROFESSIONAL or schedules are accelerated at CITY's request, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment.

SECTION 6 -COMPENSATION

CITY agrees to pay and PROFESSIONAL agrees to accept, for services rendered pursuant to the Scope of Services and Specifications and in accordance with the conditions set forth in Change Order Number 4 to Work Order 1371-1, a maximum fee under this Change Order Number 4 of $70,829.25, as shown below. This fee and the payment schedule for said fee is itemized in Exhibit A to this Change Order Number 4.

Change Order No. 4 to Work Order No. 1371-1	
Construction Materials Testing	$ 19,821.25
Resident Project Representative (RPR) Inspection	$ 45,600.00
Construction Administration/Project Close-out	$ 5,408.00
TOTAL	$ 70,829.25

The total fee of Change Order Number 4 is $70,829.25.

SECTION 7 – OTHER/ADDITIONAL CONDITIONS

Other/Additional Conditions are detailed in Section 7 - Other/Additional Conditions of Work Order 1371-1 and Change Order Number 4.

SECTION 8 – RELATION TO MASTER AGREEMENT

All conditions set forth in the MASTER AGREEMENT and this Change Order Number 4 shall control unless otherwise specified in Work Order Number 1371-1.

SECTION 9 - DESIGNATED PROFESSIONAL REPRESENTATIVE.

PROFESSIONAL designates the following listed individual as PROFESSIONAL's representative, to represent PROFESSIONAL in all matters pertaining to this Change Order:

Wesley L. Teel, Resident Project Representative

IN WITNESS WHEREOF, the parties hereto have executed this Change Order as of the last date written below.

PROFESSIONAL SERVICES PROVIDER: WILBUR SMITH ASSOCIATES

WITNESSED BY:

Sign:
Print: Deanna Janiszewski

Sign:
Print: Deanna Janiszewski

BY:
Sign:
Print: William G. Brooks
Title: Vice President

Sign: Gunther Zurstadt
Print: GUNTHER ZURSTADT
Title: DIVISION MANAGER

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 12 day of October, 2010, by William G. Brooks, as Vice President of Wilbur Smith Associates, who ✓ is personally known to me; OR ___ presented _____ as identification.

NOTARY PUBLIC

DEBORAH L. MANCUSI
MY COMMISSION # DD 882610
EXPIRES: May 12, 2013
Bonded Thru Notary Public Underwriters

Sign: Deborah L. Mancusi
Print: Deborah L. Mancusi
State of Florida at Large (seal)
Commission No.: DD882610
My Commission Expires: May 12, 2013

CITY OF VERO BEACH, FLORIDA:

ATTEST:

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

CITY OF VERO BEACH

BY:
Sign :_____
Print: Kevin Sawnick
Title: Mayor

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by _____, as _____ , and attested by Tammy K. Vock, as City Clerk, of the City of Vero Beach, Florida. They are both known to me.

NOTARY PUBLIC

Sign: _____
Print: _____
State of Florida at Large (seal)
Commission No.:_____
My Commission Expires:_____

Approved as to form and legal sufficiency:

10.13.10
City Attorney Date

Approved as conforming to municipal policy:

10/14/10
City Manager Date

Approved as to technical requirements:

10/12/10
Airport Director Date

Exhibit "A"
Change Order No. 4 To Work Order No. 1371-1
Project Costs

Vero Beach Municipal Airport (VRB)
Rehabilitate Runway 11L/29R Including Taxiway F and Connectors - Construction Phase Services

I. CONSTRUCTION MATERIALS TESTING

Independent Testing Laboratory (Page One, Inc.) (See Attachment 1 to Exhibit "A")	$19,821.25
SUBTOTAL	**$19,821.25***

II. RESIDENT PROJECT REPRESENTATIVE (RPR) INSPECTION

	Hours	Rate	Cost
Senior RPR	*384	$105	$40,320.00

**(Hours are estimated to be 8 hours/calendar day and 5 calendar days/week or 45 contract calendar days. 3 additional days were factored in during the Project close-out for a total of 48 contract calendar days)*

Mileage @ $0.50/per mile (GSA Rate) x 220 miles/day x 48 days =	$ 5,280.00
SUBTOTAL	**$45,600.00***

III. CONSTRUCTION ADMINISTRATION/PROJECT CLOSE-OUT

	Hours	Rate	Cost
Principal/QA	8	$235	$ 1,880.00
Project Manager	24	$147	$ 3,528.00
SUBTOTAL			**$ 5,408.00***

Total Change Order No. 4 To Work Order No. 1371-1 **$70,829.25***

*Lump Sum fees

VERO BEACH MUNICIPAL AIRPORT - FDOT FM NO. 416303-1-94-01

REHAB RWY 11L/29R INCL. TWY F & CONNECTORS

SCHEDULES A & B plus ALT A-2 or A-3 CMT FEE BREAKDOWN - ADDENDUM NO. 1

Item	Description	Bid Schedule		CMT Estimate							TOTAL ADD 1
		Unit	QTY	Original QTY	Through 8/31/10	Estimate to Complete	ADD 1 QTY	Total QTY	Unit Rate	Unit	
P-152	Earthwork	LS	1								
	Proctor (pick up all in same trip)			3	0	0	(3)	0	$ 90.00	ea	$ (270.00)
	Organic Content			3	0	0	(3)	0	$ 45.00	ea	$ (135.00)
	Densities (Minimum 5/trip - ASTM D 6938)			15	0	16	1	16	$ 25.00	ea	$ 25.00
P-154/P-160	LBR 40 Stabilized Subbase (12")	SY	24300					*(Estimates 2000 SY/LOT)*			
	Depth Checks (by RPR via elevations)			0	0	0	0	0	$ 50.00	ea	$ -
	LBR			2	3	0	1	3	$ 300.00	ea	$ 300.00
	Particle Size			2	3	0	1	3	$ 45.00	ea	$ 45.00
	Atterburgs			1	2	0	1	2	$ 85.00	ea	$ 85.00
	Densities (Minimum 5/trip - ASTM D 6938)			26	25	0	(1)	25	$ 25.00	ea	$ (25.00)
P-210	Recycled Bit. Base Course (6")	SY	41000					*(Estimates 2000 SY/LOT Production Rate, excl. Test Strip)*			
	Based on 13 LOTs, incl. Test Strip	***LOTS***	***22***					*(Depth Checks every 1000 SY)*			
	Depth Checks (Minimum 8/trip)			41	0	0	(41)	0	$ 50.00	ea	$ (2,050.00)
	Proctor			0	3	0	3	3	$ 90.00	ea	$ 270.00
	Extraction & Gradation			0	3	0	3	3	$ 160.00	ea	$ 480.00
	Densities (Minimum 8/trip - ASTM D 6938)			88	49	62	23	111	$ 25.00	ea	$ 575.00
P-211	Limerock Base Course (6")	SY	3947					*(Estimates 500 SY/LOT)*			
	Depth Checks (by RPR via elevations)			0	0	0	0	0	$ 50.00	ea	$ -
	LBR			1	1	0	0	1	$ 300.00	ea	$ -
	Particle Size			1	1	0	0	1	$ 45.00	ea	$ -
	Atterburgs			1	1	0	0	1	$ 85.00	ea	$ -
	Organic Content			1	1	0	0	1	$ 45.00	ea	$ -
	Densities (Minimum 4/trip - ASTM D 1556)			8	22	0	14	22	$ 50.00	ea	$ 700.00
P-401	Bituminous Surface Course	TON	6110					*(Estimates 500 TN/DAY Production Rate, excl. Test Strip)*			
	Based on 13 LOTs, incl. Test Strip	***LOTS***	***13***								
	LOT (Lab personnel REG)			104	0	112	8	112	$ 65.00	hr	$ 520.00
	LOT (Lab personnel OT)			39	0	42	3	42	$ 85.00	hr	$ 255.00
	LOT (SR PE)			39	0	39	0	39	$ 130.00	hr	$ -
	LOT (Admin)			7	0	7	0	7	$ 50.00	hr	$ -
	Pre-Pave Conference			6	6	0	0	6	$ 130.00	hr	$ -
	Shop Drawing/Job set-up (PE)			2	0	2	0	2	$ 130.00	hr	$ -
	Shop Drawing/Job Admin			6	0	6	0	6	$ 50.00	hr	$ -
	Misc. support/meetings, etc. (SR PE)			16	0	16	0	16	$ 130.00	hr	$ -
	Misc. support/meetings, etc. (Plant Tech)			10	6	12	8	18	$ 65.00	hr	$ 520.00
P-610	Non-structural Concrete Cylinders	N/A	N/A					*SET OF 4 SPECIMENS*			
	For misc. lighting ducts, etc.			2	4	2	4	6	$ 140.00	SET	$ 560.00
P-701	Pipe for Storm Drains and Culverts	LF	584								
	Proctor (contractor to dig pits - 2 trips estimated)			14	4	0	(10)	4	$ 90.00	ea	$ (900.00)
	Organic Content			14	4	0	(10)	4	$ 45.00	ea	$ (450.00)
	Densities (Minimum 5/trip - ASTM D 6938)			65	174	0	109	174	$ 25.00	ea	$ 2,725.00
	Field and Laboratory Contingencies										
	Stand By Time (field tech)			56	133.25	60	137.25	193.25	$ 45.00	hr	$ 6,176.25
	Min 5/trip consideration			1	0.166666667	0	(0.8333333)	0	$ 600.00	est	$ (500.00)
	PM Time			20	34	24	38	58	$ 130.00	hr	$ 4,940.00
	Administrative/Technical Typist			4	7.75	10	13.75	17.75	$ 50.00	hr	$ 687.50
	Travel/Expenses			1	3.3046875	1	3.3046875	4.3046875	$ 1,600.00	LS	$ 5,287.50
	TOTAL SCHEDULES A & B plus ALT. A-2 or A-3 CMT FEE BREAKDOWN - ADDENDUM NO. 1										**$ 19,821.25**

2D-9)

COUNCIL AGENDA REPORT
MEETING OCTOBER 19, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: October 12, 2010

SUBJECT: MONTHLY CAPITAL PROJECTS' STATUS REPORTS

The Monthly Capital Projects' Status Reports are prepared and presented to Council at the second meeting of each month for all capital construction projects over $100,000. They are for review and discussion, if so desired.

James M. Gabbard

:jav
Attachments

xc: Rob Bolton
Monte Falls
Ericson Menger
Jackie Mitts
Carol Shoaf

N:\Agenda\MONTHLY.RPT\report.cc.doc

CAPITAL PROJECTS REPORT – AIRPORT

Obstructions Removal Update	The Florida Department of Transportation (FDOT) executed a Joint Participation Agreement (JPA) to help fund this project. The JPA was accepted by City Council on June 15, 2010. Federal funding and final City Council approval is still pending.
Rehabilitate Runway 11L/29R and Taxiway F	Final paving should be complete by October 15, 2010. FDOT and City Council approved replacement of the LED taxiway edge lights and runway lights for this project. Electrical Contractor ordered the replacement lighting fixtures and started cabling.
Airport Operations Facility	FDOT offered a grant in the amount of $1,600,000 and City Council accepted on October 5, 2010. FEMA will share in this grant in the amount of $400,000 and the Airport will provide the remaining $400,000. An architectural/engineering contract will be recommended to City Council in late 2010 or early 2011.
Rehabilitate Sections Runway 11R/29L and Taxiway C	Award of Contract to Dickerson of Florida (Ft. Pierce) was approved on September 7, 2010 in the amount of $632,006. Notice to Proceed was issued on October 4, 2010 with construction to start approximately the end of October 2010. Project should be complete by the end of the calendar year.
Parking/Access Improvement at Building 78	City Council approved the Joint Participation Agreement between the City of Vero Beach and FDOT on October 5, 2010 in the amount of $100,000 and the Airport will pay the remaining $100,000, for a project total of $200,000. Plans and specifications for this project are underway.

Updated 07 OCT 2010

Bay Drive and River Drive Bridge Replacements

Prepared By: PROJECT NO. 2005-24

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

Contractor: Misener Marine Construction, Inc. For Period: 11/24/09 through 10/12/10

NOTES:

Both bridges were substantially complete as of August 4, 2010.

Final pavement has been deleted from the bridge contract and was completed under the City's annual paving contract.

The contractor has recently completed the final punch list and the project will be recommended for final acceptance at a future City Council meeting.

THE FOLLOWING IS A SUMMARY OF COSTS TO DATE:		THE FOLLOWING IS SUMMARY OF PROGRESS TO DATE:	
ORIGINAL CONTRACT AMOUNT	$1,699,671.30	CONTRACT DATE:	09/18/09
CHANGE ORDERS TO DATE (TOTAL)	-$6,260.65	NOTICE TO PROCEED:	11/24/09
ADJUSTED CONTRACT AMOUNT TO DATE	$1,693,410.65	TIME OF COMPLETION	90 Days
TOTAL COST OF WORK PERFORMED TO DATE	$1,532,626.99	CONTRACT DAY:	270
% OF WORK COMPLETE	100.00%	% OF CONTRACT TIME COMPLETE:	300.00%

08-Sep-10

Looking east on new Bay Drive Bridge

08-Sep-10

New River Drive Bridge

Indian River Drive East Sidewalk Construction

Prepared By: PROJECT NO. 2009-02

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

Constructed by COVB Staff For Period: 7/20/10 through 10/12/10

NOTES:

Total length of sidewalk for this project is 2,150 linear feet.

Sidewalk constructed from Beachland Blvd. to fiddlewood Road (1,700 lf).

Work from Fiddlewood Road to Greytwig Road consists of drainage improvements that are being permitted through SJRWMD.

City crews will resume work once permit is secured (estimated October 2010).

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

ORIGINAL BUDGET AMOUNT	$177,000.00	Percent of Work Complete	50%

13-Sep-10

New sidewalk looking north toward Bob Summers Field from Beachland Boulevard

13-Sep-10

New sidewalk looking north from Date Palm Road

Crestlawn Cemetery Columbarium

Prepared By: PROJECT NO. 2009-09

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

Constructed by COVB Staff For Period: 7/20/10 through 10/12/10

NOTES:

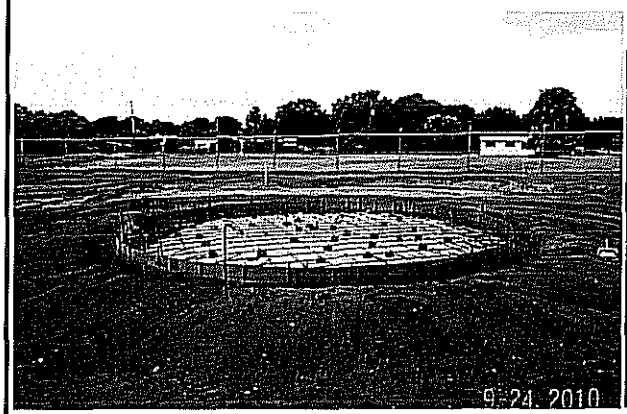
Work by City staff began on 9/8/10 and is estimated to take 6 weeks. City crews will form and pour a concrete slab.

Contractor will then furnish and install the granite columbarium units.

Center circle of concrete slab is complete. South quadrant of outer circle is complete.

North quadrant of outer circle to be poured 10/13/10.

Original Budgeted Cost (Including City Staff Work)	$260,000.00	Percent of Work Complete	5%
ORIGINAL OUTSIDE CONTRACT AMOUNT	$178,000.00	CONTRACT DATE:	08/25/2010
CHANGE ORDERS TO DATE (TOTAL)	$0.00	NOTICE TO PROCEED:	08/31/2010
ADJUSTED CONTRACT AMOUNT TO DATE	$178,000.00	TIME OF COMPLETION	120 Days
TOTAL COST OF CONTRACT WORK PERFORMED TO DATE	$0.00	CONTRACT DAY:	44
% OF CONTRACT WORK COMPLETE	0.00%	% OF CONTRACT TIME COMPLETE:	36.67%



24-Sep-10

Center section of columbarium slab ready for concrete

07-Oct-10

South quadrant of outer columbarium slab poured and finished

19th Street Culvert Replacement at 20th Avenue Canal

Prepared By: PROJECT NO. 2009-12

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

Contractor: SPS Contracting, Inc. For Period: 8/2/09 through 10/12/10

NOTES:

96" Culvert was installed on 9/1/10.

Side drains and drainage structures in the intersection were installed on 9/9 and 9/10.

Footings for headwalls were installed on 10/8.

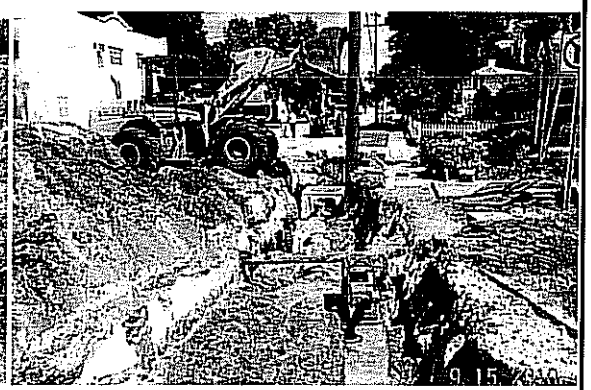
Headwall material delivered on 10/11 and work to begin on 10/13.

Frames and grates set to grade on all structures.

THE FOLLOWING IS A SUMMARY OF COSTS TO DATE:		THE FOLLOWING IS SUMMARY OF PROGRESS TO DATE:	
ORIGINAL CONTRACT AMOUNT	$144,157.30	CONTRACT DATE:	07/20/10
CHANGE ORDERS TO DATE (TOTAL)	$21,109.02	NOTICE TO PROCEED:	08/02/10
ADJUSTED CONTRACT AMOUNT TO DATE	$165,266.32	TIME OF COMPLETION	74 Days
TOTAL COST OF WORK PERFORMED TO DATE	$71,452.05	CONTRACT DAY:	70
% OF WORK COMPLETE	80.00%	% OF CONTRACT TIME COMPLETE:	94.59%

10-Sep-10

Installing side drain along east bank of 20th Avenue canal.



15-Sep-10

Drainage system across northbound 20th Avenue installed and in process of backfilling.

WATER TREATMENT MAINTENANCE BUILDING AND FIELD SERVICES COMPLEX

STATUS REPORT AS OF 10/1/10
CITY OF VERO BEACH DEPARTMENT OF WATER AND SEWER

Prepared By:	Jerry A. Gilbert, P.E.	PROJECT NO:	150-09/JV
Consultant:	Edlund, Dritenbas, Binkley Architects	FOR PERIOD:	9/1/10 - 10/1/10
Contract Date:	08/19/09		
Notice to Proceed Date:	12/04/09		
Time of Completion:	300 Calendar Days		
Scheduled Completion Date:	09/30/10	Director's Signature	

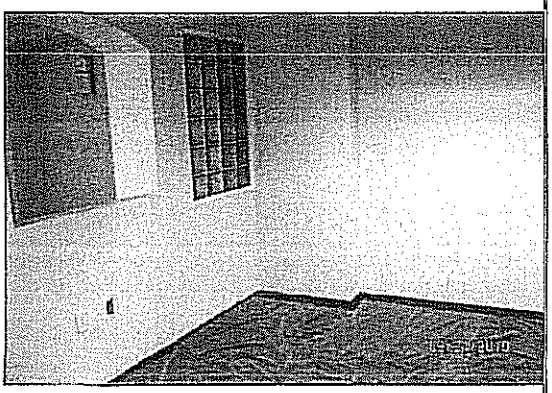
PROJECT DESCRIPTION:

The Work to be performed under this Contract includes the furnishing of all labor, materials, equipment, services and incidentals for the construction of a Water Treatment Maintenance Building and Field Services Complex for the City of Vero Beach, Florida.

THE FOLLOWING IS A SUMMARY OF PROGRESS AND COSTS TO DATE:

DIVISION

CONTRACTOR	Summit Construction Management, Inc.		
ORIGINAL CONTRACT AMOUNT	$1,924,000.00		
CHANGE ORDERS TO DATE (TOTAL)	$142,838.97		
ADJUSTED CONTRACT AMOUNT TO DATE	$2,066,838.97		
TOTAL COST OF WORK PERFORMED TO DATE	$1,821,303.97		
% OF WORK PAID	88.12%		
TOTAL WORK COMP.	$1,639,173.57		



Work on the exterior of the field services building continues, (above left) the parking and drive areas are almost ready for asphalt. Meanwhile, painting is completed inside the building (above right), floor tile is completed, interior plumbing is installed, light fixtures are installed, and finishing touches in all areas are being applied.

FORCE MAIN FROM WWTP TO WTP, &
REUSE WATER MAIN FROM RPP TO COUNTRY CLUB DRIVE

STATUS REPORT AS OF 10/1/10
CITY OF VERO BEACH DEPARTMENT OF WATER AND SEWER

Prepared By:	Jerry A. Gilbert, P.E.	PROJECT NO:	1483
Consultant:	Morgan & Associates	FOR PERIOD:	9/1/10 - 10/1/10
Contract Date:	11-Dec-09		
Notice to Proceed Date:	19-Jan-10		
Time of Completion:	270 Days		
Scheduled Completion Date:	15-Oct-10	Director's Signature	

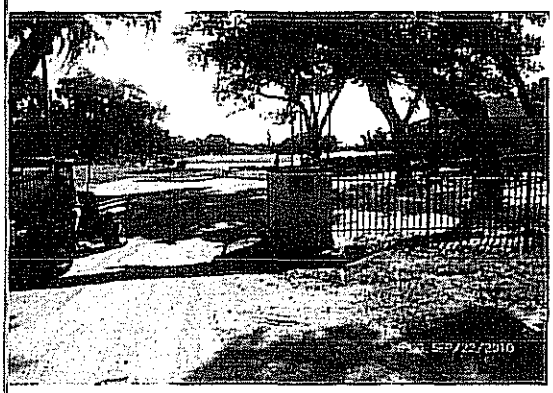
PROJECT DESCRIPTION:

The Work to be performed under this Contract includes the furnishing of all labor, materials, equipment, services and incidentals for the construction, startup and testing of a 24" PVC force main from the WWTP to the WTP, and a 24" PVC Reuse main from Royal Palm Point to Country Club Drive.

THE FOLLOWING IS A SUMMARY OF PROGRESS AND COSTS TO DATE:

DIVISION

CONTRACTOR	S.P.S. Contracting, Inc.		
ORIGINAL CONTRACT AMOUNT	$2,396,841.58		
CHANGE ORDERS TO DATE (TOTAL)	$37,547.04		
ADJUSTED CONTRACT AMOUNT TO DATE	$2,434,388.62		
TOTAL COST OF WORK PERFORMED TO DATE	$2,127,425.70		
% OF WORK PAID	78.65%		
TOTAL WORK COMP.	$1,914,683.13		



Restoration at Vero Beach Country Club, above left, looking East from Country Club Drive. Above right, 33rd Street at 13th Avenue, where the 24" effluent main was laid along the left side of the road (looking West). A "punch list" of corrections and remaining work items was prepared this month for the project.

STORAGE RESERVOIR AND INJECTION WELL PUMP STATION

STATUS REPORT AS OF 10/1/10
CITY OF VERO BEACH WATER AND SEWER DEPARTMENT

Prepared By:	Jerry A. Gilbert, P.E.	PROJECT NO:	280-09/JV
Consultant:	Arcadis, Inc.	FOR PERIOD:	9/1/10 - 10/1/10
Contract Date:	30-Sep-2009		
Notice to Proceed Date:	13-Oct-2009		
Time of Completion:	395 Calendar Days		
Scheduled Completion Date:	12-Nov-2010	Director's Signature	

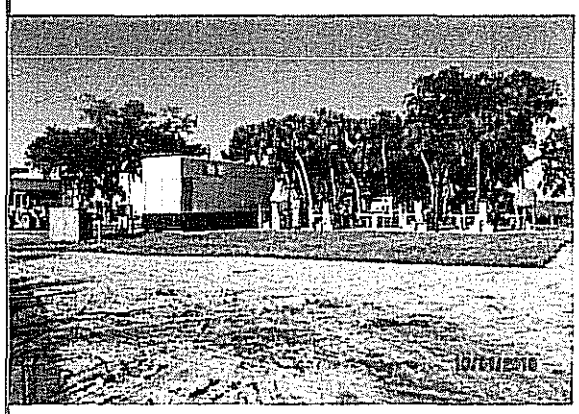
PROJECT DESCRIPTION:

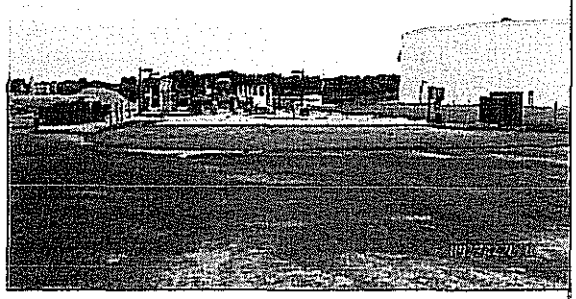
The Work to be performed under this Contract includes the furnishing of all labor, materials, equipment, services and incidentals for the construction, startup and testing of a three million gallon pre-stressed concrete storage reservoir, injection well pump station and related appurtenances.

THE FOLLOWING IS A SUMMARY OF PROGRESS AND COSTS TO DATE:

DIVISION

CONTRACTOR	Florida Design Contractors, Inc.		
ORIGINAL CONTRACT AMOUNT	$2,694,375.00		
CHANGE ORDERS TO DATE (TOTAL)	$791,836.36		
ADJUSTED CONTRACT AMOUNT TO DATE	$3,486,211.36		
TOTAL COST OF WORK PERFORMED TO DATE	$2,516,730.36		
% OF WORK PAID	72.19%		
TOTAL WORK COMP.	$2,265,057.32		





Above left, the new generator has arrived at the WTP. Above right, WTP parking lot and drive and site grading. The remaining work at the site consists largely of installing the electric and instrument controls.