

**CITY OF VERO BEACH, FLORIDA  
MARCH 2, 2010 9:30 A.M.  
REGULAR CITY COUNCIL MEETING  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**A G E N D A**

**1. CALL TO ORDER**

- A. Roll Call
- B. Invocation – Rev. Maureen Killoran/Unitarian Universalist Fellowship of Vero
- C. Pledge of Allegiance

**2. PRELIMINARY MATTERS**

- A. Agenda Additions, Deletions, and Adoption
- B. Proclamations
  - 1. Indian River College Month – March 2010
  - 2. Helen Glenn & Alma Lee Loy Day – March 13, 2010
- C. Public Comment
  - 1. Mr. David Gregg to discuss the letter that he received from Councilmember Ken Daige dated February 11, 2010
- D. Adoption of Consent Agenda
  - 1. Regular City Council Minutes – February 16, 2010

(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**

- A) An Ordinance of the City of Vero Beach, Florida, amending Chapter 30 of the Code of the City of Vero Beach regarding Elections; specifying the Eligibility and Qualification Requirements for Election to the Office of City Councilmember; providing the Time and Manner for Qualifying for Election; specifying the Qualifying Fee and Qualifying Papers required; providing for the Form of Ballot; providing Procedures when a Candidate is found Ineligible, Withdraws, is Removed, or Dies before Election; providing Procedures for an Uncontested or Vacant Office after qualifying ends; providing Procedures for Deemed Vacancies

in the Office of Councilmember in certain cases; Providing for Election Precincts and Voting by Precinct; Providing for Enforcement and Severability; and Providing for an Effective Date.

#### **4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING**

- A) A Joint Resolution by and between the City of Fort Pierce, the City of Port St. Lucie, the City of Stuart, the City of Fellsmere, the City of Vero Beach, the City of Sebastian, the City of Okeechobee, the Town of Sewall's Point, the Town of Indian River Shores, the Town of Jupiter Island, the Town of St. Lucie Village, Florida Municipal Corporations; Indian River County, Martin County, Okeechobee County and St. Lucie County, Political Subdivisions of the State of Florida; the School Board of Indian River County, the School Board of Martin County, the School Board of Okeechobee County and the School Board of St. Lucie County, amending Resolution 03-126; amending the Articles of Incorporation for the Treasure Coast Council of Local Governments, Inc.
- B) A Resolution of the City Council of the City of Vero Beach, Florida, expressing its commitment to protect and preserve the "Vero Man" Archaeological Site; directing the Historic Preservation Commission to coordinate Preservation Efforts; Directing the City Manager to prepare an Application for Designation of the "Vero Man Site" as an Archaeological Zone pursuant to Chapter 76 of the City Code; and reaffirming that any fossils, remains, or other artifacts recovered at the Site on City Property shall be the Property of the City of Vero Beach.
- C) Resolution for Assistance under the Florida Inland Navigation District Waterways Assistance Program.
- D) A Resolution authorizing the City of Vero Beach, Florida, to enter into a Joint Participation Agreement with the State of Florida, Department of Transportation to Rehabilitate Sections of Runway 11R/29L and Taxiway C Rehabilitation (FDOT #428512-1-94-01).

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

- A) An Ordinance of the City of Vero Beach, Florida, amending Section 58-78 of the Vero Beach Municipal Firefighters Retirement Trust; providing for expanded Investment Authority as permitted by law; providing for codification; providing for severability; providing for an effective date.

#### **6. CITY CLERK'S MATTERS**

**7. CITY MANAGER’S MATTERS**

- A) Award of Bid No. 100-10/JV – Lift Station and Sewer Improvements at Ocean Towers
- B) Tree Trimming Annual Contract Renewal
- C) Change Order No. 2 to Work Order No. 1371-1 between Wilbur Smith Associates and the City of Vero Beach (RFQ 340-06/CSS – Rehab Runway 11L-29R)
- D) Work Order #1372-7 between URS Corporation and the City of Vero Beach; Runway 11R/29L and Taxiway C Rehabilitation (FDOT #-1-94-01)
- E) Proposed Lease Termination Agreements requested by Bridgeton Real Fund III, LP: Airport Parcels 17 and 19
- F) Discussion regarding the Electric Utility – John Lee
- G) Discussion regarding the County Commission Meeting of 2/16/2010

**8. CITY ATTORNEY’S MATTERS**

**9. CITY COUNCIL MATTERS**

- A. Old Business
- B. New Business
  - 1. Request from Korean War Veterans Association, to place on Veterans Memorial Island a Bronze Plaque – Dr. Daniel Stanley to speak on the matter

**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
- A) Time of Future City Council Meetings

- C. Councilmember Tom White's Matters
  - 1. Correspondence
  - 2. Committee Reports
  - 3. Comments
  - A) Discuss Finance Commission Members
  
- D. Councilmember Brian Heady's Matters
  - 1. Correspondence
  - 2. Committee Reports
  - 3. Comments
  - A) David Gregg, John Little request
  - B) Internet connection for meetings (cost v guarantees)
  - C) Written Answers from City Manager
  - D) OUC Contract
  - E) City Manager resignation / terminations
  - F) City Attorney resignation / termination
  - G) Malfeasance, misfeasance, nonfeasance
  - H) Financial Reports / Solari / Electric
  
- E. Councilmember Ken Daige's Matters
  - 1. Correspondence
  - 2. Committee Reports
  - 3. Comments
  - A) Economic Goals Summit
  - B) City Council Workshop
  - C) Discussion of County 6% Franchise Fee and City 10% Utility Tax
  - D) Utility Matters

## 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  
MARCH 2, 2010 9:30 A.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:** James Gabbard, City Manager; Charles Vitunac, City Attorney and Tammy Vock, City Clerk

**B. Invocation**

The invocation was given by Pastor Derrick West of First Baptist Church of Vero.

**C. Pledge of Allegiance**

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

**2. PRELIMINARY MATTERS**

**A. Agenda Additions, Deletions, and Adoption**

Mr. Heady requested that under his matters two items be added. The first one is item I) Discussion of towing companies within the City limits and item J) Red Light Cameras. He also asked that item A) David Gregg, John Little request, under his items be moved up and heard after Mr. Gregg speaks under Public Comments.

Mayor Sawnick asked Council if they had any problems with having Mr. Gregg discuss his item after everyone has had a chance to speak under Public Comments. Council had no problems with this request.

Mr. Daige made a motion to adopt the agenda as amended. Mr. White seconded the motion and it passed unanimously.

**B. Proclamations**

- 1. Indian River College Month – March 2010**
- 2. Helen Glenn & Alma Lee Loy Day – March 13, 2010**

Mayor Sawnick read and presented all of the proclamations.

**C. Public Comment**

**1. Mr. David Gregg to discuss the letter that he received from Councilmember Ken Daige dated February 11, 2010**

Mr. David Gregg explained the reason that he was here today was very simple. He said that about a month ago he asked the three Councilmembers who approved the OUC contract if they knew that the City would have to pay Florida Power and Light (FP&L) some \$3.4 million dollars a year for use of the FP&L power lines. He said that Mr. White answered his question at the meeting, Mr. Abell called him after the meeting to answer the question and Mr. Daige said at the meeting when he asked the question that he was here to listen to the public, and that Mr. Gregg was a member of the public. He then again asked Mr. Daige if he knew at the time that he was voting for the OUC contract that the City was obligated to pay approximately \$3.4 million dollars to FP&L.

Mr. Daige told Mr. Gregg that his response was sent to him in writing. A copy of the letter and response from the City Attorney is attached to the minutes of February 2, 2010. He stands by the response that Mr. Gregg received in writing.

Mayor Sawnick told Mr. Gregg that if he has any further questions that Mr. Daige would probably meet with him at a later time.

Mr. Gregg said that he will not stand by the response given to him by Mr. Daige, because he does not feel that the question has been answered.

Mr. Daige read into the record the letter that he wrote to Mr. Gregg (on file in the City Clerk's office).

Mr. Gregg then asked Mr. Abell if he would answer the question yes or no.

Mr. Abell stated that he told Mr. Gregg that he may not have known the exact amount, but the amount would have been the same no matter what provider was providing power to the City of Vero Beach.

Mr. Glenn Heran presented to Council a rate projection (he showed on the doc cam comparisons for the City of Vero Beach versus FP&L residential rates for 1,000 kWh. He then went over these projections. He briefly discussed an item on Mr. Dagie's matters, which was discussion of the County 6% franchise fee and the City's 10% utility tax. He cautioned Council about trying to get the County to drop the 6% franchise fee because they would end up having to increase taxes to their City ratepayers.

Mr. Heady commented that the problem that he has with the reports presented by Mr. Heran is that he cannot find any discrepancies.

Mayor Sawnick said that he would like to review the numbers to see if he sees anything that may be incorrect.

Ms. Donna Lee Robart, Executive Director of Women's Refuge, explained that her Organization has three buildings located on Lemon Avenue. Their utility bill for the month of December was \$942.00 and for the month of January it was \$944.72. Her staff member lives in a small house next door and her utility bill was \$492.82 for a two bedroom house. She said that they are in dismay over these bills and wanted to issue a complaint and hoped that there would be some sort of investigation or some help with the utility problem.

Mr. White asked Ms. Robart if her utility bill was for electricity only, or did it include water, sewer and garbage. Ms. Robart said that it included everything.

Mr. Heady told Ms. Robart that she has done exactly what she should be doing and that is putting this Council on notice to do something to help her.

Mr. Abell suggested that she talk to Mr. John Lee, Acting Utilities Director, and have him compare her kilowatt usage.

Mr. Charles Wilson agreed with cleaning up the language in the Election Ordinance (referring to item 3-A on the agenda). He said that the City had opportunities to correct the Ordinance before the November election, but did not. He reiterated that the whole thing could have been avoided, but he thanked staff for cleaning it up because he would not want to see what happened before happen again.

Mr. Wilson then gave an update on the petition process. He said that he has filed the proper paperwork to become a PAC Committee (Operation Clean Sweep). The Committee will be meeting this Friday and will begin organizing themselves and will be opening a campaign account. His Attorney (Ms. Brooker) has received a sample of a petition from the State of Florida as to what their petition should look like. She is writing potential language and then will set up a meeting with the City Clerk and the City Attorney to make sure that whatever they do is accurate and correct and cannot be challenged by the City at a later date. He said that they will be circulating the petitions in the month of March.

Mr. Wilson brought up the red light cameras. He said first of all he thinks that was a bad idea and to move forward is another bad idea. It goes right in line with the government clinic (matter discussed last year).

Mr. Wilson discussed the troubling relationship between staff and the sitting City Council. He felt that one of the things that people need to do is try to see things through other people's eyes. He congratulated the City Manager in being an honorable man. He believes that Mr. Gabbard feels that his position and his job is to represent his employees and he has done a good job in doing that. The employees of the City of Vero Beach have good jobs and excellent benefits. The problem now is that staff is making policy, which is the City Council's job. The reason for this is because Councils' in the past have not done their job in representing the people. He said that it is not Council's job to go with

whatever they are being told by the City Manager or the City Attorney. It is their job is to represent the public.

Mr. Wilson briefly talked about the OUC contract. He wanted to know why their City Attorney was on the selection committee to pick the power provider that they chose. He noted that Mr. Vitunac has stated that he is against the sale of the Power Plant. He felt that was not Mr. Vitunac's job. His job is to give Council legal advice. He then brought up the letter that was sent to FP&L and what he thought the letter said.

Mr. Wilson commented that staff made its own policy even after the trial where he was removed from office to see if his homestead exemption was wrong. He noted that staff acts at the direction of the Council and he questioned if that was the direction that Council gave him. He wondered if it was a coincidence that smut packages on Mr. Heady showed up the minute that staff was going to be questioned. He stated that Mr. Gabbard went before the County Commission a couple of meetings ago and what he said is that you are losing the PR war. He said that you are not losing the PR war. The truth is that you are losing the war with truth. Their attorney two weeks ago said that there were not any changes made to the OUC contract, then he said maybe we need to have a revote on the contract, then the next week he said we do not need a revote lets just leave it the way it is. He knows that Mrs. Vock will tell the truth as to whether or not she can certify that the document that Council looked at on April 7, 2008 as being an original document.

Mr. Wilson recalled when they were being told that the City utility rates were going to be lower than FP&L rates. He said that it has been proven that this is wrong. The City Attorney said earlier in today's meeting that FP&L has a surcharge. He said that he has heard no testimony that FP&L has a surcharge. The only time FP&L has been asked this question was by the Press Journal and they answered no. He said that this is not just a City issue, it is a Countywide issue. That is the reason that he is moving forward with the petition. He then went over the wording for the petition.

Mr. Robert Walsh talked about democracy. He said so far talking to the Council is like talking to a wall. They just don't get it. He said there are three tyrants on City Council. He said that citizens in this community are not heard from because the City Council as a whole does not recognize them. He told Council that they were not elected to ignore the citizens, which they do. They are not doing the job that they were elected to do. He was asking this Council to give the citizens what they deserve. He wanted them to include citizen input from now on.

Mr. Jay Kramer commented that he has been watching these meetings for quite some time now and people have a lot of opinions. It seems to him whatever they do, there will always be people complaining regardless. He explained that his business is running data centers. He said that the biggest cost to operate a data center is the power bill. Last year when he was looking at his utility bill in Pennsylvania (where one of the data centers is located) he noticed that they have a menu and can choose what power provider that they want to use. He suggested to Council that they give the whole power decision to the

people of Vero Beach. If this OUC contract works out then the people can switch back to it. He reiterated to give the people the power of choice.

Mr. Heady told Mr. Kramer he was right. He informed him that Council would be going to Tallahassee at the end of March and maybe they could discuss this with their Legislatures. He would put that on an agenda. He felt that it was something that they could push in Tallahassee.

Mr. Kurtis Royce referred to his utility bills for 2009 and 2010. He said that in 2009 he used 805 kilowatt hours and in 2010 he used 1,379 kilowatt hours. He commented that this has been the coldest winter since he has been in Florida. He also didn't know when Council has any time to do any other business with all these electric discussion. He felt that the electric issue has been beaten to death.

Mr. Tom Nason brought up two things. The first thing was that the people who wish to sell the system are mostly from the County. If the system is sold then the City residents will pay. He urged City residents not to sign any petition because they are going to be the ones who will have to pick up the short fall. He requested to speak at the end of today's meeting to give a full disclosure of a case that happened in Sebring concerning their utilities.

Mr. Joseph Guffanti commented that he came to the meeting a little late hoping that he would miss Public Comments so that he wouldn't have a chance to talk. However, he was here and he informed the Council that they have heard from the biggest problem in Vero Beach and that was Tom Nason. He said that Mr. Nason just warned them and now he is going to warn them now to be careful of that guy.

Mrs. Caroline Ginn commented that she had three things troubling her and decided to bring them before Council. The first is the pension liability. She said borrowing money to pay pension is not sustainable. The second thing was that they needed an explanation that neither the City Clerk nor the City Attorney has a copy of the OUC contract. She said that Sue Hersey was not the custodian of the official documents. She wanted to talk a little bit about the sewer rates that she felt were already too high. Also, she did not approve of the lines that were being installed along Indian River Boulevard. This project is costing the City \$10 million dollars and they will have to add it on to debt. She asked them to keep these things under consideration. She lives in the City and wants to stay in the City, but she might have to consider selling her home because of the rise in taxes, etc.

Mr. Heady shared her concerns with the deep injection well and thanked her for bringing those things forward again.

#### **D. Adoption of Consent Agenda**

##### **1. Regular City Council Minutes – February 16, 2010**

Mr. Heady pulled the minutes off of the consent agenda to make sure that Council had received the updated copy. Council said that they had. Mr. Heady made a motion to approve the February 16, 2010 City Council minutes. Mayor Sawnick seconded the motion and it passed unanimously.

### 3. PUBLIC HEARINGS

- A) **An Ordinance of the City of Vero Beach, Florida, amending Chapter 30 of the Code of the City of Vero Beach regarding Elections; specifying the Eligibility and Qualification Requirements for Election to the Office of City Councilmember; providing the Time and Manner for Qualifying for Election; specifying the Qualifying Fee and Qualifying Papers required; providing for the Form of Ballot; providing Procedures when a Candidate is found Ineligible, Withdraws, is Removed, or Dies before Election; providing Procedures for an Uncontested or Vacant Office after qualifying ends; providing Procedures for Deemed Vacancies in the Office of Councilmember in certain cases; Providing for Election Precincts and Voting by Precinct; Providing for Enforcement and Severability; and Providing for an Effective Date.**

Mayor Sawnick read the Ordinance by title only.

Mrs. Peggy Lyon, Assistant City Attorney, stated that this proposed Ordinance is before them for a public hearing. She said that there were a couple of changes at the last meeting that Council wanted made to the Ordinance, which she has done. She said that the form to be filled out when someone has an undue burden is an affidavit of undue burden for municipal candidates. She will make sure that change is correctly made in the Ordinance.

Mr. White wanted to make sure that when someone files an affidavit of undue burden it means that they cannot afford to pay the required filing fee.

Mrs. Lyon said that he was correct and she read Section 99.093 of the Florida Statutes that outlines undue burden for municipal candidates.

Mr. White said that doesn't say anything about not paying the qualifying fee even if you don't believe in it.

Mrs. Lyon answered no.

Mayor Sawnick opened the public hearing at 10:41 a.m.

Mr. Joseph Guffanti commented that the reason for passing this Ordinance was because the previous Ordinance was inadequate.

Mr. Charles Wilson thanked Mrs. Vock for an excellent attempt in getting this done earlier. He said better late than never.

Mr. Wayne Coment, Assistant City Attorney, wanted it made clear that there is no change being made to the Charter. This Ordinance just codifies procedural matters that the City Clerk has followed in the past.

Mayor Sawnick closed the public hearing at 10:44 a.m., with no one else wishing to be heard.

Mr. White made a motion to approve the Ordinance with the amendment of using the "Affidavit of Undue Burden for Municipal Candidates" as mentioned by Mrs. Lyon. Mr. Daige seconded the motion.

Mayor Sawnick wondered if in lieu of payment (filing fee) that a candidate could collect petition signatures.

Mrs. Lyon commented that perhaps they could use the petition process for the City fee, but they could not do anything about the fee that the State imposes.

Mr. Vitunac mentioned that the petition method was in the Code about thirty years ago. He was not sure why it was taken out.

Mr. Heady referred to Section 30-4, Resign-to-run law; he said it is not a requirement that they repeat Florida Statutes within their Ordinance. He asked if there was any reason why this Section must be in this Ordinance.

Mrs. Lyon did not have any problems with deleting it from the Ordinance since it is already in the Statutes.

Mr. Coment felt that it was easier on their citizens to just have to go to one place and see what all the requirements are, which is one of the reasons that they put this Section in the Ordinance.

Mr. Daige was in agreement with Mr. Coment's explanation. He likes the way that the Ordinance is structured.

The Clerk polled the Council and the motion passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

#### **4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING**

- A) A Joint Resolution by and between the City of Fort Pierce, the City of Port St. Lucie, the City of Stuart, the City of Fellsmere, the City of Vero Beach, the City of Sebastian, the City of Okeechobee, the Town of Sewall's Point, the Town of Indian River Shores, the Town of Jupiter Island, the Town of St.**

**Lucie Village, Florida Municipal Corporations; Indian River County, Martin County, Okeechobee County and St. Lucie County, Political Subdivisions of the State of Florida; the School Board of Indian River County, the School Board of Martin County, the School Board of Okeechobee County and the School Board of St. Lucie County, amending Resolution 03-126; amending the Articles of Incorporation for the Treasure Coast Council of Local Governments, Inc.**

Mayor Sawnick read the Resolution by title only.

Mr. White noted that it refers to attachments that are not a part of the Resolution. He made a motion to table the Resolution until their next meeting giving Council time to review the attachments. Mr. Daige seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

**B) A Resolution of the City Council of the City of Vero Beach, Florida, expressing its commitment to protect and preserve the “Vero Man” Archaeological Site; directing the Historic Preservation Commission to coordinate Preservation Efforts; Directing the City Manager to prepare an Application for Designation of the “Vero Man Site” as an Archaeological Zone pursuant to Chapter 76 of the City Code; and reaffirming that any fossils, remains, or other artifacts recovered at the Site on City Property shall be the Property of the City of Vero Beach.**

Mayor Sawnick read the Resolution by title only.

Mr. Tim McGarry, Planning and Development Director, reported that the Historic Preservation Commission and the Planning and Development Department, requests that this Resolution be adopted. He noted that he also attached a copy of the Resolution that Indian River County passed for them (Council) to review.

Mr. Heady thought that for the artifacts to become the property of the City that there needs to be a date included that any artifacts found after the adoption of this Resolution are the property of the City and not the artifacts already in other people’s possession.

Mr. McGarry did not see the City going back and trying to go after artifacts that someone already has.

Mr. Heady noted that there have been artifacts already taken from this site and he did not want them to pass a Resolution that puts into question the ownership of those artifacts. He doesn’t want to be in a position that they start chasing people that already have the artifacts.

Mr. Vitunac added that this Resolution does not relinquish any claims that the City might have. He asked Mr. Heady if that was what he wanted it to do.

Mr. Heady explained that if they are going to adopt a Resolution that states that anything found on this property, is the property of the City of Vero Beach, as if it begins starting this date forward. He would not have a problem with that.

Mr. Vitunac reported that this Resolution states that if the artifact is found on City property, that it is City property. It does not relinquish claims to things found before the Resolution was adopted.

Mr. White thought that there were other laws that would supersede this Resolution as far as putting claims on artifacts already found.

Mr. Daige agreed with the way that the Resolution was written and that they should move forward on it.

Mr. Heady made a motion to amend the Resolution to have this be from this date forward. The motion died for lack of a second.

Mr. White explained that the Resolution would become effective the date that they approve it, which would be today if it is approved.

Mr. McGarry added that this Resolution just reaffirms what the property law already is.

Mr. Abell made a motion to approve the Resolution. Mr. Daige seconded the motion and it passed 4-1 with Mr. Daige voting yes, Mr. Heady no, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

**C) Resolution for Assistance under the Florida Inland Navigation District Waterways Assistance Program.**

Mayor Sawnick read the Resolution by title only.

Mr. Tim Grabenbauer, Marina Director, reported that a Florida Inland Navigation District Waterways Assistance Program application will ask for \$563,990.00 in pre-agreement costs on the purchase of the property. The requested amount is from the original request of \$1.15 million dollars, minus what they have already been awarded. He said that this is the last year to request on this multi-year project.

Mayor Sawnick asked him where is the money coming from.

Mr. Grabenbauer said that the money comes from the Waterways Assistance Program.

Mr. Abell made a motion to approve the Resolution. Mr. White seconded the motion.

Mr. Heady asked Mr. Grabenbauer that if they didn't approve this Resolution, how would this impact the purchase.

Mr. Grabenbauer explained that they would thank the Florida Inland Navigation District for their prior assistance and then move on. He reiterated that if Council doesn't approve this item that this would be the end of the project.

The motion passed 4-1 with Mr. Daige voting yes, Mr. Heady no, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

**D) A Resolution authorizing the City of Vero Beach, Florida, to enter into a Joint Participation Agreement with the State of Florida, Department of Transportation to Rehabilitate Sections of Runway 11R/29L and Taxiway C Rehabilitation (FDOT #428512-1-94-01).**

Mr. Eric Menger, Airport Director, explained that last year staff noticed a section of the main runway and its associated taxiway at the Airport had distress areas from block cracking and surface depressions to simple lane joint separation and pavement oxidation. As a result of the late nature of this discovery, funding has not yet been approved in the Airport's FY2009-2010 capital budget. Their consulting Engineer, URS Corporation, has estimated a budget of \$700,000 to complete this runway and taxiway rehabilitation project. He said that staff has pursued FAA and FDOT funding to offset the cost. The project is considered a high priority for FAA and for FDOT due to the critical nature of this runway and taxiway. FDOT has offered \$144,000 to help fund a portion of the cost. At this time, FAA has not offered a grant, but he anticipates the proposed project will be funded 95% by the FAA, 2.5% by the FDOT, and 2.5% by the Airport. He said that no General Fund dollars are proposed for the project. He requested approval of the Resolution and acceptance of the Joint Participation Agreement; as well as a capital budget amendment to the Airport's FY2009-2010 of \$700,000.

Mr. Daige asked if the Engineering Firm that he is using, URS Corporation, is a local company.

Mr. Menger explained that URS is a worldwide company.

Mr. Daige wondered if the resurfacing work would be done by a local company within the Treasure Coast area.

Mr. Menger said that usually all of the work is done from people within the area.

Mr. Heady wanted to make it clear that his understanding was that most projects that happen at the Airport are funded by Airport grants or by the Federal Government and that no money comes out of ad valorem taxes.

Mr. Menger reassured him that was correct.

Mr. Abell made a motion to approve the Resolution. Mr. White seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

At this time, Council moved item 9B-1) up on the agenda.

**1. Request from Korean War Veterans Association, to place on Veterans Memorial Island a Bronze Plaque – Dr. Daniel Stanley to speak on the matter**

Dr. Daniel Stanley was at today's meeting representing the Korean War Veterans Association. He said that the Korean War Veterans Association of Indian River County have a bronze plaque honoring those who served in the conflict that they wish to place on Veterans Memorial Island Sanctuary. They have been given approval by the Veterans Memorial Island Sanctuary Committee to place the plaque in the back of Veterans Memorial Island Sanctuary. He respectfully requested permission from the Council to move forward.

Mayor Sawnick felt that it would be a great addition to Veterans Memorial Island Sanctuary.

Mr. White commended Dr. Stanley on the process that he went through and supported the request one-hundred percent.

Mr. Heady wondered if there was some way that they could seal these plaques to help prevent erosion that exists over there. Dr. Stanley said that was not his expertise, but they could look into it.

Mr. Daige thanked all the Veterans in this community for their service.

Mr. White made a motion to approve the request. Mr. Abell seconded the motion and it passed unanimously.

**2. David Gregg, John Little request**

Mr. Gregg referred to the last meeting where he and John Little spoke and they both have agreed to go to FP&L and negotiate the outlines of the contract for FP&L to purchase the City utilities. They would be doing that free of charge. He said neither himself nor Mr. Little live in the City, but they are very fond of the services that this City provides to its customers and residents. He asked Council to please vote on the proposal.

Mr. Gabbard said one of the questions that he has is will this be acceptable to FP&L. He said that he was supposed to receive a phone call this morning from FP&L and he has asked them this very question. He talked to the local representative from FP&L yesterday and she was going to go to a meeting this morning and she was going to ask her supervisors if something like this would be acceptable. He thought that Council could make a much better decision after they heard what she had to say.

Mr. Gregg did not think that what was just said by Mr. Gabbard makes any difference. He said that if he and Mr. Little are asked by the Council to negotiate with FP&L and they don't want to negotiate then the matter is mute.

Mr. Heady commented that at the last meeting after Mr. Gregg and Mr. Little made their proposal, he made a motion that they accept their proposal as long as there was an understanding that there was no exclusivity in anything that they were going to do. They were not asking to negotiate a contract. They were just going to bring some parameters back to Council for them to consider. He made the motion and nothing ever happened with the motion. He said that they have two gentlemen who have expertise and have volunteered to do this work if they give them the approval to do it.

Mr. Heady made a motion to listen to any proposal that they (Mr. Gregg and Mr. Little) can bring back to them. Mayor Sawnick seconded the motion.

Mr. Gregg made it clear that the motion is to appoint himself and John Little as the City's representatives.

Mayor Sawnick withdrew his second to the motion.

Mr. Gregg thought that there was a good possibility that an arrangement may be made that would lower the electric cost substantially. He said that if they want them to do it just vote yes and if they don't want them to do it just vote no.

Mr. Heady restated his motion, which was that the two gentlemen would have the ability to go to FP&L if they had the City's approval/endorsement and bring back a package for Council to consider. Mayor Sawnick seconded the motion.

Mr. White stated that he would feel better if there was some representation from the City of Vero Beach. He said that could be a staff member or someone that they would appoint to be with Mr. Little and Mr. Gregg. He commented that Mr. Little has been out of the electric business for a long time and at one time he even worked for FP&L, which may be some conflict. He reiterated that it was important they have someone from the City either involved with this or they could send their own people up there to talk to FP&L. He then asked about liability of having both of these men do this.

Mr. Vitunac said that if Mr. Gregg and Mr. Little were official representatives then there would be some cost and liability issues. He noted that there is a Utility Commission meeting next Tuesday where they will find out if FP&L has any interest at all in the City's utilities. He thought that they might be premature in talking about this today.

Mr. Gregg stated that Mr. Little and himself will not take on a project of this size if any member of the City is involved.

Mr. White called the question.

Mr. Abell brought up the Utilities Commission meeting scheduled for March 9<sup>th</sup> and commented that FP&L is one of the power providers that have been invited to the meeting. He did not think that it was appropriate having these two gentlemen talk to FP&L prior to that meeting. He suggested that since Mr. Gregg did not want anyone involved with the City that Mr. Nason be considered for the process.

Mayor Sawnick noted that Mr. Gregg left the meeting. He knew that both gentlemen have a vast knowledge of the electric business and he felt that their help could be very important to the future of where the City goes from here. He agreed to wait until Tuesday to see what FP&L has to say. At this point he was not ready to vote on having Mr. Gregg and Mr. Little going to FP&L on their behalf.

Mayor Sawnick rescinded his second to the motion.

Mr. Daige made a motion to table this discussion until their next meeting (after the Utilities Commission meeting has occurred). He was told that Mr. Gregg pulled his offer to do this.

Council took a ten minute break at 11:28 a.m.

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

- A) An Ordinance of the City of Vero Beach, Florida, amending Section 58-78 of the Vero Beach Municipal Firefighters Retirement Trust; providing for expanded Investment Authority as permitted by law; providing for codification; providing for severability; providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mr. Tom Nason, Chairman of the Fire Pension Board, was at tonight's meeting to answer any questions that Council might have on this Ordinance. He said that this Ordinance is necessary because of the new rules that have been imposed by the State. Attached to the Ordinance is a copy of the Firefighters Pension Plan Investment Policy Statement.

Mr. Heady asked Mr. Nason if he could tell them what the gain or loss in this fund has been over the last three years.

Mr. Nason stated that the loss last year was significant and well over \$100,000 and the loss this year was about \$6,700.

Mr. Heady made it clear that when these funds lose money that doesn't diminish pensions from people entitled to them, it only diminishes funds that they can draw these pensions from. He referred to page 2 of the Ordinance, paragraph (2) where the wording was stricken out that says "Subject to the 50 percent equity securities investment limit set forth in subsection (b)(1) of this section, the aggregate at cost value of investments in

securities of foreign companies shall not exceed ten percent of the fund's total asset value.”

Mr. Nason explained that this is being taken out at the request of the State.

Mr. Heady was opposed to having taxpayer's money being invested in foreign companies. He did not want to see this line stricken out of the Ordinance.

Mr. Abell referred to the Policy Statement that Mr. Nason provided where it goes over the different allocations.

Mr. White made a motion to approve the Resolution on first reading and set the public hearing for March 16, 2010. Mr. Abell seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

## **6. CITY CLERK'S MATTERS**

None

## **7. CITY MANAGER'S MATTERS**

### **A) Award of Bid No. 100-10/JV – Lift Station and Sewer Improvements at Ocean Towers**

Mr. Rob Bolton, Water & Sewer Director, reported that representatives from Ocean Towers of Vero Beach have requested that the City replace their existing failing lift station with a new lift station meeting the specifications of the City. The affected property owners for this project are Ocean Towers of Vero Beach, Inc., Ocean Towers II of Vero Beach, Inc., and the Cardinal Drive Townhouses. A poll was conducted of the owners resulting in a 71.25% favorable vote. The project was bid on January 5, 2010 and bids were opened on January 28, 2010. They are recommending that the contract go with the lowest bidder who is Tim Rose Contracting of Vero Beach. They bid below the original construction estimate. This firm has performed work for the City in the past and has always done a good job. He would recommend approval of the bid from Timothy Rose Contracting for the amount of \$121,956.00.

Mr. Heady commented that he looked down at the list of contractors and he is happy to set that the contract they want to award this project to is from Vero Beach. He also was happy to see that the cost of this was being borne by the homeowners and property owners.

Mr. Daige was also pleased that the job was going to a local contractor. He knew that the company was a local company and had worked for the City in the past.

Mr. Abell made a motion to approve the Award of Bid for the lift station and sewer improvements at Ocean Towers to Timothy Rose Contracting, in the amount of \$121,956.00. Mr. White seconded the motion and it passed unanimously.

**B) Tree Trimming Annual Contract Renewal**

Mr. Randall McCamish, Director Electric T&D, asked that the tree trimming annual contract with Asplundh Tree Experts Company be renewed for one more year. Their contract contains a clause allowing for two additional one year renewal terms. This would be the second renewal term. Asplundh has agreed to extend the existing contract for the final year with no price increase.

Mr. White asked if they approved this for one year would the City be going out to bid next year. He noted that there were a lot of different tree services in the area and he would like to see local people used.

Mr. Daige asked Mr. McCamish if he put this proposal out to bid to find out if Asplundh's bid is in keeping with the market. He said if there is no harm in it then he would like them to put this out to bid. He asked if they had to renew this today.

Mr. Vitunac said that they did not. He noted that the contract was up at the end of this month, so there may be a small gap.

Mr. John O'Brien, Purchasing Manager, explained that typically what they do if they come at the end of a contract and need more time, they ask the existing contractor to provide services at the existing price. He clarified that this contract was based on their crews. The crews have pricing for their trucks and for their supervisor, so it is a contract based on an hourly wage. The prices they are offering the City right now are prices from 2006. He did not have a problem going out to bid. He said that this company may offer them the same or a lower rate, which they are allowed to do. He said that if Council was to reject this bid tonight then he would ask this contractor to remain on a month to month agreement.

Mr. Daige made a motion that he was in agreement to go with the contract on a month to month basis as just explained by Mr. O'Brien and have this put out to bid. Mr. White seconded the motion.

Mr. Heady asked if this puts the City at risk by not accepting this.

Mr. O'Brien answered yes. He said that they are subject to the market.

Mr. Gabbard commented that they have a good working relationship with this company. He was a little concerned with hurricane season right around the corner and that the time is now to have all of the trees trimmed back and the necessary work completed.

Mr. Heady asked Mr. O'Brien what were his feelings as far as pricing goes. Does he think that this company has stayed the same in price, gone up, or gone down.

Mr. O'Brien thought it was fair to say people were aggressive in their pricing. He does know that Asplundh is one of the largest companies that provides this service.

Mayor Sawnick suggested tabling this until the next meeting giving Mr. O'Brien a chance to come up with some numbers. Mr. O'Brien could do some research and find out the prices that other cities their size are paying for tree trimming.

Mr. Daige withdrew his motion. Mr. White withdrew his second.

Mr. Daige made a new motion to table this item until their next meeting. Mayor Sawnick seconded the motion and it passed 5-0.

**C) Change Order No. 2 to Work Order No. 1371-1 between Wilbur Smith Associates and the City of Vero Beach (RFQ 340-06/CSS – Rehab Runway 11L-29R)**

Mr. Menger reported that the City entered into a Professional Services Master Agreement with Wilbur Smith Associates for professional engineering services relating to Airport capital improvement projects. At this time, all FDOT funding for rehabilitation of the entire runway and taxiway system is in place and the City Council has accepted \$2.4 million dollars in FDOT grants to complete the project. This Change Order Number 2 authorizes Wilbur Smith to furnish construction phase services in order to begin the work. The total fee to Wilbur Smith for the project would be \$327,085. He recommends approval of the agreement. He thought that was a very reasonable cost and briefly went over what this will include.

Mr. Abell made a motion to approve Change Order No. 2 to Work Order 1371-1, for the Rehab of Runway 11L-29R, with Wilbur Smith Associates, in the amount of \$118,765.00. Mr. White seconded the motion and it passed unanimously.

**D) Work Order #1372-7 between URS Corporation and the City of Vero Beach; Runway 11R/29L and Taxiway C Rehabilitation (FDOT #-1-94-01)**

Mr. Menger showed on the doc cam where this runway is located. He explained that this project is a result of staff discovering significant deterioration of sections of pavement on the main runway and taxiway that need immediate repair. URS Corporation's proposed fee for the design work is based on actual cost not to exceed \$63,157.00. An amendment to the Airport's capital budget will be needed to proceed with this work. Once the project is designed and bid, a construction contract will be brought before Council for approval.

Mr. White made a motion to approve Work Order #1372-7. Mr. Abell seconded the motion.

Mr. White asked if they could place any restriction on flights on Sunday mornings.

Mr. Menger reminded him that there is a voluntary agreement that touch and goes are not to begin until 12:00 noon on Sunday.

Mr. White was referring to Flight Safety and teaching. He said that there are a lot of churches in the area and there seems to be one plane after another taking off on Sunday mornings. He just wanted to see if there were any restrictions that they could impose to at least have the planes wait until after church on Sundays before they took off.

Mr. Menger said all they have is the voluntary agreement for touch and goes. He said that they can't close the Airport on Sundays. However, he could talk to Flight Safety, but by Federal Law they cannot mandate anything.

Mr. Daige mentioned that if it is Flight Training Schools they are talking about then the schools are a business and operate under City guidelines and ordinances. In their paperwork that the school signed it does state that they cannot have any adverse effect on citizenry. The City of Vero Beach has every right to enforce that and it is their responsibility to look after their citizenry. He instructed Mr. Menger to speak with the school and if they don't get a response then they will have to do something about it.

The motion passed unanimously.

**E) Proposed Lease Termination Agreements requested by Bridgeton Real Fund III, LP: Airport Parcels 17 and 19**

Mr. Menger commented that he has received a request from Bridgeton Real Fund to terminate their lease agreement that they currently have for Airport Parcels 17 and 19. He said that Bridgeton are good tenants and have always paid their rent on time. He said that this is not the only parcels that they lease at the Airport and they will continue leasing those other parcels. This particular parcel is vacant and was never developed. Staff negotiated this agreement with both parties given the fact that there will be a loss of revenue to the City. What they have asked for is one year of advanced rent and to forfeit their security deposit. This comes to a total of \$113,000. He said that Bridgeton would need to pay the Airport these funds within five days of Council approving the termination agreement. They would also need to pay the taxes for 2009, as well as 2010, to the Indian River County Tax Collector. Also, there will need to be an environmental Phase 1 Audit done on the parcel so the City can be assured that when Bridgeton leaves that the parcel is clean. With these things done, he would recommend that Council approve the termination agreement.

Mr. White explained that Mr. Malek, owner of Bridgton Real Fund, is his landlord for his business. He knows that Mr. Malek has built the new buildings located on Aviation Drive. He feels that this seems a little stiff for him to have to pay to get out of this agreement. He wondered if Mr. Malek could be given some relief on this one year rent.

Mr. Menger said that he also is very sensitive to the needs of the business owners. He said that looking back, prior Councils' have approved charging an advancement of two years rent. He doesn't think that they will be able to lease this property even within a year. This is a kind of situation that they don't want to hurt Mr. Malek, but they also don't want to hurt the revenue stream at the Airport either.

Mr. White realized that business is business. However, knowing the amount of buildings that Mr. Malek owns in this area and the tenants in these buildings by hurting that entity and all of sudden they can't make their rent payments it might hurt the City.

Mr. White asked Mr. Malek if he was agreeable with all of the terms that have been put forward.

Mr. John Malek answered his question by saying that it puts a strain on his business. They did not want to give this property up, but it doesn't look very bright for them. It was negotiated this way with the Airport Authority. He knew that there was talk yesterday about taxes being an issue. As far as the five days in order to pay this fee he was not privy to that and will have to do due diligence in making sure that the Airport receives their check.

Mr. White felt that it would behoove the City to allow a little stretch in order for Mr. Malek to have to pay this.

Mr. Daige referred to the agreement and said that by signing this paperwork the entity has agreed to the terms. He was told that was correct. He asked if this agreement would hold up legally if it was to go to court.

Mr. Vitunac said all they need to do is accept it as a contract, but they can always make changes to the contract if they feel they are necessary.

Mr. Daige agreed that this was a lot of money for a local business to have to come up with in five days. He suggested stretching the payments out. He suggested having three payments made over a certain amount of time.

Mr. Malek said that they could probably do this. He said that the City has been very cooperative and he wanted to keep a good relationship with the City.

Mr. Malek asked if by terminating this agreement, does it eliminate him from leasing property in the future.

Mr. Menger answered no.

Mr. Malek acknowledged that he signed this paperwork and did not read it fully. If they have agreed to it then he does not want to go against it and they are willing to step up to the plate.

Mr. White told Mr. Malek that they were trying to be helpful. They would never hold it against him if he decided to come back.

Mr. Heady commented that they pay the Airport Director to negotiate the best deal for the City Airport and he has done that. And now what they are proposing doing is undoing what Mr. Menger has done to see if they can make a better deal for the business owner. He is always in favor of business owners, but this discussion seems a little ridiculous. He made a motion to approve the termination agreement as written. Mayor Sawnick seconded the motion.

Mr. Malek stated that by having the ability to make the three payments would help him and if they have the ability to make the payments sooner then they will.

Mr. Daige amended the motion to spread the payments out over three payments within a 90 day period. Mayor White seconded the amendment. Mr. Malek was in favor of doing this. The motion passed 4-1 with Mr. Heady voting no.

Mr. Menger said that he would take the agreement and have it revised.

Mr. White made a motion to approve the contract as amended. Mr. Abell seconded the motion and it passed 4-1 with Mr. Heady voting no.

**F) Discussion regarding the Electric Utility – John Lee**

Mr. John Lee, Acting Electric Director, went over the process of the separate distinct bills that they analyze and pay.

Mr. White wanted to know why they were still getting bills on FMPA letterhead.

Mr. Lee explained that the Stanton contracts are with FMPA.

Mr. White thought that the City owned Stanton.

Mr. Lee explained that the City doesn't own anything. They buy capacity from those units on a fixed price through contract. That capacity was bought with bonds from the FMPA. They certify that they will take that power 365 days a year when it is available at a price.

Mr. Lee continued by saying that even though January was a very cold month and high usage of electricity was used these bills were lower than what they would have been with FMPA. He reminded Council that they were already going to lower the bulk rate power cost by \$2.50 and they can lower it by another \$2.00 in April. By that time they will have a second round of these consolidated bills to look at and they probably will be looking at another change probably in July.

Mr. Heady quickly added the numbers and felt that their bills should be less than what they are. He asked Mr. Lee if what he said earlier was that they don't own anything. He asked with the bonds they are paying off, how they can not have any ownership rights.

Mr. Lee reiterated that they own the right to buy the capacity. If they relinquish that then it goes back to FMPA and the members in the All Requirements Project can accept those capacities.

Mr. Heady brought up the rebate that they were receiving from FMPA on some gas charges. He also thought that there was a refund from the oil in the tanks.

Mr. Lee explained that they bought the oil that was still in the tanks from FMPA. The way it works is that they take that cost and put that oil back into inventory.

Mayor Sawnick suggested to Mr. Heady that he meet one on one with Mr. Lee if he has more questions on this.

Mr. Heady said no sir that he wanted to have this discussion right now.

Mr. Lee suggested to Mr. Heady if he would put his concerns in writing in the form of a question that he would be happy to send it to FMPA for their interpretation.

Mr. Heady stated that his understanding when Sue Hersey was at one of their meetings, in regards to the ownership rights of capacity, that there was a concern with FMPA versus Orlando because they could transfer or sell and get some value if it went to a municipality. This is the first time he was hearing that there is no asset value at all.

Mr. Lee again explained that they have purchased the capacity every single day from these units and pay an appropriate amount of money for the capacity. They own the rights to this capacity as long as they continue to pay.

Mr. Heady referred to the first bill with OUC and asked if there was any breakdown.

Mr. Lee said that there was and he would make sure that Mr. Heady receives a copy of the breakdown.

Mr. Heady referred to the last page of the document, NERC compliance, when he looks back at some of the old documents from FMPA, he thought that this was something that was included as part of their rate.

Mr. Lee said Mr. Heady was correct. He included this in their backup so that Council could see what a small amount the bill was. He told Council that he would bring the bill to this meeting and in the future if he needs to bring it before Council then he will.

Mr. Heady continued by saying that the FP&L bill for the transmission of \$280,000. He asked if this was a 1/12<sup>th</sup> component for the yearly charge of transmission for their lines.

Mr. Lee answered no. He said that FP&L has what they call a transmission tariff that applies to everyone in the State of Florida including the City. He explained that in high usage times they will pay more money because they are transporting more power.

Mr. Heady was looking at the FMPA charge per kilowatt and asked how that number compares to OUC. Mr. Lee said that he would get Mr. Heady a copy of the spread sheet that breaks this out.

Mr. Daige asked Mr. Lee to explain what NERC and FERC stands for.

Mr. Lee replied National Energy Regulation Commission and Federal Energy Regulation Commission. He explained that the City has a responsibility to make sure that they do comply with these different agencies and everything has been documented properly.

Mayor Sawnick stated that Mr. Lee's door is always open if they need to talk to him.

#### **G) Discussion regarding the County Commission Meeting of 2/16/2010**

Mr. Gabbard made a few comments regarding his attendance at the County Commission meeting on February 16, 2010. He provided Council with a copy of the verbatim minutes when he spoke and when Mr. Heady spoke at the County Commission meeting. He said that on February 16<sup>th</sup> he was watching the County Commission meeting at City Hall. Mr. Heady had just taken the podium to speak about the electric utilities indicating to the County Commission that he was going to give them an update about what had been happening. Over the next forty minutes, he heard comments that were made by Mr. Heady that were stunning. Mr. Heady told the County Commissioners that he had been denied access to the working copy of the Orlando Utility contract. He further stated that to this day he has not seen the contract. Mr. Gabbard said these comments were inconsistent with the facts. He said that the City Clerk did show Mr. Heady this original work copy and also made him a copy of the contract and put it in his mail slot. He then went to the County Commission meeting and asked to address the Commission. He said his comments as well as Mr. Heady's comments are in the verbatim transcript that he has provided to them. At the conclusion of the meeting he returned to his office and Mr. Heady sent him a memo asking for a list of the inaccurate statements that he made at the County Commission meeting. He received this document around 4:00 p.m. in the afternoon and was unable to respond to it because their City Council meeting was scheduled to meet that night at 6:00 p.m. On February 17<sup>th</sup> he forwarded a memo to Mr. Heady explaining why he did not respond to his request of the previous evening. Later that day he was in the Clerk's office when Mr. Heady came into her office and handed him a second memo dated February 17<sup>th</sup>. In this memo, Mr. Heady demanded a written response stating "You can refuse if you wish, but I think your refusal is at your own peril." He believes that Mr. Heady committed a Charter violation by demanding that he comply with this order or face retribution.

Mayor Sawnick reminded Council that they are discussing items and not debating them. He said that they all need to work together. He said even if he didn't like Mr. Gabbard he knows that he would need to work with him because there is a lot of work in this City that needs to be done.

Mr. Gabbard agreed that there is a lot of work that needs to be done.

Mr. Heady brought up that the City Manager is not the only one who has publically stated his concerns. The Mayor said that he (Mr. Heady) was troubled by what he had to say at the County Commission meeting. He asked the Mayor at a previous meeting what troubled him and the Mayor chose not to explain what he said that troubled him. He felt that he was entitled to an answer as to what troubled the Mayor or what stunned the City Manager. With respect to him issuing Mr. Gabbard orders, he read parts of the letter that referred to that (please see attached). He said that the City Manager did not read the next sentence of the letter, which he read. Mr. Gabbard stated that he spoke for forty minutes in front of the County Commission, which he did not time. Mr. Gabbard said that he has been shown the working copy of the OUC contract and there is no question that he has seen the contract and the original was shown to him by the City Clerk. Mr. Heady wanted to know where the original contract that was shown to Council on April 8, 2008, was between April 7, 2008 and February 2, 2010. He asked the City Manager if the document was in Massachusetts.

Mrs. Vock stated when she received the OUC contract that was shown to the City Council on April 7, 2008.

Mr. Heady asked the City Manager if he ever insured that this document from April 7, 2008 was maintained as part of the public records in City Hall. He asked the City Manager if that was an accurate statement. Mr. Vitunac started to answer the question. Mr. Heady said that he was asking the City Manager this question.

Mayor Sawnick tried to stop Mr. Heady from speaking and had to use his gavel. He told Mr. Heady that if he ask a Councilmember to stop talking for a second please do so that they can address the issue.

Mr. Heady stated that he wished he would address the issue in the manner in which the question is asked.

Mr. Vitunac reviewed the history of the OUC contract. He said that if they go back to the April 7<sup>th</sup> meeting date, all the members of the City Council went up to the City Manager's office to review the contract. The last best draft of the City Council review was emailed to R.B. Sloan on that Monday morning and printed at City Hall and that was the working copy. He said that this matter is unusual because it is subject to the confidentiality law and they were told by Sue Hersey that if they divulge the bidding information of any of the participants that they would not have an electric provider by January 1, 2010. The unredacted full copy was emailed to the City and then shown to each of the City Councilmembers one on one, which took the entire day. By end of that

day, a redacted copy was provided and Mrs. Hersey and Mr. Sloan went to Staples and made copies of the contract and the redacted copy was hand delivered by the Police Department to the Utility Commission members and City Council. Mrs. Hersey kept the unredacted copy and the redacted version was put on the internet so everyone could see it.

Mayor Sawnick felt that Council needed to solve these problems among themselves and not before the County Commission.

Mr. Heady stated that so he was clear the testimony from the City Attorney was that the original document on the desk that was discussed with the Councilmembers is the copy that was given to the City Clerk. The City Attorney has said that is the copy with Ms. Hersey's notes. He said that if he looks at this document he will be able to find Ms. Hersey's notes that were made throughout the day.

Mr. Vitunac told Mr. Heady that he will need to ask the Clerk that question. He went on to say that the original contact is in the file and Mr. Heady was given a copy of it.

Mrs. Vock stated that after the February 2, 2010 meeting, she approached Mrs. Hersey and asked her for the original OUC document that the Council reviewed on April 7, 2008.

Mr. Heady stated that the redacted copy that was distributed that evening by a uniform Police Officer to the City Council and Utilities Commission is the one that the City Council reviewed. He said that when you print the redacted copy and you print a transparency you will see that it lines up and underneath the black marks are the numbers that have been redacted. He asked if that was an accurate statement.

Mr. Vitunac explained that this was a working document. It came in the morning and went out after 5:00 p.m. and having five sitting Councilmembers review it. If there were any suggestions or changes made by the City Councilmembers at that meeting then it would have affected the spacing of the working document. He said that the document could have changed during the day as comments were made.

Mr. Heady said that if there were changes made then there were notes to the working copy that would reflect those changes.

Mr. Gabbard told Mr. Heady that he would have to ask Mrs. Hersey where she made her notes and changes to the document. He said that all he has seen regarding his overlay are things he waives around in different venues in making all of these wild claims. He told Mr. Heady that if he has some information then he wishes that he would share it with him and maybe they can shed some light on this issue and it won't trouble Mr. Heady so much.

Mr. Heady said that he tries to get the City Manager to shed some light on things. Mr. Gabbard said that is not true. He told Mr. Heady that he has only been to his office one time since his election.

Mayor Sawnick told Mr. Gabbard and Mr. Heady that what they were discussing at this point were the comments made at the County Commission meeting of February 16, 2010. He said right now they are moving off of the topic. He told Mr. Heady that he needs to work with their Charter Officers and determine if he has the correct documents or not. He was very concerned about being productive and not being productive.

Mr. Daige noted that he was at the County Commission meeting when Mr. Heady spoke. He said if you go back and look at the recording he said that it shows that Mr. Heady was at that meeting speaking on his own, giving his input and his opinion. In the past if an individual Councilmember was going to go out and represent the entire Council they would vote on it. What he is hearing here today is that all the information that is on file has been given to Mr. Heady. He has asked each individual Charter Officer if Mr. Heady has received all of his information and they have all said yes. He said that right now they are under contract with OUC, they can go back and review the contract, but as a Council they need to continue working to bring their electric costs down. They need to be cautious how they proceed because he is not going to put their City taxpayers in jeopardy. There are a number of ratepayers who are hurting and they need to bring their rates down. He has talked to the City Manager numerous times since he got back on Council. Again, he reiterated that he has been told that Mr. Heady has all of the information that the City has.

Mr. Heady brought up the comments that Mr. Gabbard made at the County Commission meeting and one of the things that he said was that he was "stunned" by the remarks that he made. He asked Mr. Gabbard to identify with specificity what remarks he made that "stunned" him.

Mr. Gabbard stated that he (Mr. Heady) had not received or seen the original work copy that was shown to him on February 2, 2010.

Mr. Heady commented that there is a difference in being shown a copy and being shown the original document. He thought that it was pretty clear that what he has asked for over and over again was to see the original document. What he is being told today is that original document has been returned from Massachusetts and is in the custody of the City Clerk. Mr. Gabbard interrupted Mr. Heady and asked Mrs. Vock if Mr. Heady was shown the original OUC contract. Mrs. Vock answered yes. Mr. Heady asked Mrs. Vock if she knows whether or not the document that she showed him is the original document that was on the table on April 7, 2008. Mrs. Vock stated that she was told by Mrs. Hersey that the document that she gave her was the original document that Council looked at on April 7, 2008. Mr. Heady said to Mrs. Vock then she has been told that was the original document. Mrs. Vock answered yes. Mr. White spoke that this issue has been beat to death. He said that it was a waste of time and money. He said staff has been sitting in this meeting all morning and have not even gone to lunch. Mr. Heady told Mr. White that as the former Mayor he signed a contract and was not told that there were any changes. He said after listening to all three Charter Officers that it was clear that the original document was not maintained at City Hall and there is no degree of certainty that

the document that was returned is the original document. However, now he has heard from the testimony that there are notes. He said when they take a break he would like the City Clerk to retrieve the document, and with some witnesses he wanted to review the document to see if there were some notes on it. The last time he looked at the document there were not any notes.

At this time, Council took a lunch break and the meeting reconvened at 3:30 p.m.

## **8. CITY ATTORNEY'S MATTERS**

None

## **9. CITY COUNCIL MATTERS**

### **A. Old Business**

None

### **B. New Business**

- 1. Request from Korean War Veterans Association, to place on Veterans Memorial Island a Bronze Plaque – Dr. Daniel Stanley to speak on the matter**

This item was heard earlier in the meeting.

## **10. INDIVIDUAL COUNCILMEMBERS' MATTERS**

### **A. Mayor Kevin Sawnick's Matters**

#### **1. Correspondence**

#### **2. Committee Reports**

Mayor Sawnick reported that he attended the Economic Summit in Sebastian, the APPA Rally in Washington DC, he met with all five County Commissioners asking to keep lines of communication open, he attended a Mainstreet Vero Beach Task Force meeting, and the Mayor's beach clean-up. He mentioned that on March 12<sup>th</sup> there will be a Coffee with the Council and on March 13<sup>th</sup> they will be holding the Grand Opening of Humiston Park.

Mayor Sawnick went over his comments that he held from making earlier in the meeting. He said as far as utilities go they are looking at adjusting the transfers. The letter that was sent to FP&L and signed by the City Manager was a letter that he approved and he was happy with what was in the letter. He reminded Council that the census was coming up soon and it was important that people participate in the census. He said that they will

be sent out in the end of March. He expressed to Council that they all need to work together and they all will have different opinions.

### **3. Comments**

#### **B. Vice Mayor Sabin Abell's Matters**

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

Mr. Abell said that he would speak after Mr. Daige's matters (which was what took place at the meeting). He reported that he attended the Economic Summit, Coffee with the Council and the Treasure Coast Regional Planning Council.

Mr. Abell wished that Mr. Heran could provide backup material before their meetings so that Council has a chance to review the figures that he is going over.

Mr. Abell brought up the OUC contract and was still baffled by what Mr. Heady was looking for. He stated that he has had a copy of the redacted contract, which he has had since the Utilities Commission meeting that was held on April 8, 2008. He had soon after that the signed contract, which was signed on April 21, 2008 by the Mayor and OUC. He said that these things have been in his possession, since April 8<sup>th</sup> or sometime shortly after April 21<sup>st</sup>. Then they have this bible of contract revisions which was given to them and he studied two different revisions for four hours. As far as he is concerned he hopes they can put this issue to bed. The explanation is quite obvious here. He thinks that he is right when he says that there is one word that has been changed or added and that is entitlements. There is nothing more serious than that that has been changed. He then thanked staff and the Charter Officers for their dedication to the City of Vero Beach.

### **3. Comments**

#### **A) Time of Future City Council Meetings**

Mr. Abell commented that based on the time that this meeting has taken today; he would like to see them have all day time meetings. He said that there are a lot of people who do not drive at night and cannot make night meetings. He made a motion to change their meetings to day time meetings. Mr. White seconded the motion.

Mayor Sawnick understood Mr. Abell's point and felt that healthy discussion is very good. However, he still agrees with having one meeting in the morning and one meeting at night. He needs to do a better job of moving their meetings along. He has talked to different cities and it seems that most cities hold their meetings at night.

Mr. White felt that their Council meetings have turned into marathon meetings. He said if they are going to have night meetings then they need to have a time limit for people talking under Public Comments and how many items Council can put on their agenda. He said right now staff are having to take furlough days and then asking them to be here

from 6:00 at night until 12:00 midnight is not fair. He commented that there were only four residents of the City who spoke this morning. Also, the Chambers were packed this morning, which means people come out during the day time. He said everyone else meets during the day, including the County, so why do they have to have night meetings.

Mr. Daige had no problems with having night meetings, but agreed that they needed to have a time limit for public comments. He wished to have one morning meeting and one night meeting. He said Council should use discretion on what items that they put on the agenda when there are night meetings.

Mr. Heady brought up Mr. Daige's request to move their next meeting to 7:00 p.m., rather than 6:00 p.m.

Mr. Daige explained that he is going to be out of town for a business meeting on that day and was not sure that he could make it back in time if the Council meeting started at 6:00 p.m.

Mr. Heady agreed with Mr. White that the Council Chambers was packed for today's meeting, but it was also packed at the last meeting that they held and that was at night. He said that if they are holding marathon meetings then it is a demonstration that a lot of people are paying attention to what they are doing. He said that the average person speaking under Public Comments speaks for less than three minutes. If they speak any longer than that then they start losing people's attention. He felt that they needed to accommodate the public, which means a day time meeting and a night time meeting.

Mr. Abell agreed that if they were going to have night meetings that they needed to think about limiting the time someone can speak under Public Comments and about restricting the number of items that a Councilmember can add on to the agenda under their matters.

The motion to hold the meetings in the daytime at 9:30 a.m., failed 3-2 with Mr. Daige voting no, Mr. Heady no, Mr. White yes, Mr. Abell yes, and Mayor Sawnick no.

The Council agreed to hold their next meeting (March 16, 2010) at 7:00 p.m.

- C. Councilmember Tom White's Matters**
  - 1. Correspondence**
  - 2. Committee Reports**

Mr. White reported that he attended Coffee with the Council and the St. Francis Boardwalk Dedication Ceremony.

Mr. White commented that he knows that there have been a lot of things said and comments made. He brought up the FMPA contract and said that they knew that they were in a bad contract several years ago and worked hard to get out of it. He wanted citizens to think about the FP&L rate increase that they probably will eventually get approval for. He said the transfers that are made from the electric system to the General

Fund go back to the community. He mentioned that Riverside Theater and The Center for the Arts Museum's grounds are both maintained by the City and no one is making any money by doing that. He said that they lease the property for \$1.00 a year. The City is succeeding in getting their utility rates lower. If you have a complaint and you are on FP&L utilities there really is not a venue to make a complaint. You couldn't come up to the podium and say I am having a problem, like the citizens of this community can do. There was some talk that there is going to be a campaign for the sale of the Power Plant and they want to blame four people for the rise of rates in electricity. He said this all started before he ever got on Council. Since he has been on Council he has never voted for a rate increase. He suggested having meetings where people can come in and ask questions and be given some history on how they got into this situation and how they are getting out of it. He was here during the hurricanes and he knows how fast that the City customers got their utilities turned back on. He said that it was in record time. He feels that the City is a wonderful place to live and raise children. The citizens need to have faith in their officials because they are doing the right thing. The City Manager and the City Attorney have spent hours on the OUC contract to get the best deal that they could get and have done a great job to get the best for this community. They hired outside consultants because they have the knowledge and expertise. He didn't think that there was anyone on this Council who has an Electrical Engineering degree. He knows the people that they hired did a good job and the best that they could for this community. He signed the OUC contract as Mayor at the time. The week before he signed the contract, Council reviewed it and he said that he didn't know any changes were made between that week and the week that he signed the document. He was not aware of that, however he is being told now that the changes were made prior to him signing the contract. He signed the contract with Council's approval and as far as he is concerned whether the contract was redacted or not redacted, they saw the unredacted version. He mentioned that under the penalty clause for FP&L in the contract it was unlimited. He said that the \$50 million dollar penalty clause that they have in the OUC contract works both ways. He felt that if they keep messing around with this contract and someone was to say that this contract is no good, he does not want to have to pay this \$50 million dollar penalty clause that is in the contract. He said that they need to be very careful where they step. He said that they had the best expertise in the business hired to make sure that the contract was done right. He firmly believes that they did the right thing and made the right choice. His vote will always be to stay competitive with their next door neighbor.

### **3. Comments**

#### **A) Discuss Finance Commission Members**

Mr. White delayed this item until the next meeting.

#### **D. Councilmember Brian Heady's Matters**

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

Mr. Heady stated that he was hired by the citizens of this community and his obligation is to the citizens of this community. He has been told on numerous occasions that they all need to get along and they all need to work together. He said here is what he needs to do and that is to work for the people that pay his salary and that is the citizens of the community. It is his job to protect them and not to protect anyone sitting on this dais. The former Mayor said that he made the right choice. The problem is he did not know the choice that he was making because the contract he voted on was not the contract that he signed. He said that there were over 400 pages of correspondence that indicated changes to the contract and he was never told about these changes. Mr. Heady said that what he has done since he got on this Council is try to get to the bottom of things. He said that when the story continuously changes that raises a lot of red flags for him. He just wants the truth to be told. He referred to the FP&L contract with unlimited penalties and said that the reality is that the penalties involved in the exit of a contract involve stranded costs and that is not unlimited. He agreed that Council did approve the OUC contract, but the problem is that there were numerous changes to the contract. He tried to ascertain exactly what changes were made. So what he did was ask for the original document that was on the desk on April 7, 2008. The City Manager and City Attorney have told him that he has been shown that document. He asked the City Clerk, who is the custodian of records, if she could or would certify that the document that she has been given is in fact the original that was on the table on April 7, 2008.

Mrs. Vock stated that she would certify the original signed document (signed April 21, 2008), but she didn't feel that she could certify the document that Council looked at on April 7, 2008 as being the original document.

Mr. Heady stated that was the problem, that this document was out of the hands of the City's records custodian. The contract that was returned by their consultant states that this was the original document. However, he said that a casual observer could go in and look at those documents and come to a very clear conclusion that it is not the original document that was on the desk on April 7, 2008.

Mr. Heady mentioned that earlier Mr. White said that Council had no control over the price increase from FMPA. He said one of the reasons that he has tried to find the original document is because he wanted to make sure that any price increase in the future is consistent with what was agreed to in April 2008. He said that the signed contract that the City Clerk states that she can certify was dated April 21, 2008. He said that you can take that document and compare it to the redacted version and you will see that there were numerous changes made. When the consultant was present for one of their meetings the Mayor did not allow Council to ask questions and made a motion to recess the meeting and the consultant left and he was not given the opportunity to ask her these questions that he has.

Mr. Heady mentioned that there is correspondence that has been going back and forth between the City Manager and himself. Mr. Gabbard has made a charge that he violated the City Charter that prohibits individual Councilmembers from issuing orders to Charter Officers. He realizes that Mr. Gabbard is a Charter Officer and he did tell him that he

wanted him to identify with specificity anything that he said at the County Commission meeting that was incorrect. He asked Mr. Gabbard to put this in writing and Mr. Gabbard has refused to do it. He told Mr. Gabbard that he could refuse to do this, but if his refusal is at his own peril and his credibility is at risk with him and the elected commissioners. He stands by this and said that Mr. Gabbard's credibility is at risk. He feels that it is a problem to have a City Manager whose credibility is questionable. The City Manager stated earlier in this meeting that he was given the original document, but the City Clerk has said that she would not certify that document as being the original document. The City Manager and City Clerk have both said that the original document was not maintained at City Hall. Instead it was maintained in Boston at a consultant's office who has a vested interest in this. In Florida they have Sunshine Laws and Public Records Laws and clearly there is a problem when the City Manager and City Attorney fail to secure the contract at City Hall. There is no way that the citizens of this community can ever be assured that the document that was presented is the document that was on the table. He said based on the figures that were in the original document they were told that their rates would be the same or lower than FP&L. He said if you have recently paid an electric bill in the City then you know that is not true either. The continued refusal by the City Manager and the continued comments from the City Attorney that the document filed is the original, leads to more questions. They are questions as to whether or not at this meeting they are being truthful or alternatively whether or not they do not have a clue about the document. These things clearly present problems for him as a City Councilmember. He felt that it was important that they be able to trust the City Attorney and City Manager. He said at this point that is not a position that he is in.

**A) David Gregg, John Little request**

This item was heard earlier in the meeting.

**B) Internet connection for meetings (cost v guarantees)**

Mr. Heady recalled that this item was on their last agenda and at that time he asked that Council approve the connection not to exceed \$2,500 to get their Council meetings live on line. His motion was declined. However, in the meantime the City Clerk has been working on this and he understands that this work can be done for less than \$2,500. He made a motion to allow the City Clerk to proceed with getting the live video stream over the internet. Mr. Daige seconded the motion for discussion.

Mrs. Vock explained that she has worked with Nancy Reichardt, Information Systems Manager, in coming up with three different cost estimates for live video streaming. She encouraged the Council before making a decision today to view each of the sites because the quality is different for each option.

Mr. Heady withdrew his motion and said that they would bring this up again at their next meeting after Council has had a chance to review the different websites.

Mrs. Nancy Reichardt, Information Systems Manager, explained the different options and the costs associated with each of the options.

Mr. Daige requested that the Clerk provide a letter with what option would be her recommendation.

**C) Written Answers from City Manager**

Mr. Heady asked Mr. Gabbard to tell the public if he had any intentions to put in writing those things that “stunned” him by his (Mr. Heady’s) comments at the County Commission meeting and put in writing those things that were not true.

Mr. Gabbard stated that those items are in writing and he will pass out copies of the transcript of the statements that he made, as well as comments Mr. Heady made at that Commission meeting. He also suggested getting a copy of the DVD from the Clerk’s office and watching it.

Mr. Heady understood that there is a transcript prepared by the County staff and there is a DVD. He said that is not his question. He repeated his question.

Mr. Gabbard stated that he answered those questions earlier in the meeting.

Mr. Heady then asked Mr. Gabbard if he would or would not put in writing for the public record those things that he said “stunned” him.

Mr. Gabbard said that they are in writing. He referred to the transcript. Mr. Heady said that was a transcript from the County Commission. Mr. Gabbard said that is all he intends to do. He invited Mr. Heady to come up to his office and discuss these things. Mr. Heady said that he would not do that because he does not have private business to conduct with him, only public business.

Mr. Daige asked Mr. Heady what he would like this Council to do. He said that they need the vote of the Council to give direction to the City Manager.

Mr. Heady did not think that he needed the vote of the Council. He said that they were all allowed to ask the City Manager for backup documentation on things that relate to City business. He also does not think that he needs a vote of the Council to ask that the City Manager make the public records request clear.

Mr. Gabbard stated that he would have the City Clerk transcribe the comments that he made earlier, exactly with specificity as to what his objections and concerns were to his comments and he will sign it as what he said.

**D) OUC Contract**

Mr. Heady stated that the OUC Contract in question is a serious issue and continues to be a serious issue. He said that next Tuesday at the Utilities Commission meeting they will get some answers from some other power providers that may or may not have more of an impact on what he intends to do with respect to the OUC contract.

**E) City Manager resignation / terminations**

Mr. Heady told Mr. Gabbard that what he wanted from him was a memo identifying with specificity those things that he (Mr. Heady) said to the County Commission that he was “stunned” by his remarks. He wanted to know with specificity what remarks did he make that stunned him. The second thing that he wanted from Mr. Gabbard in writing is a document identifying exactly the words that he (Mr. Heady) used at the County Commission meeting that he states are inaccurate.

Mr. Heady wanted to know for the public record with the City Manager’s current contract is there anything in that contract that would result in the taxpayers of Vero Beach being on the hook for some huge payment to the City Manager in the event of his resignation or termination. Mr. Heady was told that the City Manager does not have a contract, nor does the City Attorney.

Mr. Vitunac told Mr. Heady that if he reads the Charter he will find that there are no contracts.

Mr. Heady said so both the City Manager and the City Attorney agree that they have no rights that extend pass their employment here.

Mr. Daige noted that in the Charter it outlines the step process that if a Charter Officer is terminated that they are entitled to a hearing. He asked Mr. Vitunac to read this to the Council.

Mr. Vitunac explained that if Council wishes to fire a Charter Officer that they must pass a Resolution to that effect telling why. The Charter Officer has a certain time period in which they can request a public hearing be held and the Resolution to fire them is adopted or it is not.

**F) City Attorney resignation / termination**

This item was heard along with item 10-E) under Mr. Heady’s matters.

**G) Malfeasance, misfeasance, nonfeasance**

Mr. Heady mentioned that at their last meeting he talked about the three words, malfeasance, misfeasance and nonfeasance. He said that nonfeasance is the failure to carry out an obligation. He said that it was pretty clear that the Public Records Law requires that public records be kept for the public to review. If there are documents that have some confidentiality for some term it does not eliminate the requirement for the

custodian of record to have that document here at City Hall. He felt that this was a \$2 million dollar document that should have been safeguarded by the City and clearly the City Attorney and City Manager took no steps to safeguard the original contract, which they allowed to be removed from City Hall and taken to Massachusetts for a period of almost two years. He said that the document did not resurface until he demanded to see it.

Mr. Heady brought up malfeasance and read the definition. He said that it is the commission of an act that is illegal or wrongful. He thinks the destruction of a public document that is required to be kept is an illegal act to knowingly destroy the document, which would be malfeasance. He referred to the document that Council observed on April 7, 2008 and said that he was not sure where the document was because no one has told him that yet. However, he felt that if this matter was taken to Court, he doesn't think that there is a jury that would agree considering the evidence available.

Mr. Heady brought up misfeasance and gave the definition. He said that it is an improper execution of an act that is in itself unlawful. He said clearly it is unlawful to keep the public record at a consultant's home when it belongs here in City Hall. He understands the reality of the support that he has on this Council. He also understands the legal implications of those three words and he also understands what the clear evidence on the table points to.

#### **H) Financial Reports / Solari / Electric**

Mr. Heady reported that he has asked Mr. Lee to give him the breakdown of the electric bills, which he is sure that he will receive.

Mr. Heady noted that when Bob Solari was on the City Council, he developed a breakdown in the financial reports that Council received every month. His method of breakdown was an easy comprehensive way for Councilmembers to review the finances of the City. He asked, if at all possible, that they return to that kind of breakdown, and if this was not possible then he wanted to know the reason why.

Mayor Sawnick mentioned that he has talked to staff about looking into providing that document again.

Mr. Gabbard said that could be done. He will send them a copy of what they did in the past and if Council agrees then they will reinstitute doing this again.

#### **I0 Discussion of Towing Companies within the City limits**

Mr. Heady met with City staff recently regarding the towing contract and to change the method that they are currently using. There is an opportunity for the City to have just one vendor or just one towing company to handle all the towing required within the City limits. The towing company has offered to pay the City for this privilege. At the last meeting Mr. Daige announced that he wanted to see that the money goes to a particular

place. The problem with this proposal is that the money would have to come from the City residents who had to pay the towing fee. He said that you can be the highest contributor and therefore win the bid, but the only way that those dollars will be recouped is by charging the people who have a vehicle that has to be towed. He said what they really will be doing is increasing cost to their citizens and he was not in favor of that at all. The way they handle this now is by a rotation basis and this allows several different vendors to be used. The vendor that was chosen by the City Manager and Chief of Police is an out of town vendor. He said if they were going to give it to someone then consideration should be given to a company that resides within the City limits.

Mr. Gabbard explained the reason that this was brought forward by the Chief of Police was because there was an opportunity to recover some costs and add revenue for the City. It would also provide that the rates would not be affected. He said for the record he was not involved in the bidding process. The reason that he met one on one with each of the Councilmembers was because he was sure that doing this would generate some phone calls. They tried doing this same thing about twelve or thirteen years ago and decided against it. Staff has decided that if they continue going forward with this they would have a meeting with all of the wrecker companies to get their thoughts and input. He expressed that this would require an Ordinance change, but they are not even close to bringing it before Council. He reiterated that if they decided to proceed with this, they will have a public meeting with the wrecker companies.

Mr. Heady felt that before staff spends any more time on this he would rather see them get direction from the City Council that it is something that they would want him to do. He said that he does not want them to do anything at all. He is happy to be able to spread the work out to different towing companies. Again, he reiterated that he would like to see that no work be done on this until staff is given clear direction from the City Council.

Mr. Gabbard did not have any problems with that.

Mr. White suggested keeping the rotation basis with the reliable wrecker services that they have and maybe have a license fee initiated.

Mr. Gabbard stated that is what they are doing now. He said having one wrecker service might be something that would have more appeal when times get better.

Mr. Daige brought up that this is an item placed on the agenda by Mr. Heady. He said nothing has been decided and they don't have any backup material on this so what he was hearing is that they were going to put this program on hold for now.

Mr. Heady stated that this is on hold until the City Manager is given direction from the City Council to move forward.

**J) Red Light Cameras**

Mr. Heady met with staff about the red light cameras and said that he is opposed to red light cameras. There recently was a Court decision that was not favorable and in addition to that the studies that he has seen from different States, as well as Florida, have all indicated that this is not a safety issue at all and that it is clearly a revenue issue that has backfired. He said the studies show that the severity of accidents has increased. He said that if there really is a problem that is serious in regards to red lights that the answer is to put a uniform officer in a patrol car to solve the problem. Then if that person continues to run red lights then they won't have a driver's license. He felt that they needed to stop moving forward on this until these Court cases have been settled. On this issue, same thing with the towing issue, these things were not initiated by the City Council. He asked where this whole red light issue came from.

Mr. Gabbard stated it came from the Chief of Police. He brought it before the City Council who approved it and entered into a contract. He agreed that there are still some concerns with the red light cameras. He reported a new case that recently came out of Broward County that may or may not have an impact on what they want to do. In Tallahassee there is talk about where this issue is going. He agreed that it didn't make a lot of sense to move forward if the Legislature changes things. The vendor that they entered into the contract with has been very cooperative and understands their situation. He said that if they move towards implementing this then he will advise Council.

Mr. Heady noted that when he looked at some of the intersections where they want to install the cameras he noticed that they were on County roads. He questioned why they were putting the cameras on County roads.

Mr. David Curry, Deputy Police Chief, explained that there are four streets being recommended where the red light cameras are to be installed and they are all at City intersections.

Mr. Coment added that the company will install the equipment on private property. He said the way they do it is they make agreements with the private property owners.

Mr. Daige acknowledged that he also met with staff concerning this matter. He said that the meeting was taped and the minutes are on file in the Clerk's office. He questioned what it would take if Council wishes to get out of this contract that they have entered into.

Mr. Vitunac suggested putting this on hold until after the Legislation has made a decision. If they choose to get out of the contract on their own then there will be monetary damages based on the amount of money that this company has spent on getting ready to put these cameras in.

Deputy Chief Curry added that the contract was signed in July 2009 and the company has no problem with waiting until after the Legislation has made their decision. He explained that if they were to tell the company that they could start installing the cameras today it would still take about three months before the project got started.

Mr. Coment added to what Mr. Vitunac just said about monetary damages. He said that this is a five year contract and the company could claim as damages what time and money was spent to install the equipment. They could also look at what would their profits be over the five year span.

Deputy Chief Curry wanted it understood that the company knows that they are totally on hold and they don't have a problem with that.

Mr. Heady felt that Mr. Daige has a good point. He asked staff if they could get the answer to his question.

Mr. Vitunac asked if Council wanted staff to do that now or wait until after the Legislation has made their decision.

Mayor Sawnick felt that staff should be given direction to find out where they are now (how much money has been spent up to this date).

Mr. Daige asked that since they are on hold, did staff notify this company in writing so that there will not be any more charges made.

Deputy Chief Curry said that they were not notified in writing, however they are willing to wait until the Legislative session is over.

Mr. Heady made a motion to go on hold. Mr. Daige seconded the motion.

Mr. White commented on how many times that this has gone before the Legislation and has failed.

Deputy Chief Curry reported that from what he has heard it sounds like this probably will pass this session.

Mr. White asked if we say we put it on hold officially, does that mean you would send them an official letter.

Mr. Vitunac explained that in the phone conversations that he had with the company he has asked them if they mind going on hold and he said verbally they have said that they don't have a problem.

Mayor Sawnick expressed that he was one hundred percent in favor of red light cameras. He asked Council if they wanted to put them (the company) officially on hold or just let it continue to be unofficially on hold. He restated the motion.

The motion failed 3-2 with Mr. Daige voting yes, Mr. Heady yes, Mr. White no, Mr. Abell no, and Mayor Sawnick no.

Mr. Heady brought up a letter that was from Mr. Daige, but was on the City Attorney's stationary. He said that when he first looked at the letter he thought that it was a memo from the City Attorney. He felt things would be clearer if the correct stationary was used in the future.

**Councilmember Ken Daige's Matters**

- 4. Correspondence**
- 5. Committee Reports**

Mr. Daige reported on the meetings, seminars and events that he attended (please see attached).

**6. Comments**

**A) Economic Goals Summit**

Mr. Daige felt that an Economic Goals meeting needed to be held as soon as possible. He wanted to bring one thing to Council's attention and that was the City of Sebastian's website. He said that they have an Economic Development Department. He also said that when they hold this meeting they will discuss what they can do to help their citizens. The meeting will be like holding one of their vision workshops. They will have an easel and a chalk board available to write down the different ideas that they come up with.

Mr. Abell expressed that there is a Community Leader Summit being sponsored by the Chamber of Commerce and will be held this Friday morning at the Richardson Center. He said that he spoke with the Director of the Chamber of Commerce this morning and she told him that no one, except for himself had responded from this Council that they would be attending the meeting.

**B) City Council Workshop**

Mr. Daige referred to the memo that they all received from Mr. White concerning having a workshop to discuss utility matters. He agreed with having this meeting, but would like to see it held as a Special Call meeting, but not have any votes taken at the meeting. He hoped that this meeting could occur as soon as possible.

Mayor Sawnick asked the Councilmembers to give any information that they would like to have discussed at this meeting to the Clerk so that she can compile all of the information together. He said one of the main things for the meeting will be discussion of the water, sewer, and electric rates.

Mr. White commented that after he sent out the memo, he talked to the City Manager and asked him to work on what staff could do to lower the utility rates for City customers.

Mr. Daige asked what kind of time frame they were looking at to hold this meeting.

Mr. Gabbard reported that they are looking at having their quarterly budget meeting on March 29<sup>th</sup> and then they could hold this Special Call meeting a couple of weeks after that meeting is held.

**C) Discussion of County 6% Franchise Fee and City 10% Utility Tax**

Mr. Daige stated that he wanted to suggest several topics to discuss which might lower the cost of their electric service for both in-City and out-City customers. He said first, the City Council might consider formally asking that Indian River County reduce or eliminate its 6% franchise fee on the out-City customers of their system. This would result in an immediate and significant reduction in their monthly bill. The second thing would be if the County chooses to keep its franchise fees, he would suggest that the City replace its 10% utility tax imposed on in-City customers with a 6% franchise fee identical to that charged by the County for the out-City customers. The result of this latter method would be that both in-City and out-City customers would pay exactly the same charge for the same service, making it clear that all customers of their electric system are treated the same, whether they are within the City boundaries or not. He asked Council to start thinking about these things and he does plan to bring this up again for Council to vote on. He expressed that their utility rates have to come down even more.

**D) Utility Matters**

Mr. Daige sent a memo to Mr. Lee asking him to provide copies of any wire transfers or any money being paid to OUC to provide services to the City beginning January 1, 2010. He said that this would apply to any wire transfers, wholesale bills, or any money being paid to FMPPA or any other power providers. This information was provided to Council by Mr. Lee.

**11. ADJOURNMENT**

Mayor Sawnick made a motion to adjourn today's meeting at 5:26 p.m. Mr. White seconded the motion and it passed unanimously.

/tv

**SUBJECT TO CHANGE**

**AGENDA**

**CITY MANAGER'S OFFICE**

**MARCH 2, 2010**

**Consent Agenda**

1. Regular City Council Minutes – February 16, 2010

**City Manager's Matters**

- A) Award of Bid No. 100-10/JV – Lift Station and Sewer Improvements at Ocean Towers
- B) Tree Trimming Annual Contract Renewal
- C) Change Order No. 2 to Work Order No. 1371-1 between Wilbur Smith Associates and the City of Vero Beach (RFQ 340-06/CSS – Rehab Runway 11L-29R)
- D) Work Order #1372-7 between URS Corporation and the City of Vero Beach: Runway 11R/29L and Taxiway C Rehabilitation (FDOT #-1-94-01)
- E) Proposed Lease Termination Agreements requested by Bridgeton Real Fund III, LP: Airport Parcels 17 and 19
- F) Discussion regarding the Electric Utility - John Lee
- G) Discussion regarding the County Commission Meeting of 2/16/2010



OFFICE OF THE CITY ATTORNEY

MEMORANDUM

**To:** Mayor Sawnick and City Councilmembers  
**Via:** Charles Vitunas, City Attorney  
**From:** Wayne Comen and Peggy Lyon, Assistant City Attorneys  
**Subject:** Ordinance Amending Chapter 30 of the Code regarding elections  
**Date:** February 17, 2010

Attached for your consideration is a proposed ordinance for public hearing prepared at the request of the City Clerk, amending Chapter 30 of the Code, "Elections." At the February 16, 2010 City Council meeting, the proposed ordinance was set for public hearing at the March 2, 2010 City Council meeting.

As you are aware, the local Circuit Court recently upheld Section 2.01 of the City of Vero Beach Charter, the residency requirement for election to the office of City Councilmember, terming it "clear and unambiguous and capable of only one reasonable interpretation." The proposed ordinance codifies the election procedure for administering Charter Section 2.01 by detailing the eligibility and qualifying requirements and providing a list of the forms necessary to the city election process. In addition, the proposed ordinance includes a "Notice of Candidacy and Affidavit of Candidate" that will serve to protect the public interest and the integrity of city elections.

Per City Council discussion and direction at the first hearing of the proposed ordinance, the proposed ordinance has been amended after first reading to make clearer that a potential candidate turning 18 years of age has until the end of the qualifying period, defined in the ordinance at 30-2, to meet both the age requirement and the qualified and registered elector of the city requirement. In addition, Section 30-6 ("Persons found ineligible to qualify as candidate") was amended to add the following underlined language: "A person shall not be qualified as a candidate for election if the city clerk, with the approval of the City Canvassing Board, finds that....."

ORDINANCE NO. 2010 - \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING CHAPTER 30 OF THE CODE OF THE CITY OF VERO BEACH REGARDING ELECTIONS; SPECIFYING THE ELIGIBILITY AND QUALIFICATION REQUIREMENTS FOR ELECTION TO THE OFFICE OF CITY COUNCILMEMBER; PROVIDING THE TIME AND MANNER FOR QUALIFYING FOR ELECTION; SPECIFYING THE QUALIFYING FEE AND QUALIFYING PAPERS REQUIRED; PROVIDING FOR THE FORM OF BALLOT; PROVIDING PROCEDURES WHEN A CANDIDATE IS FOUND INELIGIBLE, WITHDRAWS, IS REMOVED, OR DIES BEFORE ELECTION; PROVIDING PROCEDURES FOR AN UNCONTESTED OR VACANT OFFICE AFTER QUALIFYING ENDS; PROVIDING PROCEDURES FOR DEEMED VACANCIES IN THE OFFICE OF COUNCILMEMBER IN CERTAIN CASES; PROVIDING FOR ELECTION PRECINCTS AND VOTING BY PRECINCT; PROVIDING FOR ENFORCEMENT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, section 2.01 of the Charter of the City of Vero Beach establishes that only qualified electors of the City of Vero Beach with a minimum of one year of residency in the City as of the qualifying deadline are eligible to be members of the City Council of the City of Vero Beach; and

**WHEREAS**, section 4.03 of the Charter establishes that candidates for the office of councilmember of the City of Vero Beach shall qualify to run for election by filing a written notice of candidacy with the City Clerk and that the time and manner of such filing shall be as prescribed by ordinance; and

**WHEREAS**, Chapter 30 of the Code of the City of Vero Beach provides the election procedures required by the foregoing Charter provisions; and

**WHEREAS**, the City Council of the City of Vero Beach finds that amendment of Chapter 30 of the Code of the City of Vero Beach is necessary and appropriate to fully address candidate eligibility and qualifying requirements; and

**WHEREAS**, the City Council finds that adoption of this ordinance will serve to promote and protect the public interest and elector confidence in the city election process and protect the integrity of city elections and thereby further the health, safety, and general welfare of the citizens of the City of Vero Beach,

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

**Section 1 – Amendment of Chapter 30, ELECTIONS.**

Chapter 30, Elections, is hereby amended to read as follows:

**Chapter 30**

**ELECTIONS**

**Sec. 30-1. Qualifications of candidates for office of councilmember.**

~~A candidate for office of councilmember must be at least 18 years old and a registered elector of the city and shall qualify by filing a written notice of candidacy with the city clerk at least 60 days before the election on a prescribed form obtained from the city clerk. No notice shall be accepted by the city clerk unless it is accompanied by a filing fee of \$50.00, which shall be deposited in the general fund. All candidates who qualify shall have their names printed on the official ballot in order determined by lot conducted by the city clerk.~~

**Sec. 30-1. Purpose and intent.**

The purpose and intent of this chapter is to prescribe the time and manner of election qualifying as required by the Charter of the City of Vero Beach and thereby promote and protect the public interest and elector confidence in the city election process and protect the integrity of city elections.

### **Sec. 30-2. Definitions.**

As used in this chapter:

"Resident," "residence," and "residency" mean and refer to the establishment of a person's domicile within the city limits of the City of Vero Beach that constitutes an actual and bonafide legal abode as recognized by the person claiming residency, coupled with that person's intent to reside in and maintain the abode as his or her permanent, predominant, and principal home.

"Qualifying period" means the period of time commencing on the 75<sup>th</sup> day, and ending at 5:00 P.M. on the 60<sup>th</sup> day, before the election for which the person seeks to qualify as a candidate for election to the office of city councilmember. If the 60<sup>th</sup> day falls on a day that is a Saturday, Sunday, or city holiday, the qualifying period shall be automatically extended to the end of the next city business day.

### **Sec. 30-3. Eligibility and qualifying for office of councilmember.**

(a) *Timely filing.* Each person seeking to qualify as a candidate for election to the office of city councilmember shall file his or her qualifying papers with, and pay the qualifying fee to, the city clerk during the qualifying period. It shall be the responsibility of the person seeking to qualify to ensure that the city clerk timely receives all items as required by subsection (b) of this section by the close of the qualifying period. If all required and completed items are not received by the city clerk by the close of the qualifying period the person shall not be qualified as a candidate.

(b) *Persons eligible to qualify for office of councilmember.* A person is eligible to be a member of the city council and may qualify as a candidate for election to the office of city councilmember only if that person:

- (1) Is at least 18 years old by the end of the qualifying period;
- (2) Is a qualified and registered elector of the city as set forth in article IV of the Charter of the city;
- (3) Is a permanent and legal resident of the city;
- (4) Was continuously a permanent and legal resident of the city during the one (1) year immediately preceding the last day of the qualifying period as set forth in article II of the Charter of the city;
- (5) If elected, continuously maintains his or her status as a qualified elector and a permanent and legal resident of the city for the duration of his or her term of office as set forth in article II of the Charter of the city;

(6) Pays the qualifying fee to the city clerk as set forth in section 30-5 by a properly executed check drawn upon the candidate's campaign account or, in lieu thereof, as applicable, files a written certification as provided in section 30-5(b);

(7) Files the following qualifying papers with the city clerk before the end of the qualifying period:

a. The "Loyalty Oath" required by F.S. § 876.05, completed and signed by the candidate and duly acknowledged;

b. The "Oath of Candidate" required by F.S. § 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought; and the signature of the candidate, duly acknowledged;

c. The "Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates" required by F.S. § 106.021, completed and signed by the candidate and the campaign treasurer.

d. The statement of financial interests required by F.S. § 112.3145.

e. Proof of legal residency and status as a qualified and registered elector of the city shall be in the form of a current Florida Voter Registration Card and at least one additional item such as:

1. Florida Driver's License or Identification card;

2. Deed;

3. Residential rental/lease agreement;

4. Proof of homestead;

5. Florida vehicle registration or title;

6. Utility bills from the last two months;

7. Selective Service card; or

8. Other similar evidence as may be reasonably required by the City Clerk.

f. The notice of candidacy and affidavit of candidate in substantially the following form, subscribed under oath or affirmation by the candidate before the city clerk:

**NOTICE OF CANDIDACY  
AND AFFIDAVIT OF CANDIDATE**

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

I, \_\_\_\_\_ (name of candidate) \_\_\_\_\_, being first duly sworn,  
depose and state:

1. My name is \_\_\_\_\_.
2. I am offering myself as a candidate for election to the office of councilmember of the City of Vero Beach, Florida.
3. I am or will be at least 18 years old by the end of the qualifying period.
4. I have resided in the City of Vero Beach continuously for the one (1) year immediately preceding the last day of the qualifying period and I am a qualified and registered elector of the City of Vero Beach, Florida, presently registered to vote in precinct number \_\_\_\_\_.
5. I presently reside at the following address (must include zip code): \_\_\_\_\_  
which is my permanent, legal address, and I have resided continually at said address from the \_\_\_\_\_ day of \_\_\_\_\_ to the \_\_\_\_\_ day of \_\_\_\_\_.
6. Immediately prior to residing at the above-stated address, I have resided at the below listed addresses for the specified periods of time: (List below all addresses at which you have resided for the past one (1) year and specify the time period at each address).

Prior Addresses

For the Period


7. At the present time, I am not registered to vote in any city, county, or state other than as specified in paragraph 4, above.

8. I acknowledge that, if elected, I must continuously maintain my permanent legal residence within the City of Vero Beach and my status as a registered and qualified elector of the City for the duration of my term of office and if I fail to do so I will forfeit my office as city councilmember.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, at Vero Beach, Florida.

\_\_\_\_\_  
Print candidate name

\_\_\_\_\_  
Candidate signature

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_, who, after being duly sworn, deposes and states that he/she executed the foregoing Notice of Candidacy and Affidavit of Candidate and that the facts stated therein are true and correct.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_ by \_\_\_\_\_, who is personally known to me OR produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
CITY CLERK / NOTARY PUBLIC

Print Name:

My Commission Expires:

**Sec. 30-4. Resign-to-run.**

A person seeking to qualify for election to the office of city councilmember shall comply with the Resign-to-run provisions of F.S. § 99.012 prior to qualifying, if applicable.

**Sec. 30-5. Qualifying fee; exemption; notice and affidavit of candidate required.**

(a) *Qualifying fee.* Each person seeking to qualify for election to the office of city councilmember shall pay, by the end of qualifying, a non-refundable qualifying fee which shall consist of a city election filing fee of \$50.00 and the election assessment required by F.S. § 99.093. The city clerk shall deposit the filing fee in the general fund of the city and forward the election assessment to the Florida Department of State within 30 days after the close of qualifying. If a person's check is returned for any reason, the city clerk shall immediately notify the person and he or she shall have until the end of the qualifying period to pay the fee with a cashier's check purchased from funds of the campaign account, failing which, such person shall not be qualified as a candidate.

(b) *Exemption.* A person seeking to qualify for election who is unable to pay the filing fee or the election assessment, or both, without posing an undue burden on personal resources or on resources otherwise available to him or her shall, upon written certification of such inability given under oath to the city clerk, be exempt from paying the filing fee or election assessment, or both, as the case may be.

(c) *Notice and affidavit of candidate required before acceptance of qualifying fee.* The city clerk shall not accept a qualifying fee from any person seeking to qualify for election who fails to submit to the clerk, either prior to or simultaneously with the submission of the qualifying fee, the notice of candidacy and affidavit of candidate as required by section 30-3 of this chapter.

**Sec. 30-6. Persons found ineligible to qualify as a candidate.**

A person shall not be qualified as a candidate for election if the city clerk, with the approval of the City Canvassing Board, finds that:

- (1) The qualifying papers of a candidate show, on their face, that such person is not eligible to be a member of the city council or to otherwise qualify as a candidate for election to the office of councilmember, any oath or affirmation taken or subscribed to by such person notwithstanding;
- (2) The qualifying papers of a candidate, on their face, are not in compliance with the applicable elections laws of the state of Florida and in compliance with the applicable city charter or laws or ordinances;

- (3) The qualifying papers of any candidate, on their face, are incomplete or defective, and are incomplete or defective at the end of the qualifying period;
- (4) The city clerk has received written notification from the Indian River County Supervisor of Elections that a candidate is not a qualified and registered elector of the city of Vero Beach; or
- (5) The qualifying fee has not been paid in accordance with law or in lieu thereof a completed affidavit of hardship has not been filed.

**Sec. 30-7. Official ballot.**

(a) Form of ballot. The form of the official ballot shall be substantially the same as the form of ballots prescribed by the general election laws of the state.

(b) Inclusion of name on ballot. Only those persons who have timely qualified as a candidate shall have their names printed on the official ballot. The name of a candidate shall be printed on the ballot in the same form as the name appears on the candidate's oath and may not be changed after the close of qualifying.

(c) Order of candidate names. The order of candidate names on the ballot shall be determined by lot conducted by the city clerk after the close of qualifying.

**Sec. 30-8. Unopposed candidates; filling remaining vacancies.**

If, after the close of the qualifying period, the number of qualified candidates is equal to or fewer than the number of positions open for election, no election for such offices shall be required and such qualified candidate or candidates shall be declared elected by the city canvassing board at the time and in the manner provided for the canvassing of election returns. Any position remaining unfilled shall result in a vacancy on the city council at the first city council meeting held after the canvassing board election returns. Each such vacancy shall be filled by the remaining councilmembers as provided by the city charter by appointment of a person eligible to be a member of the city council.

**Sec. 30-9. Withdrawal, removal, or death of candidate after qualifying.**

(a) Withdrawal of candidate; time and manner. A duly qualified candidate for election to the office of city councilmember may withdraw his or her candidacy at any time prior to the election by filing with the city clerk a written and executed statement, under oath, to that effect. No duly qualified candidate who so withdraws may renew his candidacy unless the qualifying period has not expired at the time of such renewal.

(b) Incapacity after qualifying. A duly qualified candidate who suffers an illness or disability prior to the election shall remain a candidate unless adjudicated mentally incompetent by a court of competent jurisdiction prior to the election. Any such candidate who is so adjudicated shall be deemed to have withdrawn his candidacy as of the date of such adjudication.

(c) Felony conviction after qualifying. A duly qualified candidate who is convicted of a felony by a court of competent jurisdiction prior to the election shall be deemed to have withdrawn his candidacy as of the date of such conviction.

(d) Removal from ballot. The name of a candidate who has withdrawn, has been removed, or has died after qualifying and before the election shall not be printed on the ballot, or, in the event the ballots have been printed, the name shall be removed if, in the opinion of the city clerk, time permits without disrupting the administration of the election.

(e) Vote not canvassed. Any vote cast for a candidate who has withdrawn, been removed, died, or deemed to have withdrawn shall not be canvassed or certified as a valid vote.

(f) No return of qualifying fee. A candidate who withdraws, is removed, dies or is deemed to have withdrawn after having qualified and paid the qualifying fee shall not be entitled to a refund of any portion of the qualifying fee.

**Sec. 30-10. Office of councilmember deemed vacant in certain cases.**

(a) A vacancy in the office of a councilmember shall occur:

(1) Upon the death of the councilmember;

(2) Upon removal of the councilmember from office;

(3) Upon the resignation of the councilmember;

(4) Upon the succession of the councilmember to another office;

(5) Upon the councilmember's unexplained absence for 60 consecutive days;

(8) Upon the councilmember's failure to maintain the legal residence required of him or her by the city charter and this code;

(9) Upon the councilmember's failure to maintain the status of a registered and qualified elector of the city required of him or her by the city charter and this code;

(10) Upon the refusal of the person elected or appointed to accept the office;

(11) Upon the conviction of the councilmember of a felony as defined in s. 10, Art. X of the State Constitution;

(12) Upon final adjudication, in this state or in any other state, of the councilmember to be mentally incompetent; or

(13) Upon the rendition of a final judgment of a circuit court of this state declaring void the election or appointment of the councilmember to office;

(b) The vacancy shall be filled by the remaining councilmembers as provided by the city charter and this code.

**Sec. 30-2. Sec. 30-11. City election districts precincts.**

The city is divided into election ~~districts~~ precincts by the supervisor of elections for the county which are established as the official election ~~districts~~ precincts of the city for all municipal elections and which correspond to the county election ~~districts~~ precincts for the city.

**Sec. 30-3. Sec. 30-12. Qualified electors of city.**

All persons who are qualified electors of the city shall vote for councilmembers according to the election ~~district~~ precinct in which they reside. There shall be furnished to the inspectors and clerks at each election held in the city at each polling place, in the manner provided by law, a list of the names of the registered voters in the election ~~district~~, precinct and no person shall be allowed to vote in the election except in the election ~~district~~ precinct in which such person shall reside and shall be qualified as a voter.

**Sec. 30-13. Enforcement.**

The provisions of this chapter may be enforced by any appropriate method at law or in equity.

**Sec. 30-14. Conflict and severability.**

In the event any provision of this chapter conflicts with any other provision of this Code, any other ordinance or resolution of the city, or state law, the provisions of this

chapter shall apply and supersede on the subject matter of this chapter, except as may be otherwise preempted by state law. If any provision of this chapter is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this chapter, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

**Section 2 – Effective Date.**

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

\*\*\*\*\*

This ordinance was read for the first time on the \_\_\_\_ day of \_\_\_\_\_, 2010, and was advertised in the Indian River Beach Press Journal on the \_\_\_\_\_ day of \_\_\_\_\_ 2010, for a public hearing to be held on the \_\_\_\_ day of \_\_\_\_\_, 2010, at the conclusion of which hearing it was moved for adoption by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and adopted by the following vote of the City Council:

Mayor Kevin Sawnick	_____
Vice Mayor Sabin C. Abell	_____
Councilmember Thomas P. White	_____
Councilmember Brian T. Heady	_____
Councilmember Kenneth J. Daige	_____

ATTEST:

CITY OF VERO BEACH, FLORIDA

\_\_\_\_\_  
Tammy K. Vock  
City Clerk

\_\_\_\_\_  
Kevin Sawnick  
Mayor

Approved as to form and

Approved as conforming to

Page 11 of 12

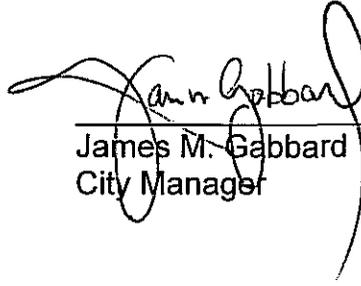
**CODING: Words stricken are deletions; words underlined are additions.**

legal sufficiency: -

municipal policy:



Charles P. Vitunac  
City Attorney



James M. Gabbard  
City Manager

Approved as to technical requirements:

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Tammy K. Vock  
City Clerk

Prepared in the  
Office of the City Attorney  
P.O. Box 1389  
Vero Beach, FL 32961-1389

RESOLUTION NO. 2010 - \_\_\_\_\_

**A JOINT RESOLUTION BY AND BETWEEN THE CITY OF FORT PIERCE, THE CITY OF PORT ST. LUCIE, THE CITY OF STUART, THE CITY OF FELLSMERE, THE CITY OF VERO BEACH, THE CITY OF SEBASTIAN, THE CITY OF OKEECHOBEE, THE TOWN OF SEWALL'S POINT, THE TOWN OF INDIAN RIVER SHORES, THE TOWN OF JUPITER ISLAND, THE TOWN OF ST. LUCIE VILLAGE, FLORIDA MUNICIPAL CORPORATIONS; INDIAN RIVER COUNTY, MARTIN COUNTY, OKEECHOBEE COUNTY AND ST. LUCIE COUNTY, POLITICAL SUBDIVISIONS OF THE STATE OF FLORIDA; THE SCHOOL BOARD OF INDIAN RIVER COUNTY, THE SCHOOL BOARD OF MARTIN COUNTY, THE SCHOOL BOARD OF OKEECHOBEE COUNTY AND THE SCHOOL BOARD OF ST. LUCIE COUNTY, AMENDING RESOLUTION 03-126; AMENDING THE ARTICLES OF INCORPORATION FOR THE TREASURE COAST COUNCIL OF LOCAL GOVERNMENTS, INC.**

**WHEREAS**, the residents of the area surrounding and proximate to the Treasure Coast are served by separate governmental entitles (collectively "Governments"); and

**WHEREAS**, the Governments incorporated the Treasure Coast Council of Local Governments, inc. on May 13, 2003; and

**WHEREAS**, the Governments now desire to amend their articles of incorporation to include the School Boards of Indian River, martin, Okeechobee and St. Lucie Counties.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Indian River County, the Board of County Commissioners of Martin County, the Board of County Commissioners of St. Lucie County, and the Board of County Commissioners of Okeechobee County, the City Commission of Fort Pierce, the City Commission of Okeechobee, the City Commission of Port St. Lucie, the City Commission of Stuart, The City Council of Vero Beach, the City Council of Sebastian, the City Council of Fellsmere, the Town Council of the Town of St. Lucie Village, the Town Council of Sewall's Point, the Town Council of Indian River Shores, and the Town Council of Jupiter Island, the School Board of Indian River County, the School Board of Martin County, the School Board of Okeechobee County, and the School Board of St. Lucie County, that;

**SECTION I. Amendment.**

The Articles of Incorporation be amended as set forth in Exhibit "A," which is attached hereto.

**SECTION II. Effective Date.**

This Resolution shall become effective upon passage by each of the parties herein provided.

This Resolution was heard on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, at which time it was moved for adoption by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and adopted by the following vote:

<b>Mayor Kevin Sawnick</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Vice Mayor Sabin C. Abell</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Councilmember Thomas P. White</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Councilmember Brian T. Heady</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Councilmember Kenneth J. Daige</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**ATTEST:**

**CITY OF VERO BEACH, FLORIDA:**

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

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**

**[NOTARY SEAL]**

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

Approved as to form and legal sufficiency:



Charles P. Vitunac  
City Attorney

Approved as conforming to municipal  
policy:

---

James M. Gabbard  
City Manager

**BYLAWS OF THE  
TREASURE COAST COUNCIL OF  
LOCAL GOVERNMENTS, INC.**

**PREAMBLE**

The Treasure Coast Council of Local Governments, Inc. (Hereinafter "TCCLG") is created by Resolution as a not for profit corporation established by agreement among its members pursuant to Section 163.02, Florida Statutes. The TCCLG is organized to establish a forum for discussion and study of area problems of mutual interest and concern to the cities, towns and counties of the Treasure Coast area.

**ARTICLE I. PURPOSES**

The purposes of the TCCLG shall be to study such area governmental problems as it deems appropriate, including but not limited to matters affecting health, safety, welfare, education, economic conditions, and area development; promote cooperative arrangements and coordinate action among its members; and make recommendations for review and action to the members and other public agencies that perform local functions and services within the area.

**ARTICLE II. FUNCTIONS**

The functions of the TCCLG shall include:

- A. **Review of Governmental Proposals.** The review of proposals for the Treasure Coast area as defined herein or regional governmental units or agencies within the said area and the making of appropriate policy or action recommendations.
- B. **Study of Treasure Coast Area Problems.** The identification and study of problems, functions, and services in the Treasure Coast area as defined herein, and the making of appropriate policy or action recommendations.
- C. **Study of Problems Affecting Treasure Coast Area.** The identification and study of any action arising outside of the Treasure Coast area which, in the opinion of the TCCLG, will have a substantial effect on the Treasure Coast area, and the making of appropriate policy or action recommendations in regard to such outside action.
- D. **Other Functions.** Such other municipal or regional functions as the Council shall deem appropriate for the Treasure Coast Council of Local Governments.

**ARTICLE III. DEFINITIONS**

- A. **Treasure Coast Area.** For the purposes of the TCCLG, the Treasure Coast area shall be

Board of County Commissioners of Okeechobee County  
Board of County Commissioners of St. Lucie County  
City of Fellsmere  
City of Fort Pierce  
City of Okeechobee  
City of Port St. Lucie  
City of Sebastian  
City of Stuart  
City of Vero Beach  
The School District of Indian River County  
Martin County School District  
Okeechobee County Schools  
St. Lucie County School Board  
Town of Indian River Shores  
Town of Jupiter Island  
Town of Sewall's Point

3. **Powers.** The Council shall have the authority and power to perform those tasks and make those decisions necessary for the daily operation of the TCCLG.
  4. **Membership Criteria.** Membership for the Council and the General Assembly shall be contingent upon the following:
    - a. Approval by the governing body of the applicant of a resolution accepting the terms and conditions of the Articles of Incorporation and these By-laws.
    - b. Payment of the membership fee, as established from time to time by the Council.
    - c. Membership with the Florida Association of Counties, the Florida League of Cities, except for the Indian River, Martin, Okeechobee, or St. Lucie County School Board.
    - d. Approval by the Council of the TCCLG
    - e. By accepting membership, the applicant agrees to pay any and all annual or special assessments which the TCCLG may establish from time to time.
  5. **Reinstatement.** Any local governing body which withdraws from membership may have its membership reinstated by paying all assessments owed by it as established by these By-laws.
- B. Meetings.**
1. **Regular Meetings.** Regular meetings of the Council shall be held as determined

government will be asked to provide a replacement.

6. **Sunshine Law and Public Records.** The TCCLG shall comply at all times with the Florida Government in the Sunshine Law and Public Records Act, as required by law.

#### **ARTICLE V. VOTING**

- A. **Voting Rights.** The overall intent of the TCCLG is that issues of concern should be fully discussed by the respective representatives. For actual votes, each local government, through their official representative, shall have one vote; and such representative shall have the obligation of keeping their jurisdiction informed of decisions of the TCCLG where appropriate.
- B. **Quorum.** The presence of a majority of the Council shall be necessary at any general or special meeting to constitute a quorum to transact business.
- C. **Voting Majority.** Action on any proposal other than an amendment to the Articles of Incorporation shall require an affirmative vote of a majority of those present. Any proposals thus passed shall be considered as action of the TCCLG and not its individual members. Any amendment to the Articles of Incorporation shall require action by the member local governments, as set forth in the Articles of Incorporation.

#### **ARTICLE VI. OFFICERS, ELECTIONS, AND VACANCIES**

- A. **TCCLG Officers.** The officers of the TCCLG shall consist of a Chairman, a Vice Chairman, a Secretary, and a Treasurer. All elected officers must be the official representative of their respective local government and on the Council. There shall be a recording secretary selected by the Chairman and need not be a member of the TCCLG.
- B. **Elections.** Election of Chairman, Vice Chairman, Secretary and Treasurer shall be held at the annual meeting of the General Assembly. The Chairman shall appoint a nominating committee for the election of the Chairman, Vice Chairman, Secretary and Treasurer. Nominations may also be made from the floor. This election may be by voice vote.
- C. **Duties.**
  1. The Chairman shall:
    - a. Preside at all meetings of the TCCLG;
    - b. Be a member of all committees;
    - c. Perform all other duties usually pertaining to the office of Chairman;
    - d. Have the custody of all records including minutes and annual reports;
    - e. Report to the General Assembly summarizing matters completed during

- E. **Vacancy.** If a vacancy should occur due to the expiration of term of one of the officers in his own jurisdiction or for any other reason, an acting officer can be appointed by the TCCLG to serve until the next annual meeting.

## **ARTICLE VII. FINANCE**

- A. **Fiscal Year.** The fiscal year of the TCCLG shall commence on October 1.
- B. **Budget.** The Treasurer, after consulting with the Chairman, shall submit the annual budget on or before May. This budget shall be adopted by the TCCLG on or before August.
- C. **Funding.** In addition to other funding provided herein or as may be deemed appropriate by the Council from time to time, the TCCLG may accept funds, grants, gifts, and services from the State of Florida, from any other governmental unit, whether participating in the TCCLG or not, from the government of the United States, and from private civic sources.
- D. **Yearly Membership Assessment.** Each year, upon adoption of the annual budget, TCCLG shall fix membership assessments for all members of the TCCLG in amounts sufficient to provide the funds required by the budget. The membership assessment shall not exceed \$500.00 per year. Any member local government whose annual assessment has not been paid by the time of the annual meeting shall not be entitled to vote at such meeting. The yearly membership assessment shall be equal for each member.
- E. **Special Assessment.** The Council may approve, by a majority vote pursuant to Article V.C., a special assessment. Following approval by the Council, such assessment must be separately considered by each member government and each member government must authorize the payment of the special assessment.
- F. **Bank Account.** The TCCLG shall establish a bank account for the deposit of assessments and the payment of expenses. Payment of expenses shall be made by the Chairman or Treasurer.

## **ARTICLE VIII. ANNUAL REPORT**

- A. **Council Reports.** Each Council member shall have the duty to regularly report Council matters to the representative's member government.
- B. **TCCLG Report.** The Council shall make an annual public report of its activities to each of the member local governments and shall have its accounts audited annually.

## **ARTICLE IX. COMMITTEES**

**DEPARTMENTAL CORRESPONDENCE**

TO: James M. Gabbard, City Manager  
FROM: Timothy J. McGarry, AICP  
Director of Planning and Development  
DATE: February 22, 2010  
SUBJECT: **Resolution on "Vero Man Site"**

**Request**

On behalf of the Historic Preservation Commission, the Planning and Development Department requests that the attached resolution be placed for consideration on the agenda of the City Council's March 2<sup>nd</sup> regularly scheduled meeting.

**Background**

The recent newspaper articles and public attention regarding the discovery of the fossilized bone of a Pleistocene animal etched with drawing of a mastodon have increased interest in protection of the "Vero Man Site" located along the Main Relief Canal. In response, the Historic Preservation Commission (HPC) invited Ms. Arlene Fletcher and Ms. Ruth Stanbridge to a couple of its recent meetings to discuss what needs to done to protect and preserve the site.

As a result of these discussions before the HPC and contacts with other interested members of community, the City Manager authorized the installation of "No Trespassing" signs on that portion of airport property on the Main Relief Canal where fossilized human and animal bones have been previously discovered or likely to be discovered. Increased police surveillance of the property has also been implemented to prevent unauthorized entry to the property. The City will shortly install a security fence around the site (location shown on the exhibit to the attached resolution).

As Chapter 76 of the Vero Beach Code charges the HPC with the duties and responsibilities for preservation of historic sites, including archaeological resources, the efforts for preserving the site and its excavation need to be properly managed and coordinated by the City through the HPC. Therefore, the HPC requested that the staff draft a resolution for its consideration that would be recommended for adoption by the City Council. [A recent resolution by the Indian River County Commission supporting efforts of the City to protect the site is attached.]

The attached resolution, which was approved by the HPC on February 10, 2010, spells out the duties and responsibilities of the HPC for preserving the "Vero Man" archaeological site and coordinating excavation activities. The resolution recognizes that the work required to obtain designation of the site on the National Register of Historic Places and possible future excavation

and documentation of the site will be funded through volunteer efforts of various not-for-profit and educational groups and public grants and private donations to underwrite the work of qualified professionals.

The resolution further directs staff to prepare an application for designation of the site (shown on Exhibit A) as an "archaeological zone." This designation will require that a "certificate to dig" application approved by the HPC be issued prior to any new construction, filling, digging, ground alteration or tree removal within the designated area. As additional survey work is undertaken, the area encompassing the "archaeological zone" for the "Vero Man Site" may be further extended.

The resolution concludes with a reaffirmation of the City's legal position, that unless otherwise provided for by law, "any fossils, remains, or other artifacts recovered from the site shall be the property of the City of Vero Beach, except as authorized by the City Council."

### **Recommendation**

The Planning and Development staff recommends approval of the resolution by the City Council.

TJM/tf  
Attachments

**RESOLUTION NO. 2010-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, EXPRESSING ITS COMMITMENT TO PROTECT AND PRESERVE THE "VERO MAN" ARCHAEOLOGICAL SITE; DIRECTING THE HISTORIC PRESERVATION COMMISSION TO COORDINATE PRESERVATION EFFORTS; DIRECTING THE CITY MANAGER TO PREPARE AN APPLICATION FOR DESIGNATION OF THE "VERO MAN SITE" AS AN ARCHAEOLOGICAL ZONE PURSUANT TO CHAPTER 76 OF THE CITY CODE; AND REAFFIRMING THAT ANY FOSSILS, REMAINS, OR OTHER ARTIFACTS RECOVERED AT THE SITE ON CITY PROPERTY SHALL BE THE PROPERTY OF THE CITY OF VERO BEACH.**

**WHEREAS**, between 1913 and 1917, fossilized human bones and stone tool artifacts were discovered at a site in the City of Vero Beach along with fossils of extinct Pleistocene animals; and

**WHEREAS**, discovery of the fossilized human bones, which became known as the "Vero Man," coexisting with fossilized remains of Pleistocene animals has led some experts to conclude that human beings inhabited the area during the Pleistocene "Ice Age" period more than 13,000 years ago; and

**WHEREAS**, the "Vero Man Site" is of local, state and national significance warranting protection in the public interest; and

**WHEREAS**, the City of Vero Beach has recently taken steps to secure the "Vero Man Site," which is located on public property, against unauthorized pilfering by posting No Trespass signs, by policing the area, and by taking other measures to protect the site; and

**WHEREAS**, the protection of archaeological sites of local, state and/or national significance such as the "Vero Man Site" is consistent with the policies of the City Comprehensive Plan and historic preservation requirements of the Vero Beach Code; and

**WHEREAS**, the City Council expresses its commitment to protecting and preserving the "Vero Man Site" from unauthorized disturbance and to facilitating the future excavation and documentation of the site by qualified professionals subject to appropriate conditions applied by the City pursuant to Section 76.42 of the City of Vero Beach Code; and

**WHEREAS**, the Historic Preservation Commission, as the entity charged by the City Council for carrying out the duties and responsibilities for historic preservation under the City Code, is the appropriate City body for carrying out a comprehensive program to protect and preserve the "Vero Man Site;"

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, AS FOLLOWS:**

1. The Historic Preservation Commission is hereby directed as the City body to coordinate the protection and preservation of the "Vero Man" archaeological site in accordance with the standards and procedures of Chapter 76;
2. The Historic Preservation Commission is hereby directed to seek input from appropriate not-for-profit and educational groups in securing professional assistance and needed funding support to:
  - a. Delineate the appropriate limits of the "Vero Man" archaeological site or sites to be protected and preserved;
  - b. Prepare necessary applications and supporting materials to secure designation of the site or sites on the National Register of Historic Places;
  - c. Undertake necessary excavation and documentation of the site by qualified professionals; and
  - d. Investigate the establishment of a local repository for any fossils, remains, or other artifacts recovered from the excavation of the site.
3. The City Manager is directed to prepare an application and initiate processing of the application through the Historic Preservation Commission for designation of the "Vero Man Site," shown on Exhibit A, as an "archaeological zone," pursuant to Chapter 76 of the City of Vero Beach Code.
4. Unless otherwise provided for by law, any fossils, remains, or other artifacts recovered from the "Vero Man Site" shall be the property of the City of Vero Beach, except as authorized by the City Council.

The resolution was moved by Councilmember \_\_\_\_\_, and seconded by Councilmember \_\_\_\_\_, and adopted on the \_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.]

**Mayor Kevin Sawnick**

Yes       No

**Vice Mayor Sabin C. Abell**

Yes       No

**Councilmember Thomas P. White**

Yes       No

**Councilmember Brian Heady**

Yes       No

**Councilmember Kenneth J. Daige**

Yes       No

**ATTEST:**

**CITY OF VERO BEACH, FLORIDA**

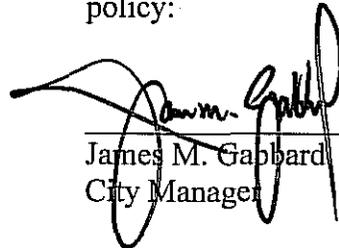
\_\_\_\_\_  
Tammy K. Vock  
City Clerk

\_\_\_\_\_  
Kevin Sawnick  
Mayor

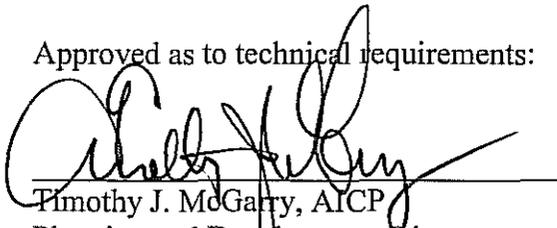
Approved as to form and legal sufficiency:

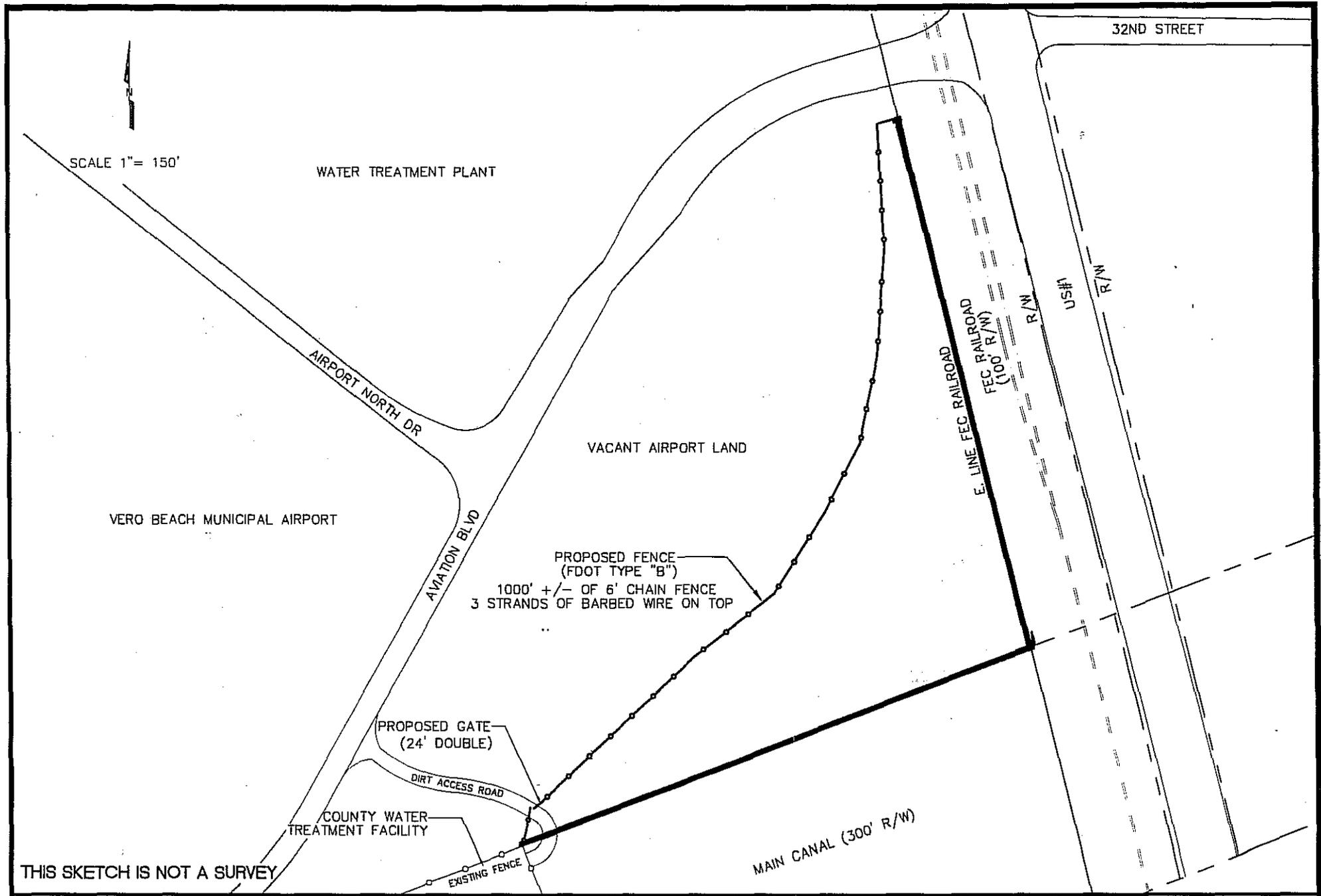
Approved as conforming to municipal policy:

  
\_\_\_\_\_  
Charles P. Vitunac  
City Attorney

  
\_\_\_\_\_  
James M. Gabbard  
City Manager

Approved as to technical requirements:

  
\_\_\_\_\_  
Timothy J. McGarry, AICP  
Planning and Development Director



CITY OF VERO BEACH  
 DEPARTMENT OF PUBLIC WORKS  
 SURVEY DIVISION

SKETCH OF  
 "ARCHAEOLOGICAL ZONE"

EXHIBIT "A"			REV. NO.	AUTHRZD. BY
CITY PROJECT NO. 20010-02			DRWN. BY	DATE
DATE 01/2010	DRWN BY DG	CHKD BY MKF	DESCRIPTION	

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA SUPPORTING EFFORTS BY THE CITY OF VERO BEACH TO PROTECT THE "VERO MAN" ARCHAEOLOGICAL SITE.**

**WHEREAS**, between 1913 and 1917, fossilized human bones and stone tool artifacts were discovered at a site in the City of Vero Beach along with fossils of extinct Pleistocene animals; and

**WHEREAS**, discovery of the fossilized human bones, which became known as the "Vero Man," coexisting with fossilized remains of Pleistocene animals has led some experts to conclude that human beings inhabited the area during the Pleistocene "Ice Age" period more than 13,000 years ago; and

**WHEREAS**, the Vero Man Site is of local, state and national significance warranting protection in the public interest; and

**WHEREAS**, the City of Vero Beach has recently taken steps to secure the Vero Man Site, which is located on public property, against unauthorized pilfering by posting No Trespass signs, by policing the area, and by taking other measures to protect the site; and

**WHEREAS**, the protection of archaeological sites of local, state and/or national significance such as the Vero Man Site is supported by Indian River County and is consistent with County objectives and policies;

**NOW, THEREFORE**, be it resolved by the Board of County Commissioners of Indian River County Florida that the Board hereby expresses its support of the efforts of the City of Vero Beach to protect the Vero Man Site from unauthorized disturbance and to allow future excavation and documentation of the site by qualified professionals subject to appropriate conditions as may be established by the City.

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

**RESOLUTION NO. 2010-010**

Chairman Peter D. O'Bryan	<u>Aye</u>
Vice Chairman Bob Solari	<u>Aye</u>
Commissioner Wesley S. Davis	<u>Aye</u>
Commissioner Joseph E. Flescher	<u>Aye</u>
Commissioner Gary C. Wheeler	<u>Aye</u>

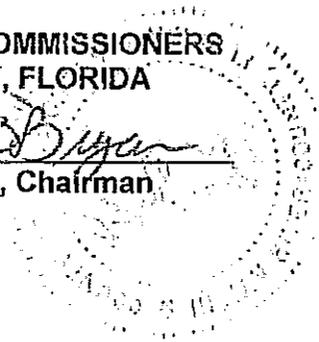
The Chairman thereupon declared the resolution duly passed and adopted this 9 th day of February, 2010.

**BOARD OF COUNTY COMMISSIONERS  
INDIAN RIVER COUNTY, FLORIDA**

By Peter D. O'Bryan  
Peter D. O'Bryan, Chairman

**ATTEST: Jeffrey K. Barton  
Clerk of Court**

By: Manuela Lillo  
Deputy Clerk



# Memo

**To:** James Gabbard, City Manager  
**From:** Tim Grabenbauer, Marina Director *TJG*  
**CC:**  
**Date:** 2/22/2010  
**Re:** AGENDA ITEM FOR REGULAR CITY COUNCIL MEETING MARCH 2, 2010

---

**ITEM:**

Resolution for assistance concerning the Marina South Complex.

**RECOMMENDATION:**

Recommend passing resolution.

**BACKGROUND INFORMATION:**

A Florida Inland Navigation District Waterways Assistance Program application will ask for \$563,990.00 in pre-agreement costs on the purchase of the property. The requested amount is from the original request of \$1.15M minus what we have already been awarded. This is the last year to request on this multi-year project.

**ATTACHMENT E-6  
RESOLUTION FOR ASSISTANCE  
UNDER THE FLORIDA INLAND NAVIGATION DISTRICT  
WATERWAYS ASSISTANCE PROGRAM**

WHEREAS, THE City of Vero Beach is interested in carrying out the  
*(Name of Agency)*  
following described project for the enjoyment of the citizenry of Vero Beach  
and the State of Florida:

Project Title Purchase of Lost Tree Marina

Total Estimated Cost \$ 4,600,000

Brief Description of Project:

Purchase an existing marina located on 1.19 acres, consisting of 20 wet slips and 64 dry storage slips

AND, Florida Inland Navigation District financial assistance is required for the program mentioned above,

NOW THEREFORE, be it resolved by the City of Vero Beach  
*(Name of Agency)*  
that the project described above be authorized,

AND, be it further resolved that said City of Vero Beach  
*(Name of Agency)*

make application to the Florida Inland Navigation District in the amount of 12.25 % of the  
actual cost of the project in behalf of said City of Vero Beach  
*(Name of Agency)*

AND, be it further resolved by the City of Vero Beach  
*(Name of Agency)*  
that it certifies to the following:

1. That it will accept the terms and conditions set forth in FIND Rule 66B-2  
F.A.C. and which will be a part of the Project Agreement for any assistance awarded under  
the attached proposal.

2. That it is in complete accord with the attached proposal and that it will carry out  
the Program in the manner described in the proposal and any plans and specifications attached  
thereto unless prior approval for any change has been received from the District.

3. That it has the ability and intention to finance its share of the cost of the project and that the project will be operated and maintained at the expense of said City of Vero Beach for public use.

\_\_\_\_\_ *(Name of Agency)*

4. That it will not discriminate against any person on the basis of race, color or national origin in the use of any property or facility acquired or developed pursuant to this proposal, and shall comply with the terms and intent of the Title VI of the Civil Rights Act of 1964, P. L. 88-352 (1964) and design and construct all facilities to comply fully with statutes relating to accessibility by handicapped persons as well as other federal, state and local laws, rules and requirements.

5. That it will maintain adequate financial records on the proposed project to substantiate claims for reimbursement.

6. That it will make available to FIND if requested, a post-audit of expenses incurred on the project prior to, or in conjunction with, request for the final 10% of the funding agreed to by FIND.

This is to certify that the foregoing is a true and correct copy of a resolution duly and legally adopted by the City of Vero Beach at a legal meeting held on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Attest  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Title

4-D)

**MEMORANDUM**

**TO:** James M. Gabbard, City Manager  
**VIA:** Charles P. Vitunac, City Attorney  
**FROM:** Ericson W. Menger, Airport Director  
**DATE:** February 18, 2010  
**SUBJECT:** **JOINT PARTICIPATION AGREEMENT BETWEEN THE CITY OF VERO BEACH AND THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR RUNWAY 11R/29L AND TAXIWAY C REHABILITATION (FDOT #428512-1-94-01)**

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Attached are six (6) copies of a Joint Participation Agreement (JPA) between the City of Vero Beach and the Florida Department of Transportation (FDOT) for the above-referenced airport project. Also attached are three (3) copies of a proposed City Resolution authorizing the Mayor and City Manager to execute the JPA on behalf of the City.

**BACKGROUND**

Late last year, staff noticed a section of the main runway (11R/29L) and its associated taxiway at the Vero Beach Airport had various distress areas from block cracking and surface depressions to simple lane joint separation and pavement oxidation (see attached runway diagram). As a result of the late nature of this discovery, funding has not yet been approved in the airport's FY2009-2010 capital budget. Our consulting engineer, URS Corporation, has estimated a budget of \$700,000 to complete this runway and taxiway rehabilitation project.

Before proposing this new capital expenditure, staff pursued FAA and FDOT funding to offset the cost. This project is considered a fairly high priority for the Federal Aviation Administration (FAA) and for FDOT due to the critical nature of this runway and taxiway at the Vero Beach Airport. Accordingly, the attached JPA from FDOT in the amount of \$144,000 has been offered to help fund a portion of the cost (attached). At this time, FAA has not offered a grant, but staff anticipates the proposed project will ultimately be funded 95% by the FAA, 2.5% by the FDOT, and 2.5% by the Airport. No general fund dollars are proposed for this project.

In the event that FAA funds are not available, additional FDOT funds will be pursued. In any case, this project must be completed as soon as possible to preclude a possible safety risk, and a budget amendment is respectfully requested. The Airport has sufficient capital reserves to cover this project should FAA funds not materialize.

A companion item requesting approval to proceed with engineering on this project is also requested for City Council approval.

**RECOMMENDATION**

I respectfully request that this item be placed on the March 2, 2010, City Council Agenda. Staff recommends **1)** approval of the proposed Resolution and acceptance of the JPA, and **2)** a capital budget amendment to the Airport's FY2009-2010 of \$700,000.

EWM:rls

Attachments (9)

cc: Airport Commission Members (via e-mail and/or USPS)  
Steve Maillet, Finance Director (via e-mail)  
Joyce Vonada, City Manager's Office (via e-mail)

RESOLUTION NO. 10-\_\_\_\_\_

A RESOLUTION AUTHORIZING THE CITY OF VERO BEACH, FLORIDA, TO ENTER INTO A JOINT PARTICIPATION AGREEMENT WITH THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION TO REHABILITATE SECTIONS OF RUNWAY 11R/29L AND TAXIWAY C (FDOT #428512-1-94-01)

WHEREAS, the City of Vero Beach owns and operates the Vero Beach Municipal Airport and;

WHEREAS, the City desires to rehabilitate sections of Runway 11R/29L and Taxiway C and;

WHEREAS, the State government has agreed to participate in the funding of the above-referenced to rehabilitate sections of Runway 11R/29L and Taxiway C with the City of Vero Beach.

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

The Mayor and City Manager are authorized to execute all appropriate documents as representatives of the City of Vero Beach in connection with the Joint Participation Agreement between the State of Florida and the City of Vero Beach to Rehabilitate Sections of Runway 11R/29L and Taxiway C.

\*\*\*\*\*

THIS RESOLUTION was moved for adoption by Councilmember \_\_\_\_\_,

seconded by Councilmember \_\_\_\_\_, and adopted on the \_\_\_\_\_ day of \_\_\_\_\_ 2010, by the following vote:

- Mayor Sawnick \_\_\_\_\_
- Vice-Mayor Abell \_\_\_\_\_
- Councilmember White \_\_\_\_\_
- Councilmember Heady \_\_\_\_\_
- Councilmember Daige \_\_\_\_\_

ATTEST

CITY OF VERO BEACH, FLORIDA

\_\_\_\_\_  
City Clerk, Tammy Vock

\_\_\_\_\_  
Mayor, Kevin Sawnick

Approved as to form and  
Legal sufficiency:

Approved as to technical  
requirements:

  
\_\_\_\_\_  
City Attorney, Charles P. Vitunac

  
\_\_\_\_\_  
City Manager, James M. Gabbard

Approved as to technical  
Requirements:

  
\_\_\_\_\_  
Airport Director, Ericson W. Menger

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**PUBLIC TRANSPORTATION**  
**JOINT PARTICIPATION AGREEMENT**

725-030-06  
PUBLIC TRANSPORTATION  
01/10  
Page 1 of 14

Financial Project No.: 428512-1-94-01 (Item-segment-phase-sequence)	Fund: DS Function: 637 Federal No.: DUNS No.:	FLAIR 088719 Object Code: 750004 Org. Code: 55042010428 Vendor No.: 596000445004
Contract No.:	CSFA Number: 55004	
CFDA Number:		

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter referred to as the Department, and City of Vero Beach

hereinafter referred to as Agency. The Department and Agency agree that all terms of this Agreement will be completed on or before June 30, 2012 and this Agreement will expire unless a time extension is provided in accordance with Section 18.00.

WITNESSETH:

WHEREAS, the Agency has the authority to enter into said Agreement and to undertake the project hereinafter described, and the Department has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under 332.006(6) Florida Statutes, to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

**1.00 Purpose of Agreement:** The purpose of this Agreement is to provide FDOT participation in a project to Rehab Sections of Runway 11R/29L and Taxiway C at Vero Beach Municipal Airport

and as further described in Exhibit(s) A, B, C, & D attached hereto and by this reference made a part hereof, hereinafter referred to as the project, and to provide Departmental financial assistance to the Agency and state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

## 2.00 Accomplishment of the Project

**2.10 General Requirements:** The Agency shall commence, and complete the project as described in Exhibit "A" attached hereto and by this reference made a part hereof this Agreement, with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws.

**2.20 Pursuant to Federal, State, and Local Law:** In the event that any election, referendum, approval, permit, notice, or other proceeding or authorization is requisite under applicable law to enable the Agency to enter into this Agreement or to undertake the project hereunder, or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

**2.30 Funds of the Agency:** The Agency shall initiate and prosecute to completion all proceedings necessary including federal aid requirements to enable the Agency to provide the necessary funds for completion of the project.

**2.40 Submission of Proceedings, Contracts and Other Documents:** The Agency shall submit to the Department such data, reports, records, contracts and other documents relating to the project as the Department may require as listed in Exhibit "C" attached hereto and by this reference made a part hereof.

**3.00 Project Cost:** The total estimated cost of the project is \$ 700,000. This amount is based upon the estimate summarized in Exhibit "B" attached hereto and by this reference made a part hereof this Agreement. The Agency agrees to bear all expenses in excess of the total estimated cost of the project and any deficits involved.

**4.00 Department Participation:** The Department agrees to maximum participation, including contingencies, in the project in the amount of \$ 144,000 as detailed in Exhibit "B", or in an amount equal to the percentage(s) of total cost shown in Exhibit "B", whichever is less.

**4.10 Project Cost Eligibility :** Project costs eligible for State participation will be allowed only from the effective date of this agreement. It is understood that State participation in eligible project costs is subject to:

- (a) Legislative approval of the Department's appropriation request in the adopted work program year that the project is scheduled to be committed;
- (b) Availability of funds as stated in Section 17.00 of this Agreement;
- (c) Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement;
- (d) Department approval of the project scope and budget (Exhibits A & B) at the time appropriation authority becomes available.

**4.20 Front End Funding :** Front end funding  is  is not applicable. If applicable, the Department may initially pay 100% of the total allowable incurred project costs up to an amount equal to its total share of participation as shown in paragraph 4.00.

**5.00 Retainage :** Retainage  is  is not applicable. If applicable, \_\_\_\_\_ percent of the Department's total share of participation as shown in paragraph 4.00 is to be held in retainage to be disbursed, at the Department's discretion, on or before the completion of the final project audit.

## **6.00 Project Budget and Payment Provisions:**

**6.10 The Project Budget:** A project budget shall be prepared by the Agency and approved by the Department. The Agency shall maintain said budget, carry out the project and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved budget for the project. No budget increase or decrease shall be effective unless it complies with fund participation requirements established in Section 4.00 of this Agreement and is approved by the Department Comptroller.

**6.20 Payment Provisions:** Unless otherwise allowed under Section 4.20, payment will begin in the year the project or project phase is scheduled in the work program as of the date of the agreement. Payment will be made for actual costs incurred as of the date the invoice is submitted with the final payment due upon receipt of a final invoice.

## **7.00 Accounting Records:**

**7.10 Establishment and Maintenance of Accounting Records:** The Agency shall establish for the project, in conformity with requirements established by Department's program guidelines/procedures and "Principles for State and Local Governments", separate accounts to be maintained within its existing accounting system or establish independent accounts. Such accounts are referred to herein collectively as the "project account". Documentation of the project account shall be made available to the Department upon request any time during the period of the Agreement and for three years after final payment is made.

**7.20 Funds Received Or Made Available for The Project:** The Agency shall appropriately record in the project account, and deposit in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, all payments received by it from the Department pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the project, which Department payments and other funds are herein collectively referred to as "project funds". The Agency shall require depositories of project funds to secure continuously and fully all project funds in excess of the amounts insured under federal plans, or under State plans which have been approved for the deposit of project funds by the Department, by the deposit or setting aside of collateral of the types and in the manner as prescribed by State Law for the security of public funds, or as approved by the Department.

**7.30 Costs Incurred for the Project:** The Agency shall charge to the project account all eligible costs of the project. Costs in excess of the latest approved budget or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.

**7.40 Documentation of Project Costs:** All costs charged to the project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

**7.50 Checks, Orders, and Vouchers:** Any check or order drawn by the Agency with respect to any item which is or will be chargeable against the project account will be drawn only in accordance with a properly signed voucher then on file in the office of the Agency stating in proper detail the purpose for which such check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents.

**7.60 Audit Reports:** In addition to the requirements below, the Agency agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department, including but not limited to site visits and limited scope audits. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the State Comptroller or Auditor General. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of three years from the date the audit report is issued, and shall allow the Department access to such records and working papers upon request. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any state agency inspector general, the Auditor General, or any other state official.

The Agency shall comply with all audit and audit reporting requirements as specified in Exhibit "D" attached hereto and by this reference made a part hereof this Agreement.

**7.61 Monitoring:** In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, Florida Statutes, (see "Audits" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, and/or other procedures. The Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Agency is appropriate, the Agency agrees to comply with any additional instructions provided by the Department staff to the Agency regarding such audit. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by FDOT's Office of Inspector General (OIG) and Florida's Chief Financial Officer (CFO) or Auditor General.

#### **7.62 Audits:**

**Part I Federally Funded:** If the Agency is a state, local government, or non-profit organizations as defined in OMB Circular A-133 and a recipient of federal funds, the following annual audit criteria will apply:

1. In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Exhibit "D" to this agreement indicates Federal resources awarded through the Department by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, Paragraph 1., the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133.
3. If the recipient expends less than the amount in Part I, Paragraph 1., an audit conducted in accordance with the provisions of OMB Circular A-133, is not required. If the recipient elects to conduct such an audit, the cost of the audit must be paid from resources obtained from other than Federal entities.
4. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.

**Part II State Funded:** If the Agency is a nonstate entity as defined by Section 215.97(2)(m), Florida Statutes, and a recipient of state funds, the following annual audit criteria will apply:

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services and the CFO; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit "D" to this agreement indicates state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, Paragraph 1., the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapter 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than the amount in Part II, Paragraph 1., such audit is not required. If the recipient elects to conduct such an audit, the cost of the audit must be paid from the recipient's resources obtained from nonstate entities.
4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

### Part III Other Audit Requirements

1. The Agency shall follow-up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.

2. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the Department, the Department Comptroller, and the Auditor General. This section does not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

### Part IV Report Submission

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Section 7.62 Part I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, by or on behalf of the recipient directly to each of the following:

A. The Department at each of the following addresses:

Office of Modal Development  
3400 W. Commercial Blvd.  
Ft Lauderdale, FL 33309

B. The number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, submitted to the following address:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10th Street  
Jeffersonville, IN 47132

C Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133.

2. In the event that a copy of the reporting package for an audit required by Section 7.62 Part I of this Agreement and conducted in accordance with OMB Circular A-133 is not required to be submitted to the Department for reasons pursuant to section .320 (e)(2), OMB Circular A-133, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to each of the following:

Office of Modal Development  
3400 W. Commercial Blvd.  
Ft Lauderdale, FL 33309

In addition, pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, and any management letters issued by the auditor, to the Department at each of the following addresses:

Office of Modal Development  
3400 W. Commercial Blvd.  
Ft Lauderdale, FL 33309

3. Copies of financial reporting packages required by Section 7.62 Part II of this Agreement shall be submitted by or on behalf of the recipient directly to each of the following:
  - A. The Department at each of the following addresses:

Office of Modal Development  
3400 W. Commercial Blvd.  
Ft Lauderdale, FL 33309
  - B. The Auditor General's Office at the following address:

Auditor General's Office  
Room 401, Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450
4. Copies of reports or the management letter required by Section 7.62 Part III of this Agreement shall be submitted by or on behalf of the recipient directly to:
  - A. The Department at each of the following addresses:

Office of Modal Development  
3400 W. Commercial Blvd.  
Ft Lauderdale, FL 33309
5. Any reports, management letter, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, Section 215.97, Florida Statutes, and Chapter 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. Recipients, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Agency in correspondence accompanying the reporting package.

**7.63 Record Retention:** The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least five years from the date the audit report is issued, and shall allow the Department, or its designee, the CFO or Auditor General access to such records upon request. The Agency shall ensure that the independent audit working papers are made available to the Department, or its designee, the CFO, or Auditor General upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the Department. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Participant's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.

**7.64 Other Requirements:** If an audit discloses any significant audit findings related to any award, including material noncompliance with individual project compliance requirements or reportable conditions in internal controls of the Agency, the Agency shall submit as part of the audit package to the Department a plan for corrective action to eliminate such audit findings or a statement describing the reasons that corrective action is not necessary. The Agency shall take timely and appropriate corrective action to any audit findings, recommendations, and corrective action plans.

**7.65 Insurance:** Execution of this Joint Participation Agreement constitutes a certification that the Agency has and will maintain the ability to repair or replace any project equipment or facilities in the event of loss or damage due to any accident or casualty for the useful life of such equipment or facilities. In the event of the loss of such equipment or facilities, the Agency shall either replace the equipment or facilities or reimburse the Department to the extent of its interest in the lost equipment or facility. In the event this Agreement is for purchase of land or for the construction of infrastructure such as airport runways the Department may waive or modify this section.

**8.00 Requisitions and Payments:**

**8.10 Action by the Agency:** In order to obtain any Department funds, the Agency shall file with the Department of Transportation, District Four Public Transportation Office 3400 W. Commercial Blvd. Ft Lauderdale, FL, 33309 its requisition on a form or forms prescribed by the Department, and any other data pertaining to the project account (as defined in Paragraph 7.10 hereof) to justify and support the payment requisitions.

**8.11** Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

**8.12** Invoices for any travel expenses shall be submitted in accordance with Chapter 112.061, F.S. The Department may establish rates lower than the maximum provided in Chapter 112.061, F.S.

**8.13** For real property acquired, submit;

- (a) the date the Agency acquired the real property,
- (b) a statement by the Agency certifying that the Agency has acquired said real property, and actual consideration paid for real property.
- (c) a statement by the Agency certifying that the appraisal and acquisition of the real property together with any attendant relocation of occupants was accomplished in compliance with all federal laws, rules and procedures required by any federal oversight agency and with all state laws, rules and procedures that may apply to the Agency acquiring the real property.

**8.20 The Department's Obligations:** Subject to other provisions hereof, the Department will honor such requisitions in amounts and at times deemed by the Department to be proper to ensure the carrying out of the project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment on the project if:

**8.21 Misrepresentation:** The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

**8.22 Litigation:** There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the project, the Agreement, or payments to the project;

**8.23 Approval by Department:** The Agency shall have taken any action pertaining to the project which, under this agreement, requires the approval of the Department or has made related expenditures or incurred related obligations without having been advised by the Department that same are approved;

**8.24 Conflict of Interests:** There has been any violation of the conflict of interest provisions contained herein;  
or

**8.25 Default:** The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

**8.26 Federal Participation (If Applicable):** Any federal agency providing federal financial assistance to the project suspends or terminates federal financial assistance to the project. In the event of suspension or termination of federal financial assistance, the Agency will reimburse the Department for all disallowed costs, including any and all federal financial assistance as detailed in Exhibit "B."

**8.30 Disallowed Costs:** In determining the amount of the payment, prior to receipt of annual notification of funds availability, the Department will exclude all projects costs incurred by the Agency prior to the effective date of this Agreement, costs which are not provided for in the latest approved budget for the project, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department and costs invoiced prior to receipt of annual notification of fund availability.

**8.40 Payment Offset:** If, after project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this agreement, the Department may offset such amount from payments due for work or services done under any public transportation joint participation agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting amounts shall not be considered a breach of contract by the Department.

#### **9.00 Termination or Suspension of Project:**

**9.10 Termination or Suspension Generally:** If the Agency abandons or, before completion, finally discontinues the project; or if, by reason of any of the events or conditions set forth in Sections 8.21 to 8.26 inclusive, or for any other reason, the commencement, prosecution, or timely completion of the project by the Agency is rendered improbable, infeasible, impossible, or illegal, the Department will, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate any or all of its obligations under this Agreement.

**9.11 Action Subsequent to Notice of Termination or Suspension.** Upon receipt of any final termination or suspension notice under this paragraph, the Agency shall proceed promptly to carry out the actions required therein which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the financing is to be computed; (2) furnish a statement of the project activities and contracts, and other undertakings the cost of which are otherwise includable as project costs; and (3) remit to the Department such portion of the financing and any advance payment previously received as is determined by the Department to be due under the provisions of the Agreement. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and budget as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Agency to furnish the schedule, plan, and budget within a reasonable time. The approval of a remittance by the Agency or the closing out of federal financial participation in the project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

**9.12** The Department reserves the right to unilaterally cancel this Agreement for refusal by the contractor or Agency to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S. and made or received in conjunction with this Agreement.

**10.00 Remission of Project Account Upon Completion of Project:** Upon completion of the project, and after payment, provision for payment, or reimbursement of all project costs payable from the project account is made, the Agency shall remit to the Department its share of any unexpended balance in the project account.

**11.00 Audit and Inspection:** The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives to inspect all work, materials, payrolls, records; and to audit the books, records and accounts pertaining to the financing and development of the project.

#### **12.00 Contracts of the Agency:**

**12.10 Third Party Agreements:** Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department joint participation funds, including consultant, construction or purchase of commodities contracts or amendments thereto, with any third party with respect to the project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department as provided in Section 8.23. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same.

**12.20 Compliance with Consultants' Competitive Negotiation Act:** It is understood and agreed by the parties hereto that participation by the Department in a project with an Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency complying in full with provisions of Chapter 287, F.S., Consultants' Competitive Negotiation Act. At the discretion of the Department, the Agency will involve the Department in the Consultant Selection Process for all contracts. In all cases, the Agency's Attorney shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

### **12.30 Disadvantaged Business Enterprise (DBE) Policy**

**12.31 DBE Policy:** The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26, as amended, have the maximum opportunity to participate in the performance of contracts and this Agreement. In this regard, all recipients, and contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Grantees, recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department assisted contracts.

**12.40** The Agency agrees to report any reasonable cause notice of noncompliance based on 49 CFR Part 26 filed under this section to the Department within 30 days of receipt by the Agency.

### **13.00 Restrictions, Prohibitions, Controls, and Labor Provisions:**

**13.10 Equal Employment Opportunity:** In connection with the carrying out of any project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin. The Agency will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Agency shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the project, except contracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

**13.20 Title VI - Civil Rights Act of 1964:** Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et. seq.), the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto.

**13.30 Title VIII - Civil Rights Act of 1968:** Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by Title VIII of the Civil Rights Act of 1968, 42 USC 3601, et seq., which among other things, prohibits discrimination in housing on the basis of race, color, national origin, creed, sex, and age.

**13.40 Americans with Disabilities Act of 1990 (ADA):** Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by the ADA (42 U.S.C. 12102, et. seq.), the regulations of the federal government issued thereunder, and the assurance by the Agency pursuant thereto.

**13.50 Prohibited Interests:** The Agency shall not enter into a contract or arrangement in connection with the project or any property included or planned to be included in the project, with any officer, director or employee of the Agency, or any business entity of which the officer, director or employee or the officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's, director's or employee's spouse or child, or any combination of them, has a material interest.

"Material Interest" means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity.

The Agency shall not enter into any contract or arrangement in connection with the project or any property included or planned to be included in the project, with any person or entity who was represented before the Agency by any person who at any time during the immediately preceding two years was an officer, director or employee of the Agency.

The provisions of this subsection shall not be applicable to any agreement between the Agency and its fiscal depositories, any agreement for utility services the rates for which are fixed or controlled by the government, or any agreement between the Agency and an agency of state government.

**13.60 Interest of Members of, or Delegates to, Congress:** No member or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

#### **14.00 Miscellaneous Provisions:**

**14.10 Environmental Pollution:** Execution of this Joint Participation Agreement constitutes a certification by the Agency that the project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The Agency will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Department for any loss incurred in connection therewith.

**14.20 Department Not Obligated to Third Parties:** The Department shall not be obligated or liable hereunder to any party other than the Agency.

**14.30 When Rights and Remedies Not Waived:** In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist, on the part of the Agency, and the making of such payment by the Department while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

**14.40 How Agreement Is Affected by Provisions Being Held Invalid:** If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

**14.50 Bonus or Commission:** By execution of the Agreement the Agency represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

**14.60 State or Territorial Law:** Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable State law: Provided, that if any of the provisions of the Agreement violate any applicable State law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the project.

**14.70 Use and Maintenance of Project Facilities and Equipment:** The Agency agrees that the project facilities and equipment will be used by the Agency to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles and approved by the Department. The Agency further agrees to maintain the project facilities and equipment in good working order for the useful life of said facilities or equipment.

**14.71 Property Records:** The Agency agrees to maintain property records, conduct physical inventories and develop control systems as required by 49 CFR Part 18, when applicable.

**14.80 Disposal of Project Facilities or Equipment:** If the Agency disposes of any project facility or equipment during its useful life for any purpose except its replacement with like facility or equipment for public transportation use, the Agency will comply with the terms of 49 CFR Part 18 relating to property management standards. The Agency agrees to remit to the Department a proportional amount of the proceeds from the disposal of the facility or equipment. Said proportional amount shall be determined on the basis of the ratio of the Department financing of the facility or equipment as provided in this Agreement.

**14.90 Contractual Indemnity:** To the extent provided by law, the Agency shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Agency, its agents, or employees, during the performance of the Agreement, except that neither the Agency, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by the Agency in the performance of services required under this Agreement, the Department will immediately forward the claim to the Agency. The Agency and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the Agency in the defense of the claim or to require that the Agency defend the Department in such claim as described in this section. The Department's failure to promptly notify the Agency of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Agency. The Department and the Agency will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial.

**15.00 Plans and Specifications:** In the event that this Agreement involves the purchasing of capital equipment or the constructing and equipping of facilities, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the project and comments or recommendations concerning any remainder of the project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval with said remainder of the project. Failure to obtain this written approval shall be sufficient cause for nonpayment by the Department as provided in 8.23.

**16.00 Project Completion, Agency Certification:** The Agency will certify in writing on or attached to the final invoice, that the project was completed in accordance with applicable plans and specifications, is in place on the Agency facility, that adequate title is in the Agency and that the project is accepted by the Agency as suitable for the intended purpose.

**17.00 Appropriation of Funds:**

**17.10** The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

**17.20 Multi-Year Commitment:** In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Chapter 339.135(6)(a), F.S., are hereby incorporated: "(a) The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of 25,000 dollars and which have a term for a period of more than 1 year."

**18.00 Expiration of Agreement:** The Agency agrees to complete the project on or before June 30, 2012. If the Agency does not complete the project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the Director of Transportation Development. Expiration of this Agreement will be considered termination of the project and the procedure established in Section 9.00 of this Agreement shall be initiated.

**18.10 Final Invoice:** The Agency must submit the final invoice on this project to the Department within 120 days after the expiration of this Agreement. Invoices submitted after the 120 day time period will not be paid.

**19.00 Agreement Format:** All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

**20.00 Execution of Agreement:** This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

#### **21.00 Restrictions on Lobbying:**

**21.10 Federal:** The Agency agrees that no federal appropriated funds have been paid or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federal appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Joint Participation Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**21.20 State:** No funds received pursuant to this contract may be expended for lobbying the Legislature or a state agency.

**22.00 Vendors Rights:** Vendors (in this document identified as Agency) providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services unless the bid specifications, purchase order or contract specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

If a payment is not available within 40 days after receipt of the invoice and receipt, inspection and approval of goods and services, a separate interest penalty in accordance with Section 215.422(3)(b), F.S. will be due and payable, in addition to the invoice amount to the Agency. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices which have to be returned to an Agency because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from the Department. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Department of Financial Services Hotline, 877-693-5236.

**23.00 Public Entity Crime:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017, F.S. for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**24.00 Discrimination:** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

Financial Project No. 428512-1-94-01

Contract No. \_\_\_\_\_

Agreement Date \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused these presents be executed, the day and year first above written.

AGENCY

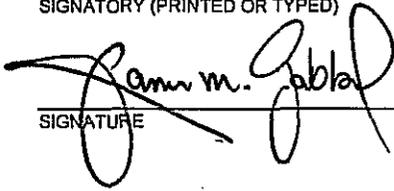
FDOT

City of Vero Beach  
AGENCY NAME

See attached Encumbrance Form for date of Funding  
Approval by Comptroller

\_\_\_\_\_  
SIGNATORY (PRINTED OR TYPED)

\_\_\_\_\_  
LEGAL REVIEW  
DEPARTMENT OF TRANSPORTATION

  
SIGNATURE

\_\_\_\_\_  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
TITLE

Director of Transportation Development  
TITLE

*OK Legal  
CR*

## Exhibit D

**FEDERAL and/or STATE** resources awarded to the recipient pursuant to this agreement should be listed below. If the resources awarded to the recipient represent more than one Federal or State program, provide the same information for each program and the total resources awarded. **Compliance Requirements** applicable to each Federal or State program should also be listed below. If the resources awarded to the recipient represent more than one program, list applicable compliance requirements for each program in the same manner as shown here:

- (e.g., What services or purposes the resources must be used for)
- (e.g., Eligibility requirements for recipients of the resources)
- (Etc...)

**NOTE:** Instead of listing the specific compliance requirements as shown above, the State awarding agency may elect to use language that requires the recipient to comply with the requirements of applicable provisions of specific laws, rules, regulations, etc. The State awarding agency, if practical, may want to attach a copy of the specific law, rule, or regulation referred to.

### FEDERAL RESOURCES

<u>Federal Agency</u>	<u>Catalog of Federal Domestic Assistance (Number &amp; Title)</u>	<u>Amount</u>
-----------------------	--	---------------

#### Compliance Requirements

- 1.
- 2.
- 3.

### STATE RESOURCES

<u>State Agency</u>	<u>Catalog of State Financial Assistance (Number &amp; Title)</u>	<u>Amount</u>
---------------------	---	---------------

#### Compliance Requirements

- 1.
- 2.
- 3.

### Matching Resources for Federal Programs

<u>Federal Agency</u>	<u>Catalog of Federal Domestic Assistance (Number &amp; Title)</u>	<u>Amount</u>
-----------------------	--	---------------

#### Compliance Requirements

- 1.
- 2.
- 3.

**NOTE:** Section .400(d) of OMB Circular A-133, as revised, and Section 215.97(5)(a), Florida Statutes, require that the information about Federal Programs and State Projects included in this exhibit be provided to the recipient.

Fin. Proj. No.: 428512-1-94-01

Contract No.: \_\_\_\_\_

Agreement Date: \_\_\_\_\_

**EXHIBIT "A"**  
**PROJECT DESCRIPTION AND RESPONSIBILITIES**

This exhibit forms an integral part of that certain Joint Participation Agreement  
between the State of Florida, Department of Transportation and **City of Vero Beach**

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PROJECT LOCATION: Vero Beach Municipal Airport

PROJECT DESCRIPTION: Rehabilitate Sections of Runway 11R/29L and Taxiway C

**SPECIAL CONSIDERATIONS BY AGENCY:**

The audit report(s) required in paragraph 7.60 of the Agreement shall include a schedule of project assistance that will reflect the Department's contract number, Financial Project Number and the Federal Identification number, where applicable and the amount of state funding action (receipt and disbursement of funds) and any federal or local funding action and the funding action from any other source with respect to the project.

The plans and specifications review required in paragraph 15.00 of the Agreement shall include an Engineer Certification and compliance with Department requirements as outlined in Exhibit "C".

**SPECIAL CONSIDERATIONS BY DEPARTMENT: N/A**

Fin. Proj. No.: 428512 -1-94-01

Contract No.: \_\_\_\_\_

Agreement Date: \_\_\_\_\_

**EXHIBIT "B"  
PROJECT BUDGET**

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida, Department of Transportation and **City of Vero Beach**.

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<b>I. TOTAL PROJECT COST:</b>		<b>\$700,000</b>
<hr/>		
<b>II. PARTICIPATION:</b>		
Federal Participation:		
<b>FAA, FTA, UMTA, etc.</b>	<b>58.86%</b>	<b>\$412,000</b>
Agency Participation:		
In-Kind		
<b>Cash</b>	<b>20.57%</b>	<b>\$144,000</b>
Other		
**Maximum Department Participation:		
Primary ( <b>DS</b> ) (DDR) (DIM) (PORT)	<b>20.57%</b>	<b>\$144,000</b>
Federal Reimbursable (DU) (FRA) (DFTA)		
Local Reimbursable (DL)		
<hr/>		
<b>III. TOTAL PROJECT COST:</b>		<b>\$700,000</b>

## AVIATION PROGRAM ASSURANCES

FINANCIAL PROJECT NO.: 428512-1-94-01

EFFECTIVE DATE: \_\_\_\_\_

**A. General**

1. The assurances herein shall form an integral part of the Joint Participation Agreement (Agreement) between the State of Florida, Department of Transportation (Department) and the airport sponsor, whether county or municipal government body or special district, such as an Airport Authority (herein, collectively referred to as "Agency").
2. These assurances delineate the obligations of the parties to this Agreement to ensure their commitment and compliance with specific provisions of Exhibit A, "Project Description and responsibilities" and Exhibit B, "Project Budget", as well as serving to protect public investment in public-use airports and the continued viability of the Florida Aviation System.
3. The Agency shall comply with the assurances as specified in this Agreement.
4. The terms and assurances of this Agreement shall remain in full force and effect throughout the useful life of a facility developed; equipment acquired; or project items installed within a facility for an airport development or noise compatibility program project, but shall not exceed 20 years from the effective date of this Agreement.
5. There shall be no limit on the duration on the terms and assurances of this Agreement regarding Exclusive Rights and Airport Revenue so long as the property is used as a public airport.
6. There shall be no limit on the duration of the terms and assurances of this Agreement with respect to real property acquired with funds provided by the State of Florida.
7. Subject to appropriations, the Department shall continue to comply with its financial commitment to this project under the terms of this Agreement, until such time as the Department may determine that the Agency has failed to comply with the terms of the Agreement and/or these assurances.
8. An Agency that has been determined by the Department to have failed to comply with the terms of the Agreement and/or these assurances shall be notified, in writing, by the Department, identifying the specifics of the non-compliance and any corrective action by the Agency to remedy the failure.
9. Failure by the Agency to satisfactorily remedy the non-compliance shall absolve the Department's continued financial commitment to this project and immediately require the Agency to repay the Department the full amount of funds expended by the Department on this project.
10. Any history of failure to comply with the terms of an Agreement and/or assurances will jeopardize the Agency's eligibility for further state funding of airport projects by the Department.

**B. Agency Compliance Certification**

1. **General Certification:** The Agency hereby certifies, with respect to this project, it will comply, within its authority, with all applicable, current laws and rules of the State of Florida and local government, as well as Department policies, guidelines, and requirements, including but not limited to the following:

a. **Florida Statutes (F.S.)**

- Chapter 163, F.S., Local Government Comprehensive Planning and Land Development
- Chapter 329, F.S., Aircraft: Title; Liens; Registration; Liens
- Chapter 330, F.S., Regulation of Aircraft, Pilots, and Airports
- Chapter 331, F.S., Aviation and Aerospace Facilities and Commerce
- Chapter 332, F.S., Airports and Other Air Navigation Facilities
- Chapter 333, F.S., Airport Zoning

b. **Florida Administrative Code (FAC)**

- Chapter 9J-5, FAC, Review of Comprehensive Plans and Determination of Compliance
- Chapter 14-60, FAC, Airport Licensing, Registration, and Airspace Protection
- Section 62-256.300(5) FAC, Open Burning, Prohibitions, Public Airports

## AVIATION PROGRAM ASSURANCES

- Section 62-701.320(13), FAC, Solid Waste Management, Permitting, Airport Safety

c. **Local Government Requirements**

- Airport Zoning Ordinance
- Local Comprehensive Plan

d. **Department Requirements**

- Eight Steps to Building a New Airport
- Florida Airport Financial Resource Guide
- Florida Aviation Project Handbook
- Guidebook for Airport Master Planning
- Guidelines for Plan Development

2. **Construction Certification:** The Agency hereby certifies, with respect to a construction-related project, that all design plans and specifications will comply with applicable federal, state, local, and professional standards, as well as Federal Aviation Administration (FAA) Advisory Circulars (AC's) and FAA issued waivers thereto, including but not limited to the following:

a. **Federal Requirements**

- FAA AC 70/7460-1, Obstruction Marking and Lighting
- FAA AC 150/5300-13, Airport Design

b. **Local Government Requirements**

- Local Building Codes
- Local Zoning Codes

c. **Department Requirements**

- Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (Commonly Referred to as the "Florida Green Book")
- Manual on Uniform Traffic Control Devices
- Section 14-60.007, Florida Administrative Code, "Airfield Standards for Licensed Airports"
- Standard Specifications for Construction of General Aviation Airports

3. **Land Acquisition Certification:** The Agency hereby certifies, regarding land acquisition, that it will comply with applicable federal and state policies, regulations, and laws, including but not limited to the following:

a. **Federal Requirements**

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- National Environmental Policy of 1969
- FAA Order 5050.4, National Environmental Policy Act Implementing Instructions for Airport Projects
- FAA Order 5100.37B, Land Acquisition and Relocation Assistance for Airport Projects

b. **Florida Requirements**

- Chapter 73, F.S., Eminent Domain (re: Property Acquired Through Condemnation)
- Chapter 74, F.S., Proceedings Supplemental to Eminent Domain (re: Condemnation)
- Section 286.23, F.S., Public Business: Miscellaneous Provisions

C. **Agency Authority**

## AVIATION PROGRAM ASSURANCES

1. **Legal Authority:** The Agency hereby certifies, with respect to this project Agreement, that it has the legal authority to enter into this Agreement and commit to this project; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the airport sponsor's governing body authorizing this Agreement, including assurances contained therein, and directing and authorizing the person identified as the official representative of the governing body to act on its behalf with respect to this Agreement and to provide any additional information as may be required.

2. **Financial Authority:** The Agency hereby certifies, with respect to this project Agreement, that it has sufficient funds available for that portion of the project costs which are not paid by the U.S. Government or the State of Florida; that it has sufficient funds available to assure future operation and maintenance of items funded by this project, which it will control; and that authority has been granted by the airport sponsor governing body to commit those funds to this project.

**D. Agency Responsibilities**

The Agency hereby certifies it currently complies with or will comply with the following responsibilities:

**1. Accounting System**

- a. The Agency shall create and maintain a separate account to document all of the financial transactions related to the airport as a distinct entity.
- b. The accounting records shall be kept by the Agency or its authorized representative in accordance with Generally Accepted Accounting Principles and in an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- c. The Department has the right to audit and inspect all financial records of the airport upon reasonable notice.

**2. Good Title**

- a. The Agency holds good title, satisfactory to the Department, to the airport or site thereof, or gives assurance, satisfactory to the Department, that good title will be obtained.
- b. For noise compatibility program projects undertaken on the airport sponsor's property, the Agency holds good title, satisfactory to the Department, to that portion of the property upon which state funds will be expended, or gives assurance, satisfactory to the Department, that good title will be obtained.

**3. Preserving Rights and Powers**

- a. The Agency will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms and assurances of this Agreement without the written approval of the Department. Further, it will act promptly to acquire, extinguish, or modify, in a manner acceptable to the Department, any outstanding rights or claims of right of others which would interfere with such performance by the Agency.
- b. If an arrangement is made for management and operation of the airport by any entity or person other than the Agency or an employee of the Agency, the Agency will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with the terms and assurances of this Agreement.

**4. Hazard Removal and Mitigation**

- a. For airport hazards located on airport controlled property, the Agency will clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.
- b. For airport hazards not located on airport controlled property, the Agency will work in conjunction with the governing public authority or private land owner of the property to clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards. The Agency may enter into an agreement with surrounding property owners or pursue available legal remedies to remove potential hazards to air navigation.

**5. Airport Compatible Land Use**

- a. The Agency assures that appropriate airport zoning ordinances are in place consistent with Section 333.03, F.S., "Airport Zoning", or if not in place, that it will take appropriate action necessary to ensure local government

**AVIATION PROGRAM ASSURANCES**

adoption of an airport zoning ordinance or interlocal agreement with another local government body having an airport zoning ordinance, consistent with the provisions of Section 333.03, F.S.

b. The Agency assures that it will disapprove or oppose any attempted alteration or creation of objects, natural or man-made, dangerous to navigable airspace or that would adversely affect the current or future levels of airport operations.

c. The Agency assures that it will disapprove or oppose any attempted change in local land use development regulations that would adversely affect the current or future levels of airport operations by creation or expansion of airport incompatible land use areas.

**6. Consistency with Local Government Plans**

a. The Agency assures the project is consistent with the currently existing and planned future land use development plans approved by the local government having jurisdictional responsibility for the area surrounding the airport.

b. The Agency assures that it has given fair consideration to the interest of local communities and has had reasonable consultation with those parties affected by the project.

c. The Agency will consider and take appropriate actions, if deemed warranted, to adopt the current, approved Airport Master Plan into the local government comprehensive plan.

**7. Consistency with Airport Master Plan and Airport Layout Plan**

a. The Agency assures that any project, covered by the terms and assurances of this Agreement, is consistent with the current, approved Airport Master Plan.

b. The Agency assures that this project, covered by the terms and assurances of this Agreement, is consistent with the current, approved Airport Layout Plan (ALP), which shows:

(1) The boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Agency for airport purposes and proposed additions thereto;

(2) The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and

(3) The location of all existing and proposed non-aviation areas on airport property and of all existing improvements thereon.

c. The Agency assures that it will not make or permit any changes or alterations on the airport or any of its facilities that are not consistent with the Airport Master Plan and the Airport Layout Plan, as approved by the Department.

d. Original Airport Master Plans and Airport Layout Plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Department.

**8. Airport Financial Plan**

a. The Agency assures that it will develop and maintain a cost-feasible financial plan to accomplish the projects necessary to achieve the proposed airport improvements identified in the Airport Master Plan and depicted in the Airport Layout Plan, and any updates thereto.

(1) The financial plan shall be a part of the Airport Master Plan.

(2) The financial plan shall realistically assess project phasing considering availability of state and local funding and likelihood of federal funding under the FAA's priority system.

(3) The financial plan shall not include Department funding for projects which are inconsistent with the local government comprehensive plan.

b. All project cost estimates contained in the financial plan shall be entered into and kept current in the Joint Automated Capital Improvement Program (JACIP) online website.

**9. Airport Revenue**

The Agency assures that all revenue generated by the airport will be expended for capital improvement or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the

**AVIATION PROGRAM ASSURANCES**

owner or operator of the airport and which are directly and substantially related to the air transportation of passengers or property, or for environmental or noise mitigation purposes on or off the airport.

**10. Fee and Rental Structure**

- a. The Agency assures that it will maintain a fee and rental structure for facilities and services at the airport that will make the airport as self-sustaining as possible under the circumstances existing at the particular airport.
- b. If this Agreement results in a facility that will be leased or otherwise produce revenue, the Agency assures that the price charged for that facility will be based on the fair market value.
- c. The Agency assures that property or facility leases for aeronautical purposes shall not exceed a period of 30 years.

**11. Public-Private Partnership for Aeronautical Uses**

- a. If the airport owner or operator and a person or entity that owns an aircraft or an airport tenant or potential tenant agree that an aircraft hangar or tenant-specific facility, respectively, is to be constructed on airport property for aircraft storage or tenant use at the expense of the aircraft owner or tenant, the airport owner or operator may grant to the aircraft owner or tenant of the facility a lease that is subject to such terms and conditions on the facility as the airport owner or operator may impose, subject to approval by the Department.
- b. Duration of the terms or conditions in Section D11a shall not exceed a period of 30 years.

**12. Economic Nondiscrimination**

- a. The Agency assures that it will make the airport available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public.
  - (1) The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
  - (2) The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.
- b. The Agency assures that each airport Fixed-Based Operator (FBO) shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other FBOs making the same or similar uses of such airport and utilizing the same or similar facilities.

**13. Air and Water Quality Standards**

The Agency assures that in projects involving airport location, major runway extension, or runway location that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards.

**14. Operations and Maintenance**

- a. The Agency assures that the airport and all facilities, which are necessary to serve the aeronautical users of the airport, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal and state agencies for maintenance and operation, as well as minimum standards established by the Department for State of Florida licensing as a public-use airport.
  - (1) The Agency assures that it will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.
  - (2) Except in emergency situations, any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Department.
  - (3) The Agency assures that it will have arrangements for promptly notifying airmen of any condition affecting aeronautical use of the airport.
- b. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when adverse weather conditions interfere with safe airport operations.

**15. Federal Funding Eligibility**

## AVIATION PROGRAM ASSURANCES

- a. The Agency assures it will take appropriate actions to maintain federal funding eligibility for the airport and it will avoid any action that renders the airport ineligible for federal funding.
- b. Ineligibility for federal funding of airport projects will render the Agency ineligible for state funding of airport projects.

**16. Project Implementation**

- a. The Agency assures that it will begin making expenditures or incurring obligations pertaining to this airport project within one year after the effective date of this Agreement.
- b. The Agency may request a one-year extension of this one-year time period, subject to approval by the Department District Secretary or designee.
- c. Failure of the Agency to make expenditures, incur obligations or receive an approved extension may allow the Department to terminate this Agreement.

**17. Exclusive Rights**

The Agency assures that it will not permit any exclusive right for use of the airport by any person providing, or intending to provide, aeronautical services to the public.

**18. Airfield Access**

- a. The Agency assures that it will not grant or allow general easement or public access that opens onto or crosses the airport runways, taxiways, flight line, passenger facilities, or any area used for emergency equipment, fuel, supplies, passengers, mail and freight, radar, communications, utilities, and landing systems, including but not limited to flight operations, ground services, emergency services, terminal facilities, maintenance, repair, or storage, except for those normal airport providers responsible for standard airport daily services or during special events at the airport open to the public with limited and controlled access.
- b. The Agency assures that it will not grant or allow general easement or public access to any portion of the airfield from adjacent real property which is not owned, operated, or otherwise controlled by the Agency without prior Department approval.

**19. Retention of Rights and Interests**

The agency will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the real property shown as airport owned or controlled on the current airport layout plan without prior written approval by the Department. It will not sell, lease, encumber, terminate, waive, or otherwise transfer or dispose of any part of its title, rights, or other interest in existing noise easements or aviation easements on any property, airport or non airport, without prior written approval by the Department. These assurances shall not limit the Agency's right to lease airport property for airport-compatible purposes.

**20. Consultant, Contractor, Scope, and Costs**

- a. The Department has the right to disapprove the Agency's employment of consultants, contractors, and subcontractors for all or any part of this project if the specific consultants, contractors, or subcontractors have a record of poor project performance with the Department.
- b. Further, the Department maintains the right to disapprove the proposed project scope and cost of professional services.

**21. Planning Projects**

If this project involves planning or other aviation studies, the Agency assures that it will:

- a. Execute the project per the approved project narrative or with approved modifications.
- b. Furnish the Department with such periodic project and work activity reports as indicated in the approved scope of services.
- c. Make such material available for public review, unless exempt from public disclosure.
  - (1) Information related to airport security is considered restricted information and is exempt from public dissemination per Sections 119.071(3) and 331.22 Florida Statutes.
  - (2) No material prepared under this Agreement shall be subject to copyright in the United States or any other country.

## AVIATION PROGRAM ASSURANCES

- d. Grant the Department unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this Agreement.
- e. If the project involves developing an Airport Master Plan or an Airport Layout Plan, and any updates thereto, it will be consistent with provisions of the Florida Aviation System Plan, will identify reasonable future growth of the airport and the Agency will comply with the Department airport master planning guidebook, including:
- (1) Provide copies, in electronic and editable format, of final project materials to the Department, including computer-aided drafting (CAD) files of the Airport Layout Plan.
  - (2) Develop a cost-feasible financial plan, approved by the Department, to accomplish the projects described in the Airport Master Plan or depicted in the Airport Layout Plan, and any updates thereto. The cost-feasible financial plan shall realistically assess project phasing considering availability of state and local funding and federal funding under the FAA's priority system.
  - (3) Enter all projects contained in the cost-feasible plan in the Joint Automated Capital Improvement Program (JACIP).
- f. The Agency understands and agrees that Department approval of this project Agreement or any planning material developed as part of this Agreement does not constitute or imply any assurance or commitment on the part of the Department to approve any pending or future application for state aviation funding.
- g. The Agency will submit master planning draft and final deliverables for Department and, if required, FAA approval prior to submitting any invoices to the Department for payment.
- h. The Department may extend the 5-day requirement for the approval and inspection of goods and services to allow for adequate time for review (reference Section 215.422(1), F.S.).

**22. Land Acquisition Projects**

If this project involves the purchase of real property, the Agency assures that it will:

- a. **Laws:** Acquire the land in accordance with federal and state laws governing such action.
- b. **Administration:** Maintain direct control of project administration, including:
  - (1) Maintain responsibility for all related contract letting and administrative procedures.
  - (2) Secure written Department approval to execute each agreement for the purchase of real property with any third party.
  - (3) Ensure a qualified, State certified general appraiser provides all necessary services and documentation.
  - (4) Furnish the Department with a projected schedule of events and a cash flow projection within 20 calendar days after completion of the review appraisal.
  - (5) Establish a project account for the purchase of the land.
  - (6) Collect and disburse federal, state, and local project funds.
- c. **Reimbursable Funds:** If funding conveyed by this Agreement is reimbursable for land purchase in accordance with Chapter 332, Florida Statutes, the Agency will comply with the following requirements:
  - (1) The Agency shall apply for a FAA Airport Improvement Program grant for the land purchase within 60 days of executing this Agreement.
  - (2) If federal funds are received for the land purchase, the Agency shall notify the Department, in writing, within 14 calendar days of receiving the federal funds and is responsible for reimbursing the Department within 30 calendar days to achieve normal project federal, state, and local funding shares per Chapter 332, Florida Statutes.
  - (3) If federal funds are not received for the land purchase, the Agency shall reimburse the Department within 30 calendar days after the reimbursable funds are to achieve normal project state and local funding shares as described in Chapter 332, Florida Statutes.
  - (4) If federal funds are not received for the land purchase and the state share of the purchase is less than or equal to normal state and local funding shares per Chapter 332, F.S., when reimbursable funds are due, no reimbursement to the Department shall be required.

## AVIATION PROGRAM ASSURANCES

d. **New Airport:** If this project involves the purchase of real property for the development of a new airport, the Agency assures that it will:

- (1) Apply for federal and state funding to construct a paved runway, associated aircraft parking apron, and connecting taxiway within one year of the date of land purchase.
- (2) Complete an Airport Master Plan within two years of land purchase.
- (3) Complete airport construction for basic operation within 10 years of land purchase.

e. **Use of Land:** The Agency assures that it shall use the land for aviation purposes in accordance with the terms and assurances of this Agreement within 10 years of acquisition.

f. **Disposal of Land:** For disposal of real property purchased in accordance with the terms and assurances of this Agreement, the Agency assures that it will comply with the following:

- (1) For land purchased for airport development or noise compatibility purposes, the Agency will, when the land is no longer needed for such purposes, dispose of such land at fair market value and/or make available to the Department an amount equal to the state's proportionate share of its fair market value.
- (2) Land shall be considered to be needed for airport purposes under this assurance if:
  - (a) It serves aeronautical purposes, e.g. runway protection zone or as a noise buffer.
  - (b) Revenue from uses of such land contributes to airport financial self-sufficiency.
- (3) Disposition of land under Section 22f(1) or (2), above, shall be subject to retention or reservation of any interest or right therein needed to ensure such land will only be used for purposes compatible with noise levels related to airport operations.
- (4) For disposal of real property purchased with Department funding:
  - (a) The Agency will reimburse the Department a proportional amount of the proceeds of the sale of any airport-owned real property.
  - (b) The proportional amount shall be determined on the basis of the ratio of the Department financing of the acquisition of the real property multiplied against the sale amount, and shall be remitted to the Department within ninety (90) days of closing of sale.
  - (c) Sale of real property acquired with Department funds shall be at fair market value as determined by appraisal, and the contract for sale must be approved in advance by the Department.
  - (d) If any portion of the proceeds from the sale to the Agency is non-cash considerations, reimbursement to the Department shall include a proportional amount based on the value of the non-cash considerations.

23. **Construction Projects:** The Agency assures that it will:

a. **Project Certifications:** Certify project compliances, including

- (1) Consultant and contractor selection comply with all applicable federal, state and local laws, rules, regulations, and policies.
- (2) All design plans and specifications comply with federal, state, and professional standards and applicable FAA advisory circulars, as well as the minimum standards established by the Department for State of Florida licensing as a public-use airport.
- (3) Completed construction complies with all applicable local building codes.
- (4) Completed construction complies with the project plans and specifications with certification of that fact by the project Engineer.

b. **Design Development:** For the plans, specifications, construction contract documents, and any and all other engineering, construction, and contractual documents produced by the Engineer, which are hereinafter collectively referred to as "plans", the Agency will certify that:

- (1) The plans shall be developed in accordance with sound engineering and design principles, and with generally accepted professional standards.

## AVIATION PROGRAM ASSURANCES

(2) The plans shall be consistent with the intent of the project as defined in Exhibit A and Exhibit B of this Agreement.

(3) The project Engineer shall perform a review of the certification requirements listed in Section B2 above and make a determination as to their applicability to this project.

(4) Development of the plans shall comply with all applicable laws, ordinances, zoning and permitting requirements, public notice requirements, and other similar regulations.

**c. Inspection and Approval:** The Agency assures that:

(1) The Agency will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Department for the project.

(2) The Agency assures that it will allow the Department to inspect the work and that it will provide any cost and progress reporting, as may be required by the Department.

(3) The Agency assures that it will take the appropriate corrective action necessary, as required by the Department, for work which does not conform to Department standards.

**d. Pavement Preventive Maintenance:** The Agency assures that for a project involving replacement or reconstruction of runway or taxiway pavement it has implemented an airport pavement maintenance management program and that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with state financial assistance at the airport.

**24. Noise Mitigation Projects:** The Agency assures that it will:

**a. Government Agreements:** For all noise compatibility projects that are carried out by another unit of local government or are on property owned by a unit of local government other than the Agency, the Agency shall enter into an agreement with that government body.

(1) The local agreement, satisfactory to the Department, shall obligate the unit of local government to the same terms and assurances that apply to the Agency.

(2) The Agency assures that it will take steps to enforce the local agreement if there is substantial non-compliance with the terms of the agreement.

**b. Private Agreements:** For noise compatibility projects on privately owned property,

(1) The Agency shall enter into an agreement with the owner of that property to exclude future actions against the airport.

(2) The Agency assures that it will take steps to enforce the agreement if there is substantial non-compliance with the terms of the agreement.

**EXHIBIT D**

<u>State Agency</u>	<u>Catalog of State Financial Assistance (Number &amp; Title)</u>	<u>Amount</u>
FDOT	55004 - Aviation Grant Program	\$144,000

**COMPLIANCE REQUIREMENTS**

**Activities Allowed:**

**Airport Planning**

Airport Planning Grants are to study options for airport development and operations. The Department funds airport master plans, airport layout plans (ALP), noise and environmental studies, economical impact, services development, and airport promotion. Examples of projects are:

- Master plans and ALPs;
- Master drainage plans;
- Environmental assessments (EA);
- Development of regional impact (DRI);
- Operations and emergency response plans;
- Federal Aviation Regulations (FAR) Part 150 noise studies;
- Environmental impact studies (EIS);
- Wildlife hazard studies;
- Feasibility and site selection studies;
- Business plans;
- Airport management studies and training;
- Air services studies and related promotional materials.

(FDOT Aviation Grant Program Handbook)

**Airport Improvement**

These grants are to provide capital facilities and equipment for airports. Examples of projects are:

- Air-side capital improvement projects (runways, taxiways, aprons, T-hangers, fuel farms, maintenance hangers, lighting, control towers, instrument approach aids, automatic weather observation stations);
- Land-side capital improvement projects (terminal buildings, parking lots and structures, road and other access projects);
- Presentation projects (overlays, crack sealing, marking, painting buildings, roofing buildings, and other approved projects);
- Safety equipment (including AARF fire fighting equipment and lighted Xs);
- Safety projects (tree clearing, land contouring on overrun areas, and removing, lowering, moving, and marking, lighting hazards);
- Information technology equipment (used to inventory and plan airport facility needs);
- Drainage improvements.

(FDOT Aviation Grant Program Handbook)

## Land Acquisition

This grant program protects Florida's citizens from airport noise and protects airport clear zones and runway approach areas from encroachment. Administrative Costs, appraisals, legal fees, surveys, closing costs and preliminary engineering fees are eligible costs. In the event the negotiation for a fair market value is unsuccessful, the court will be petitioned for "an Order of Taking" under the eminent domain laws of Florida. Examples of projects are:

- Land acquisition (for land in an approved master plan or ALP);
- Mitigation land (on or off airport);
- Aviation easements;
- Right of way;
- Approach clear zones.

(FDOT Aviation Grant program Handbook)

## Airport Economic Development

This grant program is to encourage airport revenue. Examples of projects are:

- Any airport improvement and land purchase that will enhance economic impact;
- Building for lease;
- Industrial park infrastructure and buildings;
- General aviation terminals that will be 100 percent leased out;
- Industrial park marketing programs.

(FDOT Aviation Grant Program Handbook)

## Aviation Land Acquisition Loan Program

The Department provides interest free loans for 75 percent of the cost of airport land purchases for both commercial service and general aviation airports.

This is a general description of project types. A detail list of project types approved for these grant programs can be found in the Aviation Grant Program manual which can be accessed through the internet at [www.dot.state.fl.us/Aviation/Public.htm](http://www.dot.state.fl.us/Aviation/Public.htm).

**Allowable Cost:** See part three of compliance supplement

**Cash Management:** See part three of compliance supplement

**Matching Requirements are as follows:**

### Commercial Service Airports

When no federal funding is available, the Department provides up to 50 percent of the project costs. When federal funding is available, the Department can provide up to 50 percent of the non-federal share.

(FDOT Aviation Grant Program Handbook and Section 332.007(6) Florida Statutes)

### General Aviation Airports

When no federal funding is available, the Department provides up to 80 percent of project costs. When federal funding is available, the Department can provide up to 80 percent of the non-federal share.

(FDOT Aviation Grant Program Handbook and Section 332.007(6) Florida Statutes)

## Economic Development

The Department provides up to 50 percent of airport economic development funds to build on-airport revenue-producing capital improvements. This program is for local match only.  
(FDOT Aviation Grant Program Handbook and Section 332.007(6) Florida Statutes)

#### Airport Loans

The Department provides a 75 percent loan program to fund the Aviation Land Acquisition Loan Program.

(FDOT Aviation Grant Program Handbook and Section 332.007(6) Florida Statutes)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING SECTION 58-78 OF THE VERO BEACH MUNICIPAL FIREFIGHTERS RETIREMENT TRUST; PROVIDING FOR EXPANDED INVESTMENT AUTHORITY AS PERMITTED BY LAW; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

WHEREAS the City of Vero Beach Municipal Firemen’s Relief and Pension Fund is governed by Chapter 175, Florida Statutes;

WHEREAS Chapter 175 was recently amended to expand the investment authority of Chapter 175 pension boards;

WHEREAS the Firefighter Pension Board works with an investment consultant to prepare an investment policy statement and guidelines, which govern the institutional money managers retained by the Board to invest the Board’s portfolio;

WHEREAS the Board’s investment consultant has recommended the updating of the Board’s investment authority set forth in Section 58-78 of the City Code; and

WHEREAS the Vero Beach City Council has determined that the passage of this ordinance is in the best interest of the citizens of the City of Vero Beach;

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

**Section 1:** Section 58-78 of the Code of the City of Vero Beach is hereby amended to read as follows:

Sec. 58-78. Investment of funds.

- (a) Objective. It shall be the objective of the municipal firefighter's relief and pension fund that it be managed, administered, operated, and funded in such a manner as to maximize the protection of the fund. In pursuit of this objective, the assets of the fund will be invested primarily in publicly traded instruments of investment grade or higher, as described in F.S. § 175.071. Consistent with this objective is the mandate that the fund will be capable of providing retirement benefits to participants in accordance with the plan benefits as stated

in F.S. ch. 175 and this Code.

- (b) Investment guidelines. The board's investments shall be governed by the investment policy statement and guidelines, which may be periodically reviewed by the board. The board shall have the authority to invest in all lawful investments, as permitted by Chapter 175 and Section 215.47, Fla.Statutes.

~~(1) The aggregate at cost value of investments in equity securities shall not exceed 50 percent of the fund's total asset value.~~

~~(2) Subject to the 50 percent equity securities investment limit set forth in subsection (b)(1) of this section, the aggregate at cost value of investments in securities of foreign companies shall not exceed ten percent of the fund's total asset value.~~

- (c) Investment policy statement to be filed with city clerk by fire pension board. The fire pension board shall file a copy of its statement of investment policy relative to the firefighters' pension plan with the city clerk. In the event that the fire pension board amends its state of investment policy, the fire pension board shall file an amended copy of its statement of investment policy with the city clerk. The fire pension board's statement of investment policy shall complement the investment guidelines provided in all applicable state law and local ordinances.

- (d) Statement of investment policy for the municipal firefighters' pension plan.

- (1) Introduction. The Board of Trustees of the City of Vero Beach Municipal Firefighters' Pension Plan has established this statement of investment policy. This policy has been identified by the board as having the greatest expected investment return, and the resulting positive impact on asset values, funded status and benefits, without exceeding a prudent level of risk. The board determined this policy after evaluating the implications of increased investment return versus increased variability of return for a number of potential investment policies with varying commitments to stocks and bonds.

This statement of investment policy is intended to compliment the investment guidelines provided in all applicable state statutes and local ordinances. The purpose of this statement is to:

- a. Provide the investment manager a more accurate understanding of the trustees' investment objectives and,
  - b. Indicate the criteria by which the investment manager's performance will be evaluated.
- (2) General objectives. The primary investment objective of the City of Vero Beach Municipal Firefighters' Pension Plan is the preservation of invested capital. The secondary objective is to achieve moderate long-term real growth of the assets

while minimizing the volatility of returns.

To achieve these objectives, the board seeks to create a conservative, well diversified and balanced portfolio of high quality equity, fixed income and money market securities. The board has determined that one or more outside investment managers shall be retained to assure that all investments are managed in both a prudent and professional manner and in compliance with the stated investment guidelines.

- (3) Investment manager responsibilities.
- a. Within the guidelines and restrictions set forth herein, it is the intention of the board to give the investment manager full investment discretion, with respect to assets under its management. The investment manager shall discharge its responsibilities in the same manner as it would if the fund were governed by the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974 (ERISA). Although the fund trustees acknowledge that ERISA does not apply to a governmental fund, it hereby imposes the fiduciary provisions of ERISA upon the investment manager whose performance shall conform to the statutory provisions, rules, regulations, interpretations and case law of ERISA. The investment manager shall acknowledge, in writing, that it is a named fiduciary of the fund.
  - b. The investment manager is expected to provide any reasonable information requested by the board of trustees. At a minimum, each manager shall provide a quarterly report detailing their investment activity, the portfolio's current value, and any changes in investment philosophy or strategy. The firm's investment manager is expected to meet with the board of trustees at least once per year. A designated representative will meet with the board of trustees, as requested.
  - c. Unless otherwise provided by the custodian, the investment manager will monitor portfolio activity to minimize uninvested cash balances.
  - d. The investment manager shall be responsible only for those assets under its management.
  - e. It will be the responsibility of the investment manager to review the monthly valuations provided by the custodian and to note, in writing, any significant discrepancies from the valuations provided in their own reports.
- (4) Investment objectives. Investment objectives are intended to provide quantifiable benchmarks to measure and evaluate portfolio return and risk. Most investment styles require a full market cycle to allow an investment manager to demonstrate his abilities. A full market cycle is generally defined as a three- to five-year time

period. As a result, performance objectives will be measured over three- to five-year periods. Monitoring shorter periods may be used to determine the trend of performance premiums or deficiencies.

The specific investment objectives of the municipal firefighters' pension plan are as follows:

Primary objective: To earn an average rate of return over the long term (three to five years) which exceeds the return of a target index. The target index for the municipal firefighters' pension plan is defined as a 50 percent investment in the Standard & Poor's 500 Stock Index and a 50 percent investment in the Merrill Lynch Government/Corporate Bond Index shall be set forth in the board's investment statement and guidelines.

In addition, it is expected that the total rate of return earned by the fund and the returns earned by the stock and bond portions of the portfolio will each rank above average when compared to a representative universe of other, similarly managed portfolios.

Secondary objectives: A further goal of the municipal firefighters' pension plan shall be to achieve an average annual rate of return greater than eight percent, over the longer term. This absolute return objective will be evaluated in the context of the prevailing investment market conditions.

Volatility: The volatility of the fund's total returns is expected to be similar to that of the target index and will be evaluated accordingly.

The above investment objectives have been established for the entire municipal firefighters' pension plan. The specific investment objectives for each investment manager will be outlined in addenda to this overall statement of investment policy.

- (5) ~~Investment guidelines. The board of trustees has established the following target asset allocation of the entire municipal firefighters' pension plan:~~

~~TABLE INSET:-~~

<del>Equity securities-</del>	<del>50 percent-</del>
<del>Fixed income securities-</del>	<del>50 percent-</del>

~~To implement this strategy, the board has chosen to hire one or more professional investment managers. Specific assignments and additional guidelines for each investment manager will be outlined in addenda to this overall statement of investment policy. The following guidelines and restrictions apply to all fund investments.-~~

In accordance with F.S. ch. 175, and the policies established by the board of

Trustees, the assets of the municipal firefighters' pension plan shall be invested in a diversified portfolio of fully negotiable, equity, fixed income, and money market securities, as set forth in the board's investment policy statement and guidelines, provided they meet the following criteria:-

a. ~~Equity securities:-~~

1. ~~Investments in equity securities shall be limited to no more than 60 percent (market value) of the fund's total asset value.-~~
2. ~~Investments in all domestic equity securities shall be limited to those listed on a major U.S. stock exchange (including NASDAQ).-~~
3. ~~No more than five percent at cost value of an investment manager's equity portfolio may be invested in the shares of a single corporate issuer.-~~
4. ~~Investments in stocks of foreign companies shall be limited to ten percent of the value of the total investment portfolio (at cost).-~~
5. ~~Investment in equity securities whose market capitalization is less than three billion dollars shall be limited to 20 percent of the total equity portfolio.-~~
6. ~~Shares of stock in those corporations whose stock has been publicly traded for less than one year are limited to 15 percent of the equity portfolio.-~~

b. ~~Fixed income securities:-~~

1. ~~The fixed income portfolio shall comply with the following guidelines: The duration of the fixed income portfolio should be within 65 percent and 135 percent of the duration of the market index. The market index is defined as the Merrill Lynch Government/Corporate Bond Index.-~~
2. ~~Investments in all corporate fixed income securities shall be limited to:-~~
  - (i) ~~Those securities rated "A" or higher by Moodys' or Standard & Poor's rating services. Fixed income securities which are downgraded below the minimum rating shall be sold at the earliest beneficial opportunity.-~~
  - (ii) ~~Securities issued by a corporation organized under the laws of the United States, any state or organized territory of the~~

~~United States, or the District of Columbia.~~

~~(iii) No more than ten percent at cost of an investment managers' total fixed income portfolio shall be invested in the securities of any single corporate issuer.~~

~~3. Investments in Collateralized Mortgage Obligations (CMOs) shall be limited to 15% of the market value of the investment managers' total portfolio and shall be restricted to issues which meet all of the following criteria:~~

~~(i) All issues must be backed mortgage securities, issued, guaranteed, or fully insured by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), or that are rated "AAA" by Moody's or "AAA" by Standard & Poor's rating services.~~

~~(ii) All issues must pass the FFIEC High Risk Security Test on an annual basis. Any CMO issue held in the investment managers' portfolio that fails the FFIEC test shall be sold at the earliest beneficial opportunity.~~

~~4. There is no limit imposed on investments in fixed income securities issued directly by the United States Government or any agency or instrumentality thereof.~~

~~Investments in interest only or principal only CMOs, precious metals, limited partnerships of any kind, real estate, venture capital, futures contracts, options contracts, trading on margin and short selling are prohibited.~~

~~e. Cash equivalent securities:~~

~~1. The investment manager may invest only in the following short term investment vehicles:~~

~~(i) The money market or STIF provided by the plan's custodian.~~

~~(ii) Direct obligations of the United States Government with a maturity of one year or less.~~

~~(iii) Commercial paper with a maturity of 270 days or less that is rated A-1 by Standard & Poor's or P-1 by Moody's.~~

~~(iv) Bankers acceptances issued by the largest 50 banks in the United States (in terms of total assets).~~

- (6) Review of policy. It is the intention of the Board of Trustees of the City of Vero Beach Municipal Firefighters' Pension Plan to review this statement of investment policy and its addenda periodically to amend it to reflect any changes in philosophy or objectives. However, if at any time the investment manager believes that the specific objectives defined herein cannot be met or that these guidelines unnecessarily constrict performance, the board shall be so notified in writing.

**Section 2:** This Section shall be codified and made a part of the Code of Ordinances of the City of Vero Beach. In any such codification, the editor shall have the authority to re-number or re-letter any section of this ordinance as may be necessary provided, however, that no such editorial change shall alter the substantive language of this ordinance.

**Section 3:** Should any provision of this ordinance be declared invalid by a court of competent jurisdiction the remaining provisions of this ordinance shall remain in full force and effect as if the invalid provision had not been enacted.

**Section 4:** This Ordinance shall become effective immediately upon its adoption by the City Council.

\*\*\*\*\*

This Ordinance was read for the first time on the \_\_\_\_\_ of \_\_\_\_\_, 2010, and was advertised in the Indian River Press Journal on the \_\_\_\_\_ of \_\_\_\_\_, 2010, as being scheduled for a public hearing to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, at the conclusion of which hearing it was moved for adoption by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and adopted by the following vote:

Mayor Kevin Sawnick \_\_\_\_\_  
Vice Mayor Sabin C. Abell \_\_\_\_\_  
Councilmember Thomas P. White \_\_\_\_\_  
Councilmember Brian T. Heady \_\_\_\_\_  
Councilmember Ken Daige \_\_\_\_\_

ATTEST:

CITY OF VERO BEACH, FLORIDA

\_\_\_\_\_  
Tammy K. Vock  
City Clerk

\_\_\_\_\_  
Kevin Sawnick  
Mayor

Approved as to form and legal sufficiency:    Approved as conforming to municipal policy:

\_\_\_\_\_  
Charles P. Vitunac  
City Attorney

\_\_\_\_\_  
James M. Gabbard  
City Manager

Approved as to technical requirements:

\_\_\_\_\_  
Steve Maillet  
Finance Director

# CITY OF VERO BEACH

(PLAN SPONSER)

## FIREFIGHTERS' PENSION PLAN

### Investment Policy Statement

#### I. PURPOSE OF INVESTMENT POLICY STATEMENT

The Pension Board of Trustees (Board) maintains that an important determinant of future investment returns is the expression and periodic review of the City of Vero Beach Firefighters' Pension Fund (the Plan) investment objectives. To that end, the Board has adopted this statement of Investment Policy and directs that it apply to all assets under their control.

In fulfilling their fiduciary responsibility, the Board recognizes that the retirement system is an essential vehicle for providing income benefits to retired participants or their beneficiaries. The Board also recognizes that the obligations of the Plan are long-term and that investment policy should be made with a view toward performance and return over a number of years. The general investment objective is to obtain a reasonable total rate of return - defined as interest and dividend income plus realized and unrealized capital gains or losses - commensurate with the Prudent Investor Rule and any other applicable ordinances and statutes.

Reasonable consistency of return and protection of assets against the inroads of inflation are paramount. However, interest rate fluctuations and volatility of securities markets make it necessary to judge results within the context of several years rather than over short periods of five years or less.

The Board will employ investment professionals to oversee and invest the assets of the Plan. Within the parameters allowed in this document and their agreements with the Board, the investment management professionals shall have investment discretion over their mandates, including security selection, sector weightings and investment style.

The Board, in performing their investment duties, shall comply with the fiduciary standards set forth in Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. s. 1104(a) (1) (A) - (C). In case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this section shall prevail.

## II. TARGET ALLOCATIONS

In order to provide for a diversified portfolio, the Board has engaged investment professional(s) to manage and administer the fund. The investment manager(s) are responsible for the assets and allocation of their mandate only and may be provided an addendum to this policy with their specific performance objectives and investment criteria. The Board has established the following asset allocation targets for the total fund:

Asset Class	Target	Range	Benchmark Index
Domestic Equity	45%	40% - 50%	S&P 500 Value
International Equity	15%	10% - 20%	MSCI-World (x-U.S.)
Broad Market Fixed Income	25%	20% - 30%	Barclays Aggregate
TIPS*	5%	0% - 10%	Barclays TIPS
Real Estate*	10%	0% - 15%	NCREIF Property

\*Benchmark will default to "broad market fixed income" if these portfolios are not funded. Targets and ranges above are based on market value of total Plan assets.

The investment consultant will monitor the aggregate asset allocation of the portfolio, and will rebalance to the target asset allocation based on market conditions. If at the end of any calendar quarter, the allocation of an asset class falls outside of its allowable range, barring extenuating circumstances such as pending cash flows or allocation levels viewed as temporary, the asset allocation will be rebalanced into the allowable range. To the extent possible, contributions and withdrawals from the portfolio will be executed proportionally based on the most current market values available. The Board does not intend to exercise short-term changes to the target allocation.

## III. INVESTMENT PERFORMANCE OBJECTIVES

The following performance measures will be used as objective criteria for evaluating the effectiveness of the Investment Managers.

### A. Total Portfolio Performance

1. The performance of the total portfolio will be measured for rolling three and five year periods. The performance of the portfolio will be compared to the return of the policy indexes comprised of 50% S&P 500 Value, 10% MSCI World x-U.S., 25% Barclays Intermediate Aggregate Bond Index, 5% Barclays TIPS Index and 10% NCREIF Property Index.
2. On a relative basis, it is expected that the total portfolio performance will rank in the top 40<sup>th</sup> percentile of the appropriate peer universe over three and five-year time periods.
3. On an absolute basis, the objective is that the return of the total portfolio will equal or exceed the actuarial earnings assumption (7%), and provide inflation protection by meeting Consumer Price Index plus 3%.

**B. Equity Performance**

The combined equity portion of the portfolio, defined as common stocks and convertible bonds, is expected to perform at a rate at least equal to the 83% Russell 3000 and 17% MSCI World x-U.S. Index. Individual components of the equity portfolio will be compared to the specific benchmarks defined in each Investment Manager addendum. All portfolios are expected to rank in the top 40<sup>th</sup> percentile of the appropriate peer universe over three and five-year time periods.

**C. Fixed Income Performance**

The overall objective of the fixed income portion of the portfolio is to add stability and liquidity to the total portfolio. The fixed income portion of the portfolio is expected to perform at a rate at least equal to the Barclays Capital U.S. Aggregate Bond Index. All portfolios are expected to rank in the top 40<sup>th</sup> percentile of the appropriate peer universe over three and five-year time periods.

**D. Treasury Inflation Protection Security (TIPS) Performance**

The overall objective of the TIPS portfolio, if utilized, is to provide inflation protection while adding stability to the total portfolio. If TIPS are utilized the strategy is expected to approximate the structure and performance of the Barclays Capital U.S Treasury TIPS Index.

**E. Real Estate Performance**

The overall objective of the real estate portfolio of the portfolio, if utilized, is to add diversification and another stable income stream to the total fund. The real estate portion of the total fund; defined as core, open ended private real estate, is expected to perform at a rate at least equal to the NCREIF Index and rank in the top 40<sup>th</sup> percentile of the appropriate peer universe over three and five-year time periods.

**F. Alternative and Other Asset Performance**

The overall objective of the alternative and/or "other asset" portion of the portfolio, if utilized, is to reduce the overall volatility of the portfolio and enhance returns. This portion of the fund will be benchmarked as outlined in the manager addendum.

**IV. INVESTMENT GUIDELINES**

**A. Authorized Investments**

Pursuant to the investment powers of the Board of Trustees as set forth in the Florida Statutes and local ordinances, the Board of Trustees sets forth the following investment guidelines and limitations:

1. Equities:

- a. Must be traded on a national exchange or electronic network; and
  - b. Not more than 5% of the Plan's assets, at the time of purchase, shall be invested in the common stock, capital stock or convertible stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5% of the outstanding capital stock of the company; and
  - c. Additional criteria may be outlined in the manager's addendum.
2. Fixed Income:
- a. All fixed income investments shall have a minimum rating of investment grade or higher as reported by a major credit rating service; and
  - b. The value of bonds issued by any single corporation shall not exceed 3% of the total fund; and
  - c. Additional criteria may be outlined in the manager's addendum.
3. Money Market:
- a. The money market fund or STIF options provided by the Plan's custodian; and
  - b. Have a minimum rating of Standard & Poor's A1 or Moody's P1.

4. Pooled Funds:

Investments made by the Board may include pooled funds. For purposes of this policy pooled funds may include, but are not limited to, mutual funds, commingled funds, exchange-traded funds, limited partnerships and private equity. Pooled funds may be governed by separate documents which may include investments not expressly permitted in this Investment Policy Statement. In the event of investment by the Plan into a pooled fund, the prospectus or governing policy of that pooled fund, as updated from time to time, shall be treated as an addendum to this Investment Policy Statement. The Investment Consultant shall periodically review with the Board any material changes in the prospectus or governing policy of a pooled fund.

B. Trading Parameters

When feasible and appropriate, all securities shall be competitively bid. Except as otherwise required by law, the most economically advantageous bid shall be selected. Commissions paid for purchase of securities must meet the prevailing best-execution rates. The responsibility of monitoring best price and execution of trades placed by each manager on behalf of the Plan will be governed by the Portfolio Management Agreement between the Plan and the Investment Managers.

C. Limitations

1. Investments in corporate common stock and convertible bonds shall not exceed seventy (70%) of the Plan assets at market.
2. Foreign securities shall not exceed twenty-five percent (25%) of Plan's market value.
3. All equity and fixed income securities must be readily marketable. Commingled funds must be independently appraised at least annually.

D. Absolute Restrictions

No investments shall be permitted in;

1. Any investment not specifically allowed as part of this policy.
2. Illiquid investments, as described in Chapter 215.47, Florida Statutes.
3. Direct investment in 'Scrutinized Companies' identified in the periodic publication by the State Board of Administration ("SBA list", updated on their website [www.sbafla.com/fsb/](http://www.sbafla.com/fsb/)), is prohibited. Any security identified as non-compliant on or before January 1, 2010 must be divested by September 1, 2010. Securities identified after January 1, 2010, are subject to the provisions of section V. (c) below. However, if divestiture of business activities is accomplished and the company is subsequently removed from the SBA list, the manager can continue to hold that security. Indirect investment in 'Scrutinized Companies' (through pooled funds) are governed by the provisions of Section V(G) below.

V. **COMMUNICATIONS**

- A. On a monthly basis, the custodian shall supply an accounting statement that will include a summary of all receipts and disbursements and the cost and the market value of all assets.
- B. On a quarterly basis, the Investment Managers shall provide a written report affirming compliance with the security restrictions of Section IV (as well as any provisions outlined in the Investment Manager's addendum). In addition, the Investment Managers shall deliver a report each quarter detailing the Plan's performance, forecast of the market and economy, portfolio analysis and current assets of the Plan. Written reports shall be delivered to the Board within 30 days of the end of the quarter. A copy of the written report shall be submitted to the person designated by the City, and shall be available for public inspection. The Investment Managers will provide immediate written and telephone notice to the Board of any significant market related or non-market related event, specifically including, but not limited to, any deviation from the standards set forth in Section IV or their Investment Manager addendum.
- C. If the Fund owns investments, that complied with section IV at the time of purchase, which subsequently exceed the applicable limit or do not satisfy the applicable investment standard, such excess or noncompliant investments may be continued until it is economically feasible to dispose of such investment in accordance with the prudent man

standard of care, but no additional investment may be made unless authorized by law or ordinance. An action plan outlining the investment 'hold or sell' strategy shall be provided to the Board immediately.

- D. The Investment Consultant shall evaluate and report on a quarterly basis the rate of return net of investment fees and relative performance of the Plan.
- E. The Board will meet periodically to review the Investment Consultant performance report. The Board will meet with the investment manager and appropriate outside consultants to discuss performance results, economic outlook, investment strategy and tactics and other pertinent matters affecting the Plan on a periodic basis.
- F. At least annually, the Board shall provide the Investment Managers with projected disbursement needs of the Plan so that the investment portfolio can be structured in such a manner as to provide sufficient liquidity to pay obligations as they come due. To this end the Investment Managers should, to the extent possible, attempt to match investment maturities with known cash needs and anticipated cash-flow requirements.
- G. The Investment Consultant, on behalf of the Plan, shall send a letter to any pooled fund referring the investment manager to the listing of 'Scrutinized Companies' by the State Board of Administration ('SBA list'), on their website [www.sbafla.com/fsb/](http://www.sbafla.com/fsb/). This letter shall request that they consider removing such companies from the fund or create a similar actively managed fund having indirect holdings devoid of such companies. If the manager creates a similar fund, the Plan shall replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards. For the purposes of this section, a private equity fund is deemed to be an actively managed investment fund. However, after sending the required correspondence, the Plan is not required to sell the pooled fund.

## VI. COMPLIANCE

- A. It is the direction of the Board that the plan assets are held by a third party custodian, and that all securities purchased by, and all collateral obtained by the plan shall be properly designated as Plan assets. No withdrawal of assets, in whole or in part, shall be made from safekeeping except by an authorized member of the Board or their designee. Securities transactions between a broker-dealer and the custodian involving purchase or sale of securities by transfer of money or securities must be made on a "delivery vs. payment" basis to insure that the custodian will have the security or money in hand at conclusion of the transaction.
- B. The investment policy shall require all approved institutions and dealers transacting repurchase agreements to execute and perform as stated in the Master Repurchase Agreement. All repurchase agreement transactions shall adhere to the requirements of the Master Repurchase Agreement.
- C. At the direction of the Board operations of the Plan shall be reviewed by independent certified public accountants as part of any financial audit periodically required. Compliance with the Board's internal controls shall be verified. These controls have been designed to prevent losses of assets that might arise from fraud, error, or misrepresentation by third

parties or imprudent actions by the Board or employees of the plan sponsor, to the extent possible.

- D. Each member of the Board shall participate in a continuing education program relating to investments and the Board's responsibilities to the Plan. It is suggested that this education process begin during each Trustee's first term.
- E. With each actuarial valuation, the Board shall determine the total expected annual rate of return for the current year, for each of the next several years and for the long term thereafter. This determination shall be filed promptly with the Department of Management Services, the plan's sponsor and the consulting actuary.
- F. The proxy votes must be exercised for the exclusive benefit of the participants of the Plan. Each Investment Manager shall provide the Board with a copy of their proxy voting policy for approval. On a regular basis, at least annually, each manager shall report a record of their proxy vote.

## VII. CRITERIA FOR INVESTMENT MANAGER REVIEW

The Board wishes to adopt standards by which judgments of the ongoing performance of a portfolio manager may be made. If, at any time, any three of the following is breached, the portfolio manager may be warned of the Board's serious concern for the Plan's continued safety and performance. If any five of these are violated the consultant may recommend a manager search for that mandate.

- Four (4) consecutive quarters of relative under-performance verses the benchmark.
- Three (3) year trailing return below the top 40<sup>th</sup> percentile within the appropriate peer group and under performance verses the benchmark.
- Five (5) year trailing return below the top 40<sup>th</sup> percentile and under performance verses the benchmark.
- Three (3) year downside volatility greater than the index (greater than 100), as measured by down market capture ratio.
- Five (5) year downside volatility greater than the index (greater than 100), as measured by down market capture ratio.
- Style consistency or purity drift from the mandate.
- Management turnover in portfolio team or senior management.
- Investment process change, including varying the index or benchmark.
- Failure to adhere to the IPS or other compliance issues.
- Investigation of the firm by the Securities and Exchange Commission (SEC).
- Significant asset flows into or out of the company.
- Merger or sale of firm.
- Fee increases outside of the competitive range.

- Servicing issues – key personnel stop servicing the account without proper notification.
- Failure to attain a 60% vote of confidence by the Board.

Nothing in this section shall limit or diminish the Board's right to terminate the manager at any time for any reason.

### **VIII. APPLICABLE CITY ORDINANCES**

If at any time this document is found to be in conflict with the City Ordinances or applicable Florida Statutes, the Ordinances and Statutes shall prevail.

### **IX. REVIEW AND AMENDMENTS**

It is the Board's intention to review this document at least annually subsequent to the actuarial report and to amend this statement to reflect any changes in philosophy, objectives, or guidelines. In this regard, the Investment Manager's interest in consistency in these matters is recognized and will be taken into account when changes are being considered. If, at any time, the Investment Manager feels that the specific objectives defined herein cannot be met, or the guidelines constrict performance, the Board should be notified in writing. By initialing and continuing acceptance of this Investment Policy Statement, the Investment Managers concur with the provisions of this document. By signing this document, the Chairman attests that this policy has been recommended by the Investment Consultant, reviewed by the plan's legal counsel for compliance with applicable law, and approved by the Board of Trustees.

### **X. FILING OF THE INVESTMENT POLICY**

Upon adoption by the Board, the investment policy shall be promptly filed with the Florida Department of Management Services, the City, and the plan's actuary. The effective date of the Investment Policy shall be the 31 days following the filing date with the City.

### **CITY OF VERO BEACH FIREFIGHTERS' PENSION PLAN**

\_\_\_\_\_  
Chairman, Board of Trustees

\_\_\_\_\_  
Date

**COUNCIL AGENDA REPORT**  
**MEETING OF MARCH 2, 2010**

**TO:** The Honorable Mayor and Members of the City Council

**FROM:** James M. Gabbard, City Manager

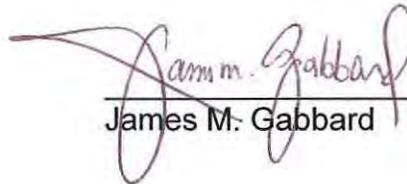
**DATE:** February 16, 2010

**SUBJECT: AWARD OF BID NO. 100-10/JV – LIFT STATION AND SEWER IMPROVEMENTS AT OCEAN TOWERS**

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Attached is a memorandum from Rob Bolton, dated February 12, 2010, which provides background information and a recommendation on the above-referenced bid.

**It is the recommendation of the City Manager's Office that Council approve the Award of Bid No. 100-10/JV, for Lift Station and Sewer Improvements at Ocean Towers, to Timothy Rose Contracting, in the amount of \$121,956.00. Funding will be from Account No. 423.9001.536.610361.**

  
James M. Gabbard

:jav  
Attachments

xc: Rob Bolton  
Stephen Maillet

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**DEPARTMENTAL CORRESPONDENCE**  
**WATER AND SEWER DEPARTMENT**



To: James M. Gabbard, City Manager

From: Robert J. Bolton, P.E., Director *RJB*

Date: February 12, 2010

RE: Ocean Towers Lift Station

**Background**

Representatives from Ocean Towers of Vero Beach, Inc. requested the City replace their existing failing lift station with a new lift station meeting the specifications of the City. The affected property owners for this project are Ocean Towers of Vero Beach, Inc., Ocean Towers II of Vero Beach, Inc., and the Cardinal Drive Townhouses. A poll was conducted of the owners resulting in a 71.25% favorable vote. Council approved this assessment project on April 7, 2009 through Resolution No. 2009-14. The total estimated cost to be assessed is \$229,391.50 being \$2,867.39 per owner.

The project was bid on January 5, 2010 and bids were opened on January 28, 2010. Fifteen companies bid on the project with Tim Rose Contracting of Vero Beach providing the lowest bid at \$121,956.00, which is below the original construction estimate of \$196,265.00. Tim Rose has performed work for the City in the past such as the Lift Station No. 11 Replacement and Tulip Lane Sanitary Sewer Installation.

**Funding**

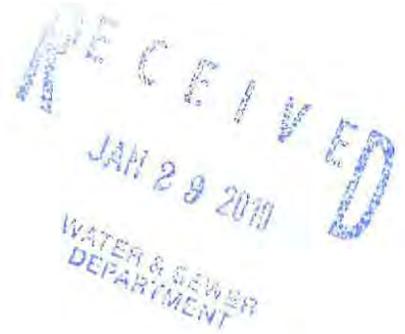
Funds are available in account 423.9001.536.610361

**Recommendation**

Please place this item on the March 2, 2010 Council Agenda for approval. Recommend that the City approve the bid from Timothy Rose Contracting for the amount of \$121,956.00. Please contact me at ext. 5228 if you have any questions.

DEPARTMENTAL CORRESPONDENCE

TO: Jerry Gilbert, Engineer Water and Sewer  
FROM: Jay Van Arsdall, Senior Buyer  
DATE: January 29, 2010  
SUBJECT: Bid No. 100-10/JV Lift Station and Sewer Improvements at Ocean Towers



In order to secure firm pricing for the Water and Sewer Department, the Division of Purchasing advertised and solicited bids on January 5, 2010 for Bid No. 100-10/JV Lift Station and Sewer Improvements at Ocean Towers. Seven hundred and sixty-one (761) vendors were notified of this bid, seventy-nine (79) vendors actually downloaded the bid, and fifteen (15) responses were received.

On Thursday, January 28, 2010, at 2:30 p.m., the Division of Purchasing opened bids on the above subject. Please find a bid tabulation and copies of the bids enclosed for your review and recommendation. Please provide Purchasing with a memorandum stating Water & Sewer's recommendation so that we may process the contract for the appropriate approval.

Should you have any questions regarding this matter, please do not hesitate to contact me at extension 5473.

Cc: File

Bid Tabulation - Bid No. 100-10-JV  
Lift Station and Sewer Improvements at Ocean Towers

Vendor	Bid	Variances	Drug-Free Workplace	Questionnaire	Addendum No. 1	Bid Bond
Timothy Rose Contracting, Inc. Vero Beach, FL	\$121,956.00	None	YES	YES	YES	YES
H & D Construction Co., Inc. Ft. Pierce, FL	\$125,230.00	None	YES	YES	YES	YES
So. Underground Ind., Inc. Pompano Beach, FL	\$135,257.00	None	YES	YES	YES	YES
Hinterland Group, Inc. Cocoa, FL	\$136,735.00	None	YES	YES	YES	YES
R.K. Contractors, Inc. Ft. Pierce, FL	\$138,515.00	None	YES	YES	YES	YES
Olney Earthworks, Inc. Stuart, FL	\$141,673.00	None	YES	YES	YES	YES
Blazer Const. Ind., Inc. Jupiter, FL	\$143,959.30	None	NO	YES	YES	YES
C & S Tech. Resources, Inc. Orlando, FL	\$149,290.00	None	YES	YES	YES	YES
Atlantic Civil Const. Corp. Orlando, FL	\$151,985.50	None	YES	YES	YES	YES
Masci Corporation South Daytona, FL	\$152,020.00	None	YES	YES	YES	YES
Chaz Equipment Co., Inc. Wellington, FL	\$156,135.00	None	YES	YES	YES	YES
Jobear/Warden Construction Palm Bay, FL	\$158,714.00	None	YES	YES	YES	YES
Construction Mgt. Assoc., LLC Rockledge, FL	\$164,182.75	None	YES	YES	NO	YES
TLC Diversified, Inc. Palmetto, FL	\$188,984.00	None	YES	YES	YES	YES
Underground Const. Mgt., Inc. Jensen Beach, FL	\$248,400.00	YES	YES	YES	YES	YES

**BID PROPOSAL**

**INVITATION TO BID NO: 100-10/JV**

To: The City Manager  
City of Vero Beach  
P.O. Box 1389  
Vero Beach, Florida 32961

The Undersigned Bidder has carefully examined the Contract Documents and any and all Work Sites. The undersigned is familiar with the nature and extent of the Work and any local conditions that may in any manner affect the Work to be done, and the equipment, materials and labor required.

The undersigned agrees to do all the Work in accordance with the Contract Documents and according to the standards of quality and performance established by the City, for the unit prices as provided in the attached Bid Schedule, for each of the items or combination of items stipulated. It is understood that certain quantities shown in the Bid Schedule are approximate only, subject to increases and decreases, and for the purpose of Bid comparisons for determination of low Bidder. It is further understood that payment will be in accordance with actual quantities placed in the construction as more specifically provided in the Contract Documents. The undersigned further agrees as follows:

1. To do any Work, not covered by the Bid Schedule, which may be ordered by the City upon authorization by the City Council, and to accept as full compensation therefore such prices as may be agreed upon, in writing, by the City and the Contractor in accordance with Articles 8-9, of the General Conditions.
2. To begin and complete Work as required in the Notice to Proceed.
3. To reimburse the City of Vero Beach liquidated damages in the amount and under the conditions specified in the Contract Documents.
4. To insert in all Contracts at every tier the notice stated in Article 17 of the Instructions to Bidders.

Dated this 28<sup>th</sup> day of January, 2010.

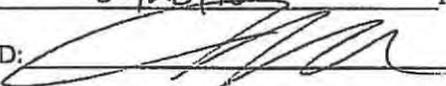
Respectfully submitted

Timothy Rose Contracting, Inc.  
Bidder  
1360 SW Old Dixie Hwy, Ste. 106  
Address  
Vero Beach, FL 32962  
City, State and Zip Code

**BID SCHEDULE**  
**BID 100-10/JV, LIFT STATION AND SEWER SYSTEM IMPROVEMENTS AT OCEAN TOWERS**

Item No.	Description	Quantity	Unit	Unit Price	Total Price
1.01	Mobilization	1	L.S.	5,200.00	5,200.00
1.02	Unclassified Excavation (Including, but not limited to, excavation, removal and disposal of the items shown on the plans or designated by the Engineer i.e. existing asphalt, driveways, road base, concrete, curb and gutter, etc.)	1	L.S.	2,200.00	2,200.00
1.03	Furnish and install 8 ft. diameter wet well and valve vault complete	1	L.S.	82,690.00	82,690.00
1.04	Furnish and install electrical service to lift station complete	1	L.S.	6,000.00	6,000.00
1.05	Furnish and install 6" concrete driveway with mesh reinforcement	35	S.Y.	28.00	980.00
1.06	Hold poles adjacent to excavation sites	1	L.S.	780.00	780.00
1.07	Furnish and install 4" C900 force main	20	L.F.	80.00	1,600.00
1.08	Furnish and install megalug restraints	10	EA.	38.00	380.00
1.09	Furnish and install by directional drilling 4" HDPE SDR 11 force main	47	L.F.	28.00	1,316.00
1.10	Connect 4" force main to existing 4" force main	1	L.S.	320.00	320.00
1.11	Furnish and install air release valves	2	EA.	2,533.00	5,066.00
1.12	Furnish and install 8" SDR 35 gravity sewer	75	L.F.	46.00	3,450.00
1.13	Furnish and install dewatering 0' - 8'	75	L.F.	40.00	3,000.00
1.14	Convert existing lift station wet well to a sewer manhole as specified on plans	1	L.S.	2,782.00	2,782.00
1.15	Furnish and install 4 ft. diameter manhole	1	EA.	2,400.00	2,400.00
1.16	Remove and replace 3 ft. high concrete block wall and hedge as required	1	L.S.	1,725.00	1,725.00

1.17	Remove and replace brick pavers as shown on plans	1	L.S.	550.00	550.00
1.18	Remove and replace existing sod and landscaping disturbed by construction	1	L.S.	1,517.00	1,517.00
	<b>Total Bid</b>			#121,956.00	

BIDDER NAME: Timothy Rose Contracting, Inc.  
 ADDRESS: 1360 SW Old Dixie Hwy, Ste. 106  
 CITY, STATE, ZIP: Vero Beach, FL 32962  
 TELEPHONE: 772-564-7800 FAX: 772-564-7888  
 E-MAIL ADDRESS: timrose7@bellsouth.net  
 DATE: 01/28/10 PAYMENT TERMS: \_\_\_\_\_  
 SIGNED: 

Time of completion = 45 days

QUESTIONNAIRE

The undersigned guarantees the truth and accuracy of all statements and answers herein contained.

1. How many years has your organization been in business as a supplier of these materials/services?

25 years

2. What is the last project of this nature that you have completed?

Lift Stations 29 & 11 - Co Melbourne

3. Have you ever failed to complete Work awarded to you; if so, where and why?

No

4. Name three (3) individuals or corporations for which you have performed Work of this size and nature to which you refer:

City of Melbourne Phone 321-674-5726

City of Vero Beach Phone 772-978-5220 Dallas Jenkins

IR County Phone 772-567-8000 Art Pfeffer  
Dan Wittenberg

5. Have you personally inspected the proposed Work and have you a complete plan for its performance?

Yes

6. Will you sublet any part of this Work? If so, give details:

Sod - Good Green Sodding, Inc.

7. What equipment do you own that is available for the Work?

All necessary equipment

8. What equipment will you purchase for the proposed Work?

None

9. What equipment will you rent for the proposed Work?

None

10. Minority Business Statement:

Is your firm a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985? YES or NO

11. State the true, exact, correct, and complete name of the partnership, corporation, limited liability company, or trade name under which you do business, and the address of the place of business. (If a partnership, state the name of all partners. If a corporation, state the name of the President and Secretary. If a Limited Liability Company, state the names of all members. If a trade name, state the names of the individuals who do business under the trade name.)

Timothy Rose Contracting, Inc.  
(Correct Name of Bidder)

a. The business is a Sole Proprietorship, Partnership, Corporation, or Limited Liability Company.

Corporation

b. The address and phone number of principal place of business is

1360 SW Old Dixie Hwy, Ste 106 VB, FL 32962 472-564-7800

c. The names of the partners, corporate officers, members, or individuals doing business under a trade name, are as follows:

Tim Rose, President  
Ron Rose, Vice President  
Lisa Rose, Treasurer

  
(Bidder)

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A310

Bid Bond

BOND # BB02423

KNOW ALL MEN BY THESE PRESENTS, that we Timothy Rose Contracting, Inc. 1360 SW Old Dixie Hwy., Ste 106 Vero Beach, FL 32962

(Here insert full name, and address or legal title of Contractor)

as Principal, hereinafter called the Principal, and Developers Surety and Indemnity Company

a corporation duly organized under the laws of the State of IOWA as Surety, hereinafter called the Surety, are held and firmly bound unto City of Vero Beach

3455 Airport West Drive, Vero Beach, FL 32960

(Here insert full name, and address or legal title of Owner)

as Oblige, hereinafter called the Oblige, in the sum of Five Percent of Amount Bid Dollars (\$ 5%), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Lift Station & Sewer Improvements at Ocean Towers Bid No. 100-10/JV

(Here insert full name, address and description of project)

NOW, THEREFORE, if the Oblige shall accept the bid of the Principal and the Principal shall enter into a Contract with the Oblige in accordance with the terms of such bid and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Oblige the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Oblige may in good faith contract with another party to perform the Work covered by said bid then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 26 day of January 2010

Timothy Rose Contracting, Inc.

(Principal) (Seal)

(Witness)

(Title) Timothy Rose President

Developers Surety and Indemnity Company

(Surety) (Seal)

(Witness)

(Title) Robert Barra Attorney In Fact

BB02423

POWER OF ATTORNEY FOR  
DEVELOPERS SURETY AND INDEMNITY COMPANY  
PO Box 19725, IRVINE, CA 92623 (949) 263-3300

KNOW ALL BY THESE PRESENTS that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY, does hereby make, constitute and appoint:

\*\*\*Robert Barra\*\*\*

as its true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporation, as surety, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporation could do, but reserving to each of said corporation full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolution adopted by the Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY, effective as of January 1st, 2008.

RESOLVED, that a combination of any two of the Chairman of the Board, the President, any Executive Vice-President, Senior Vice-President or Vice-President of the corporation be, and that each of them hereby is, authorized to execute this Power of Attorney, qualifying the attorney(s) named in the Power of Attorney to execute, on behalf of the corporation, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the corporation be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporation when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY has caused these presents to be signed by its officers and attested by its Secretary or Assistant Secretary this January 1st, 2008.

By: Daniel Young  
Daniel Young, Vice-President

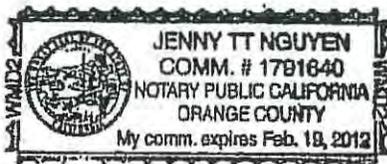
By: Stephen T. Pate  
Stephen T. Pate, Senior Vice-President



State of California  
County of Orange

On August 13th, 2008 before me, Jenny TT Nguyen, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Daniel Young and Stephen T. Pate  
Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jenny TT Nguyen  
Jenny TT Nguyen, Notary Public

CERTIFICATE

The undersigned, as Secretary or Assistant Secretary of DEVELOPERS SURETY AND INDEMNITY COMPANY does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked and, furthermore, that the provisions of the resolution of the Board of Directors of said corporation set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 26 day of January 2010

By: Gregg Okura  
Gregg Okura, Assistant Secretary

**FORM OF AGREEMENT**

**LIFT STATION AND SEWER SYSTEM IMPROVEMENTS AT OCEAN TOWERS**

THIS AGREEMENT made and entered into on the 28<sup>th</sup> day of Jan., 2019 by and between

NAME OF CONTRACTOR: Timothy Rose Contracting, Inc.

ADDRESS OF CONTRACTOR: 1360 SW Old Dixie Hwy, Ste 106

CITY, STATE, ZIP CODE: Vero Beach, FL 32962

hereinafter called the Contractor, and the CITY OF VERO BEACH, a municipal corporation organized and existing under the Laws of the State of Florida and located in Indian River County, Florida, hereinafter called the City.

**WITNESSETH:**

That the Contractor and the City, for the consideration hereinafter named, agree as follows:

**Article 1. SCOPE OF WORK** - The Contractor shall perform all the Work as described in the Documents entitled "**LIFT STATION AND SEWER SYSTEM PROVEMENTS AT OCEAN TOWERS**" for the City of Vero Beach, Florida, and shall do everything required by this Form of Agreement and any other Contract Documents.

**Article 2. COMMENCEMENT AND COMPLETION** - The Contractor shall commence Work under this Contract within ten (10) calendar days after the Commencement Date, as described in the Notice to Proceed, and shall complete the Work within thirty (30) days, unless the City grants Contractor an extension of time, as described herein.

**Article 3. THE CONTRACT SUM** - The City shall pay Contractor for performance of the Contract, subject to additions and deductions provided therein, in current funds as follows:

Written Amount One hundred Twenty One Thousand, Nine Hundred  
Fifty Six \$ 00/100  
Numerical Amount \$ 121,956.00

**Article 4. PROGRESS PAYMENTS** - The City will make progress payments, based on a calculated percentage of Work which the Contractor has completed. The City shall make such progress payments on or about the 10<sup>th</sup> of each month for the previous month's Work, so long as Contractor has submitted an Estimate for Progress Payment.

Ten (10%) percent of the amount due and payable to the Contractor will be retained from each progress payment, to ensure that the Contractor completes all Work under this Contract and complies with all obligations hereunder.

The City will certify all requests for progress payments before presenting them to the City Finance Department for payment.

If the Contract is in a sum less than \$25,000, a single final payment will be made upon the City's acceptance of all Work.

**Article 5. FINAL PAYMENT** - Before final payment, the Contractor shall submit evidence satisfactory to the City that all payrolls, material bills, and other indebtedness connected with the Work have been paid. The City shall have the right to demand and receive from the Contractor before making final payment, an affidavit stating that the Contractor has made payment in full for all labor, services and materials incorporated into the Work corresponding to the progress or final payment to be made. The City shall rely on said affidavit at face value.

The making and acceptance of the final payment shall constitute a waiver of all claims by the Contractor and the City, other than any claims the City may have arising from unsettled liens or from faulty Work appearing after final payment. The City may withhold from final payment such amounts as may be described elsewhere herein.

**Article 6. INDEMNIFICATION AND INSURANCE** - The Contractor shall indemnify City, as provided in Article 17, General Conditions, and procure and maintain insurance provided in Article 18, General Conditions, and Attachment "Insurance Requirements" and, to the extent required in said Articles or Attachment, require any and all Subcontractors to do the same.

**Article 7. GUARANTEES** - The Contractor shall guarantee via performance bond as described herein, the equipment, articles, devices, and materials furnished or installed, against any and all failure in proper use and operation for a period of one (1) year from the date of final acceptance of the Work completed under this Contract. The Contractor shall also obtain and guarantee by Performance Bond, as described herein, warranties from manufacturers for each article and piece of equipment furnished or installed, so that the manufacturer's warranty fully covers the equipment from date of shipment to the Contractor through the period of one (1) year after date of final acceptance of the Work completed under this Contract.

**Article 8. LIQUIDATED DAMAGES** - The parties, recognizing that time is of the essence and that it would be impossible to determine the City's damages in the event that the Contractor fails to complete the Contract by the Completion Date, hereby agree that the Contractor shall pay, as liquidated damages, the sum of Two Hundred and no/100 (\$200.00) Dollars for each calendar day beyond the Completion Date that Contractor fails to complete the Work. The parties further agree that the City may withhold such liquidated damages from any payment due the Contractor.

**Article 9. CONTRACTOR'S REPRESENTATIONS** - In order to induce the City to enter into this Contract, the Contractor makes the following representations:

A. The Contractor has familiarized himself with the nature and extent of his obligations under this Contract. Contractor has familiarized himself with the Work Site, locality, and all local conditions and laws and regulations that in any manner may effect his costs, progress, or performance.

B. The Contractor has carefully studied, or will carefully study, all reports of explorations and tests of subsurface conditions and Drawings of physical conditions which are identified or provided in this Contract or prior to any Work Order and accepts or shall accept the accuracy of any technical data contained in such reports and Drawings, upon which Contractor is entitled to rely.

C. The Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to those referred to in Sub-Article B, above) pertaining to the subsurface or physical conditions at or contiguous to the Site or otherwise affecting his performance, as the Contractor considers necessary for the performance at the Contract Price and in accordance with the other terms and conditions of this Contract.

D. The Contractor has correlated the results of all such observations, examinations, investigations,

explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.

E. The Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the Site and assumes responsibility for the accurate location of said underground facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said underground facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including other revisions specified elsewhere herein.

F. At the time of entering into the Contract, the Contractor has given the City written notice of all conflicts, errors, and discrepancies that the Contractor had discovered in the Contract Documents and the written resolution thereof by the City is acceptable to the Contractor.

**Article 10. CONTRACT UNIT PRICES** - The unit prices contained in the Bid Schedule are incorporated herein, with changes as noted, and made a part of this Contract.

**TITLE: LIFT STATION AND SEWER SYSTEM IMPROVEMENTS AT OCEAN TOWERS**

WITNESSED BY:

Sign: [Signature]  
Print: Roger Rose

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

Timothy Rose Contracting, Inc.  
(NAME OF CONTRACTOR/COMPANY)

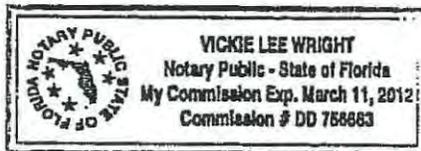
Sign: [Signature]  
Print: Tim Rose  
Title: President

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

(CORPORATE SEAL)

STATE OF Florida  
COUNTY OF Indian River

The foregoing instrument was acknowledged before me this 28 day of Jan, 2010, by Tim Rose as President, and N/A as N/A, on behalf of the corporation. They are personally known to me or have produced \_\_\_\_\_ as identification and did (did not) take an oath.



NOTARY PUBLIC

Sign: [Signature]  
Print: Vickie Lee Wright  
State of Florida at Large (seal)

**ADDENDUM**

CONTRACT FORMS  
AND  
SPECIFICATIONS

CITY OF VERO BEACH

LIFT STATION AND SEWER SYSTEM IMPROVEMENTS AT OCEAN TOWERS

BID NO. 100-10/JV

\*\*\*\*\*

**ADDENDUM NO. 1**

January 19, 2009

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The following addendum is hereby made a part of the specifications and shall be considered a part thereof for all purposes, superseding and replacing anything to the contrary in the original specifications. All addenda must be signed by the bidder and included with the bidding documents, in order for bid to be considered.

Question 1: What size is the water main shown on the east edge of the wet well? Who will move it?

Answer: The water main is 8" in diameter; it will be moved by the City.

Question 2: There are no fittings listed on the bid sheet, should there be?

Answer: Include the cost of the ductile iron fittings in the price of the pipe item.

Question 3: Can an allowance be added to the bid sheet for electrical supply by the City's T & D Department? Will it include connection costs too?

Answer: There will be no charge from the City's Electric Department. Include in your bid the cost of placing the connection from a pedestal at the base of the pole to the panel.

Question 4: What type of panel is required for the lift station?

Answer: The panel must be of 316 stainless steel, and use the Multitrode level control. ITT Flygt Pumps will usually include the panel with their pump supply.

Question 5: Is a dewatering permit required?

Answer: The City will take a groundwater sample and test it. After the water test passes, the contractor will need to notify the necessary agencies that he is dewatering and where as usual.

Question 6: What are the electrical wiring requirements?

Answer: Indian River County requires a 316 stainless steel fuse disconnect (Square D) on installations on the beach. Electrical conduit to be PVC schedule 40. Wire must be copper, not aluminum.

Question 7: Plan sheet C-3 details a connection between the proposed 4" PVC pipe and the existing force main. Is there an existing valve that can be used to shut down the force main during the connection, or will a line stop be required to make the connection?

Answer: The existing force main to which the connection is to be made serves only the existing lift station which we are replacing. The connection will be made when the new lift station is completed and tested. At that point the old station will be turn off during the time when the connection is made. A valve or line stop will not be necessary.

Question 8: The plans show the wet well and valve vault piping to be 4" ductile iron pipe. On the valves it shows 6". Can you please verify the correct size of the valves and the piping?

Answer: All the piping and valves/fittings are 4" on this project. The 6" valves are shown on the standard drawing in error, they should be 4".

CERTIFICATION FOR RECEIPT OF ADDENDA

CITY OF VERO BEACH

LIFT STATION AND SEWER SYSTEM IMPROVEMENTS AT OCEAN TOWERS

BID NO. 100-10/JV

I hereby certify that I have received the information contained in Addendum No. 1.

Timothy Rose Contracting, Inc.  
Company

  
Signature Tim Rose

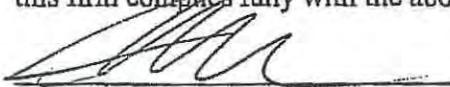
01/28/10  
Date



### **IDENTICAL TIE BIDS**

Preference shall be given to business with drug-free workplace programs. Whenever two or more Bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or Contractual services, a Bid received from a business that certifies that it has implemented a drug-free Workplace program shall be given preference in the award process. Established procedures for processing tie Bids will be followed if none of the tied vendors has a drug-free Workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or Contractual services that are under Bid a copy of the statement specified in Subsection 1.
4. In the statement specified in Subsection 1, notify the employees that, as a condition of working on the commodities or Contractual services that are under Bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any State for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employer's community by, any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through the implementation of this section. As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

  
VENDOR'S SIGNATURE

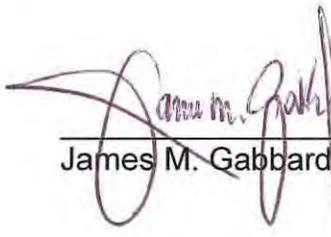
**COUNCIL AGENDA REPORT**  
**MEETING OF MARCH 2, 2010**

**TO:** The Honorable Mayor and Members of the City Council  
**FROM:** James M. Gabbard, City Manager  
**DATE:** February 23, 2010  
**SUBJECT: TREE TRIMMING ANNUAL CONTRACT RENEWAL**

---

Attached is a memorandum from Randall McCamish, dated February 23, 2010, providing a recommendation for the above-referenced item.

**It is the recommendation of the City Manager's Office that Council approve a one-year renewal of the Annual Tree Trimming Contract with Asplundh Tree Experts Company, in the amount of \$327,981.00. Funding will be from Account No. 401.5400.531.352041.**

  
James M. Gabbard

:jav  
Attachments

xc: Randall McCamish  
John Lee  
Stephen Maillet



## DEPARTMENTAL CORRESPONDENCE

**TO:** James Gabbard, City Manager

**THROUGH:** John Lee, Acting Electric Utility Director *506 2/23/2010*

**FROM:** Randall McCamish, Director Electric T & D *Ral*

**DATE:** February 23, 2010

**SUBJECT:** Request for Council Approval

---

We request that the following item be placed on the agenda for approval at the March 2, 2010 City Council meeting.

Tree Trimming Annual Contract – Bid # 010-06/PJW Contract # 1332. We recommend that the contract with Asplundh Tree Experts Company be renewed for one more year. The budget impact to the City will be approximately \$327,981.00.

Justification – The contract was first approved by the Council on March 7, 2006. The contract contains a clause allowing for two (2) additional one (1) year renewal terms. This would be the second renewal term. Asplundh Tree Experts Company has agreed to extend the existing contract for the final year with no price increase.

## Kulp, Danielle

---

**From:** Stevens, Donna  
**Sent:** Tuesday, February 23, 2010 9:54 AM  
**To:** Kulp, Danielle  
**Subject:** GL number

Danielle,

Per Randall's request the following is the GL number that we use for Asplundh Tree: 401.5400.531.352041. If you need anything else please let me know.

Thanks,

*Donna J. Stevens,*  
*Sr. Administrative Assistant*  
City of Vero Beach  
T&D Department  
3455 Airport West Drive  
P.O. Box 1389  
Vero Beach, FL 32961-1389

Office: 772.978.5419 7:30 AM until 4:00 PM  
Faxes: 772.562.1330 or 772.770.2230

## DEPARTMENTAL CORRESPONDENCE

TO: Randall McCamish, Director T&D

THROUGH: John O'Brien Manager of Purchasing & Warehouse Operations *AOB*

FROM: Carol Shoaf, CPPB, FCCM, Contract Administrator 

SUBJECT: Renewal of Tree Trimming Annual Service Contract bid 010-06/PJW  
Contract Number 1332

DATE: February 22, 2010

On March 7, 2006, the City Council approved the above referenced contract with Asplundh Tree Experts Company. The contract was executed on March 21, 2006, with an expiration date of March 31, 2009. The contract contains a clause allowing two (2) additional one (1) year renewal terms. The first of the two renewals were executed in March of 2009. The contract will be expiring on April 1, 2010 and has one more renewal that can be executed. If you wish to renew this contract for the final year, you will need to obtain Council approval.

Please find the confirmation letter from Asplundh Tree Experts Company who is presently serving the City with the above-mentioned service. Asplundh Tree Experts Company is in agreement to extend the existing contract for the final one (1) year with no price increase.

The budget impact for the City is estimated at \$327,981.00 for the designated term.

If you are satisfied with the service Asplundh Tree Experts Company has provided, you please have this renewal put on City Council agenda for approval. To have this renewal put on the March 2, 2010 Council agenda you must have your recommendation in to the City Manager office no later than noon on February 23, 2010

Thank you for your attention in this matter, and please contact me at 978-5474, if you have any questions or concerns.

Attachments

**CONTRACT RENEWAL FORM  
CITY OF VERO BEACH**

**RE: Renewal of Contract 1332 Tree Trimming Annual Service Contract**

The undersigned has carefully examined the original Contract Documents, Contract Renewal form and Introductory Letter, and is familiar with the nature and extent of the conditions that may in any manner affect the materials or services required.

The Contractor shall agree to furnish all supplies, materials, manpower, tools, solutions, chemicals, and services called for in the manner prescribed in the original Contract Documents and at the unit prices stated in the original contract, for each of the items or combination of items stipulated. It shall be understood that the City has provided the quantities shown in the bid schedule as estimates and that the quantities could increase or decrease. It is further understood that payment shall be in accordance with actual quantities delivered, as more specifically described in the Contract Documents.

I agree to continue deliveries or services as specified, in accordance with the Contract Documents, in the time and to the places identified, and complete deliveries or services not later than the number of days specified in the Contract Documents or by a City Authorized Representative, with zero cost increase for this renewal term.

**Renewal Contract period begins April 1, 2010 through May 31, 2011.**

**WITNESS FOR THE CONTRACTOR:**

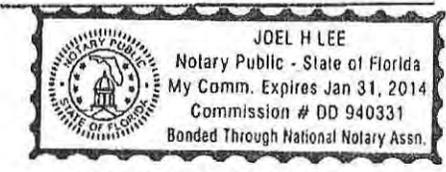
**Asplundh Tree Experts Company**

*[Handwritten signature]*  
\_\_\_\_\_

PRINT: EUGENE WYATT

SIGNED: *Eugene Wyatt*

TITLE: VICE PRESIDENT



CORPORATE SEAL

**COUNCIL AGENDA REPORT**  
**MEETING OF MARCH 2, 2010**

**TO:** The Honorable Mayor and Members of the City Council

**FROM:** James M. Gabbard, City Manager

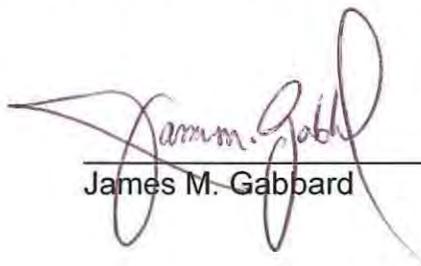
**DATE:** February 23, 2010

**SUBJECT: CHANGE ORDER NO. 2 TO WORK ORDER 1371-1 BETWEEN  
WILBUR SMITH ASSOCIATES AND THE CITY OF VERO BEACH (RFQ  
340-06/CSS – REHAB RUNWAY 11L-29R)**

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Attached is a memorandum from Ericson Menger, Airport Director, dated February 18, 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. 2 to Work Order 1371-1, for the Rehab of Runway 11L-29R, with Wilbur Smith Associates, in the amount of \$118,765.00. Funding is outlined in the attached back-up information.**

  
\_\_\_\_\_  
James M. Gabbard

:jav  
Attachments

xc: Ericson Menger  
Stephen Maillet

N:\AGENDA\AIRPORT\2010\RUNWAY REHAB - CO2 - WILBUR SMITH.DOC

MEMORANDUM

TO: James M. Gabbard, City Manager
VIA: Charles P. Vitunac, City Attorney
FROM: Ericson W. Menger, Airport Director
DATE: February 18, 2010
SUBJECT: CHANGE ORDER NO. 2 TO WORK ORDER NO. 1371-1 BETWEEN WILBUR SMITH ASSOCIATES AND THE CITY OF VERO BEACH (RFQ 340-06/CSS)

Attached are three (3) originals of the above-referenced change order. This change order is to authorize 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 and Taxiway F 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 in the amount of \$129,572.00 for the design and bidding phase of the runway project.

On January 6, 2009, when additional funding from the Florida Department of Transportation (FDOT) became available, City Council approved Change Order Number 1 at a cost of \$78,748 for additional engineering services to include the adjacent Taxiway F and connectors into the project. The project would also include replacing drainage pipes under Runway 11L-29R and Taxiway F, as well as airfield electrical work for Taxiway F and connectors.

At this time, all FDOT funding for rehabilitation of the entire runway and taxiway system is in place and City Council has accepted \$2.4M in FDOT grants to complete the project. Accordingly, the attached Change Order Number 2 at \$118,765 authorizes Wilbur Smith to furnish construction phase services in order to begin the work. For your information, the total fee to Wilbur Smith for the project would be \$327,085, or approximately 10.9% of the project budget. The Rehabilitation of Runway 11L-29R was approved by City Council in the Airport's FY-05 budget under the Five Year Capital Improvement Program. The account number for Runway 11L-29R is 443.4000.542.605001. Rehabilitate Taxiway F was approved in the FY-10 budget under the Five Year Capital Improvement Program (same account number). The approved budget is as follows:

Table with 2 columns: Category and Amount. Rows include Construction (\$2,600,000), Engineering (Wilbur Smith) (\$ 327,085), Administration/Misc. (\$ 72,915), and TOTAL (\$3,000,000). The total amount is noted as '<< current budget'.

RECOMMENDATION

I respectfully request that this item be placed on the March 2, 2010, City Council Agenda. Staff recommends approval of the Agreement in the amount of \$118,765.

EWM:rls
Attachments (3)

cc: Airport Commission Members (email and/or USPS)
John O'Brien, Purchasing Manager (email)
Joyce Vonada (email)

CITY OF VERO BEACH, FLORIDA  
DEPARTMENT: AIRPORT  
PROJECT: REHAB RUNWAY 11L-29R  
CHANGE ORDER NO. 2  
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 1371 and Change Order Number 2 to Work Order 1371-1.

The PROFESSIONAL services for this Change Order are listed below.

SECTION 1 - PROJECT DESCRIPTION FOR CHANGE ORDER NUMBER 2

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

The construction components of the PROJECT are as follows:

- a. Rehabilitate Runway 11L-29R, Taxiway F and Connector Taxiways A, D, F1 and F2.
- b. Widen Taxiway F and Connector Taxiways A, D, F1 and F2 to 35 feet.
- c. Replace drainage pipes under Runway 11L-29R and Taxiway F.
- d. Extend drainage pipes as necessary to the edge of the 11L-29R Object Free Area.
- e. The replacement of existing inlets.
- f. Relocate existing and/or install new lights/signage for Runway 11L-29R, Taxiway F and Connector Taxiways A, D, F1 and F2.
- g. Replace the cable homerun for Runway 11L-29R.
- h. Replace the Precision Approach Path Indicator (PAPI) and cable homerun for the 11L approach.
- i. Install a new Airfield Lighting Control (and Monitoring) System (ALCS).
- j. Stabilize the soil within the Runway Safety Area near the Runway 29R approach.

## GENERAL OVERVIEW OF CHANGE ORDER NUMBER 2

The additional work identified in this Change Order 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 2

The additional work identified in this Change Order is similar to that detailed in Section 1 - Project Description, General Overview of Work Order No. 1371-1.

## SECTION 2 - SCOPE OF SERVICES FOR CHANGE ORDER NUMBER 2

### **Project Management and Construction Administration**

#### a. Conduct Preconstruction Conference

Prepare for and conduct one preconstruction conference with the selected contractor, CITY, FAA, FDOT, and airport users to discuss in detail the requirements and responsibilities for items such as the contractor's responsibility for shop drawing submittal and safety, etc. PROFESSIONAL will prepare the minutes of the preconstruction conference and distribute to the list of attendees.

#### b. 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 plan 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 reports, 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.

d. Site Visits

Site visits will be on a bi-weekly basis by the PROFESSIONAL during construction.

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 construction of the PROJECT (based on a 75 calendar day construction duration). 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. Attend preconstruction conference.
  - iii. Review and monitor the contractor's Quality Control Plan.
- d. Construction Surveying
 

The contractor will provide surveying services (as-builts) of the finished grades, pipe inverts, etc., 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 2007 and/or portable document format (PDF).
- b. Meetings to be attended during the construction activities by the PROFESSIONAL'S Project Manager/Engineer will be on a bi-weekly basis during the 75 calendar day construction period. A breakdown of the 8 construction related meetings are as follows:
  - (1) Preconstruction Conference
  - (5) Bi-Weekly Site Visits
  - (1) Substantial Completion Inspection
  - (1) Final Inspection
- c. RPR time on-site during construction is estimated to be 10 hours/calendar day and 5 calendar days/week or 54 contract calendar days. 6 additional days were factored in during the procurement phase and close-out for a total of 60 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 work associated with Change Order Number 2 and in conjunction with the notice-to-proceed date issued under separate contract to the construction contractor for the Procurement and Construction Phases. All work (Change Order No. 2) shall be completed within one-hundred and thirty-five (135) calendar days after issuance of the written notice-to-proceed to the PROFESSIONAL and under separate contract to the construction contractor. This shall be in conjunction with the 135 calendar day construction schedule for the PROJECT, which is inclusive of a 60 day Procurement Phase and 75 day Construction Phase.

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 2 to Work Order 1371-1, a maximum fee under this Change Order number 2 of \$118,765.00, as shown below. This fee and the payment schedule for said fee is itemized in Exhibit A to this Change Order Number 2.

Change Order No. 2 to Work Order No. 1371-1	
Construction Materials Testing	\$ 38,210.00
Resident Project Representative (RPR) Inspection	\$ 67,950.00
Construction Administration/Project Close-out	\$ 11,608.00
Direct Expenses	\$ 997.00
TOTAL	\$118,765.00

The total fee of Change Order Number 2 is \$118,765.00.

**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 2.

**SECTION 8 – RELATION TO MASTER AGREEMENT**

All conditions set forth in the MASTER AGREEMENT and this Change Order Number 2 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:

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: [Signature]  
Print: WESLEY L. TEEL

BY: [Signature]  
Sign: William G. Brooks  
Print: William G. Brooks  
Title: VICE PRESIDENT

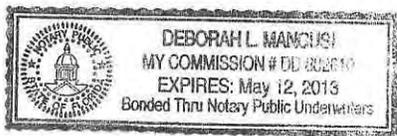
Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF Florida  
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of February, 2010, by William Brooks, as Vice President of Wilbur Smith Associates who  is personally known to me; OR \_\_\_\_\_ presented \_\_\_\_\_ as identification.

NOTARY PUBLIC



Sign: [Signature]  
Print: Deborah L. Mancusi  
State of Florida at Large (seal)  
Commission No.: DD 882610  
My Commission Expires: May 12, 2013

CITY OF VERO BEACH, FLORIDA:

ATTEST:

CITY OF VERO BEACH

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

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:

Approved as conforming to municipal policy:

 2/22/10  
\_\_\_\_\_  
City Attorney Date

 2/23/10  
\_\_\_\_\_  
City Manager Date

Approved as to technical requirements:

 2/18/10  
\_\_\_\_\_  
Airport Director Date

**Exhibit "A"**  
**Change Order No. 2 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) (See Attachment 1 to Exhibit "A")	\$38,210
<b>SUBTOTAL</b>	<b>\$38,210*</b>

**II. RESIDENT PROJECT REPRESENTATIVE (RPR) INSPECTION**

	<u>Hours</u>	<u>Rate</u>	<u>Cost</u>
Senior RPR	*600	\$105	\$63,000
<i>*(Hours are estimated to be 10 hours/calendar day and 5 calendar days/week or 54 contract calendar days. 6 additional days were factored in during the Procurement Phase and close-out for a total of 60 contract calendar days)</i>			
Mileage @ \$0.50/per mile (GSA Rate) x 900 miles/week x 11 Weeks			<u>\$ 4,950</u>
<b>SUBTOTAL</b>			<b>\$67,950*</b>

**III. CONSTRUCTION ADMINISTRATION/PROJECT CLOSE-OUT**

	<u>Hours</u>	<u>Rate</u>	<u>Cost</u>
Principal/QA	8	\$235	\$ 1,880
Project Manager	56	\$147	\$ 8,232
CADD Tech	20	\$62	\$ 1,240
Clerical	8	\$32	\$ 256
<b>SUBTOTAL</b>			<b>\$11,608*</b>

**IV. DIRECT EXPENSES**

Travel ( For Project Engineer at 8 construction related meetings) 211.75 miles roundtrip by auto from Orlando to Vero Beach and return (211.75 miles x \$0.50/per mile x 8 visits) =	\$ 847
Printing, Materials, Postage	<u>\$ 150</u>
<b>SUBTOTAL</b>	<b>\$ 997*</b>
<b>Total Change Order No. 2 To Work Order No. 1371-1</b>	<b>\$118,765*</b>
*Lump Sum fees	



**PAGE ONE CONSULTANTS, INCORPORATED**  
 ENVIRONMENTAL AND GEOTECHNICAL MATERIALS TESTING AND INSPECTION CONSTRUCTION MANAGEMENT

**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 ESTIMATE**

Item	Description	Bid Schedule		CMT Estimate		Unit	TOTAL
		Unit	QTY	QTY	Unit Rate		
P-152	Earthwork	LS	1				
	Proctor (pick up all in same trip)			3	\$ 90.00	ea	\$ 270.00
	Organic Content			3	\$ 45.00	ea	\$ 135.00
	Densities (Minimum 5/trip - ASTM D 6938)			15	\$ 25.00	ea	\$ 375.00
P-154/P-160	LBR 40 Stabilized Subbase (12")	SY	24300				
				<i>(Estimates 2000 SY/LOT)</i>			
	Depth Checks (by RPR via elevations)			0	\$ 50.00	ea	\$ -
	LBR			2	\$ 300.00	ea	\$ 600.00
	Particle Size			2	\$ 45.00	ea	\$ 90.00
	Atterburgs			1	\$ 85.00	ea	\$ 85.00
	Densities (Minimum 5/trip - ASTM D 6938)			26	\$ 25.00	ea	\$ 650.00
P-210	Recycled Bit. Base Course (6")	SY	41000				
				<i>(Estimates 2000 SY/LOT Production Rate, excl. Test Strip)</i>			
	<i>Based on 13 LOTS, incl. Test Strip</i>	LOTS	22	<i>(Depth Checks every 1000 SY)</i>			
	Depth Checks (Minimum 8/trip)			41	\$ 50.00	ea	\$ 2,050.00
	Densities (Minimum 8/trip - ASTM D 6938)			88	\$ 25.00	ea	\$ 2,200.00
P-211	Limerock Base Course (6")	SY	3947				
				<i>(Estimates 500 SY/LOT)</i>			
	Depth Checks (by RPR via elevations)			0	\$ 50.00	ea	\$ -
	LBR			1	\$ 300.00	ea	\$ 300.00
	Particle Size			1	\$ 45.00	ea	\$ 45.00
	Atterburgs			1	\$ 85.00	ea	\$ 85.00
	Organic Content			1	\$ 45.00	ea	\$ 45.00
	Densities (Minimum 4/trip - ASTM D 1556)			8	\$ 50.00	ea	\$ 400.00
P-401	Bituminous Surface Course	TON	6110				
				<i>(Estimates 500 TN/DAY Production Rate, excl. Test Strip)</i>			
	<i>Based on 13 LOTS, incl. Test Strip</i>	LOTS	13				
	LOT (Lab personnel REG)			104	\$ 65.00	hr	\$ 6,760.00
	LOT (Lab personnel OT)			39	\$ 85.00	hr	\$ 3,315.00
	LOT (SR PE)			39	\$ 130.00	hr	\$ 5,070.00
	LOT (Admin)			7	\$ 50.00	hr	\$ 350.00
	Pre-Pave Conference			6	\$ 130.00	hr	\$ 780.00
	Shop Drawing/Job set-up (PE)			2	\$ 130.00	hr	\$ 260.00
	Shop Drawing/Job Admin			6	\$ 50.00	hr	\$ 300.00
	Misc. support/meetings, etc. (SR PE)			16	\$ 130.00	hr	\$ 2,080.00
	Misc. support/meetings, etc. (Plant Tech)			10	\$ 65.00	hr	\$ 650.00
P-610	Non-structural Concrete Cylinders	N/A	N/A				
				<i>SET OF 4 SPECIMENS</i>			
	For misc. lighting ducts, etc.			2	\$ 140.00	SET	\$ 280.00
P-701	Pipe for Storm Drains and Culverts	LF	584				
	Proctor (contractor to dig pits - 2 trips estimated)			14	\$ 90.00	ea	\$ 1,260.00
	Organic Content			14	\$ 45.00	ea	\$ 630.00
	Densities (Minimum 5/trip - ASTM D 6938)			65	\$ 25.00	ea	\$ 1,625.00
	<i>Field and Laboratory Contingencies</i>						
	Stand By Time (field tech)			56	\$ 45.00	hr	\$ 2,520.00
	Min 5/trip consideration			1	\$ 600.00	est	\$ 600.00
	PM Time			20	\$ 130.00	hr	\$ 2,600.00
	Administrative/Technical Typist			4	\$ 50.00	hr	\$ 200.00
	Travel/Expenses			1	\$ 1,600.00	LS	\$ 1,600.00
<b>TOTAL SCHEDULES A &amp; B plus ALT. A-2 or A-3 CMT FEE ESTIMATE</b>							<b>\$ 38,210.00</b>

**COUNCIL AGENDA REPORT**  
**MEETING OF MARCH 2, 2010**

**TO:** The Honorable Mayor and Members of the City Council

**FROM:** James M. Gabbard, City Manager

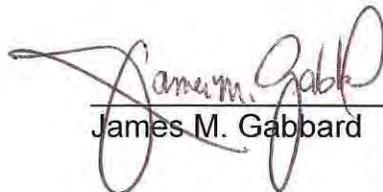
**DATE:** February 23, 2010

**SUBJECT: WORK ORDER #1372-7 BETWEEN URS CORPORATION AND THE CITY OF VERO BEACH: RUNWAY 11R/29L AND TAXIWAY C REHABILITATION (FDOT #-1-94-01)**

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Attached is a memorandum from Ericson Menger, Airport Director, dated February 18, 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 Work Order #1372-7 with URS Corporation, for Runway 11R/29L and Taxiway C Rehabilitation (FDOT #-1-94-01), in the amount of \$63,157, and amend the Airport's budget to cover estimated construction costs, in the amount of \$700,000.00.**

  
\_\_\_\_\_  
James M. Gabbard

:jav  
Attachments

xc: Ericson Menger  
Stephen Maillet

## MEMORANDUM

**TO:** James M. Gabbard, City Manager  
**VIA:** Charles P. Vitunac, City Attorney  
**FROM:** Ericson W. Menger, Airport Director  
**DATE:** February 18, 2010  
**SUBJECT:** **WORK ORDER #1372-7 BETWEEN URS CORPORATION AND THE CITY OF VERO BEACH: RUNWAY 11R/29L AND TAXIWAY C REHABILITATION (FDOT #-1-94-01)**

---

Attached are three (3) originals of the above-referenced work order. This work order is to authorize engineering services in conjunction with the proposed new capital project to rehabilitate sections of Runway 11R/29L and Taxiway C at the Vero Beach Municipal Airport.

### **BACKGROUND**

As described in a companion memorandum requesting acceptance of a Joint Participation Agreement from the Florida Department of Transportation (copy attached), this project is a result of staff discovering significant deterioration of sections of pavement on the main runway and taxiway that need immediate repair. The attached Work Order with URS will include engineering, testing, and construction to rehabilitate the runway and taxiway. Survey work will be accomplished in-house with City Survey crews (Public Works and Engineering Department).

In 2007, the City entered into a general contract for professional services with URS Corporation for engineering services relating to Airport capital improvement projects, with specific projects requiring individual work orders. Accordingly, the attached Work Order #1372-7 authorizes URS Corporation to furnish design phase engineering services for this project. Plans, specifications, and a bid package will be prepared for rehabilitation of the affected areas using a combination of surface milling, crack sealing, placing a stress relief engineering fabric on affected areas, and overlaying with a 3" nominal structural asphalt surface course. This work order also includes testing and evaluation of a surface deviation located on Runway 11R/29L, which needs to be repaired using asphalt milling and paving. Plans and specs will also require the taxiway and runway to be re-marked for Part 139 operations in accordance with Federal Aviation Administration requirements.

URS Corporation's proposed fee for the design work is based on actual cost not-to-exceed \$63,157.00. An amendment to the airport's capital budget will be needed to proceed with this work. Once the project is designed and bid, a construction contract will be brought before City Council for approval, along with any grants which may be offered to cover the cost.

### **RECOMMENDATION**

I respectfully request that this item be placed on the March 2, 2010, City Council Agenda, with a recommendation to approve the work order with URS for \$63,157, and amend the airport's budget to cover ultimate construction costs (estimated at \$700,000).

EWM:rls

Attachments (9)

cc: Airport Commission Members (via e-mail and/or USPS)  
Steve Maillet, Finance Director (via e-mail)  
Joyce Vonada, City Manager's Office (via e-mail)

**CITY OF VERO BEACH, FLORIDA**  
**DEPARTMENT: Airport**  
**PROJECT: Rehabilitate Sections of Runway 11R-29L and Taxiway C**

**WORK ORDER NO. 1372-7**  
**TO PROFESSIONAL SERVICES MASTER AGREEMENT**  
**DATED MARCH 12, 2007 BETWEEN CITY OF VERO BEACH**  
**AND URS CORPORATION SOUTHERN**

This Work 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 URS Corporation Southern ("**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.

**SECTION 1 – PROJECT DESCRIPTION**

The **CITY** hereby retains **PROFESSIONAL** to furnish professional engineering services for design phases for:

- Rehabilitate Sections of Runway 11R-29L and Taxiway C at the Vero Beach Municipal Airport

The above described improvements are hereinafter called the **PROJECT**.

**SECTION 2 – SCOPE OF SERVICES**

The engineering services that **PROFESSIONAL** shall furnish to the **CITY** under this Agreement shall include the defined below and attached Exhibit A Project Narrative and Fee Proposal.

A. General Services

1. Serve as the **CITY**'s professional representative in all phases of the **PROJECT**, and will give consultation and advice to the **CITY** during the performance of the services.
2. Keep the **CITY** periodically advised during the design phase as to the estimated cost and schedule of the **PROJECT**.
3. The **PROFESSIONAL** will not be responsible for defects or deficiencies in the construction or the Contractor's performance; however, the **PROFESSIONAL** shall write into the construction contract documents sufficient guarantees, supported by a performance bond, to protect the **CITY** against any defects or deficiencies in either labor or workmanship for a period of one year after completion of construction, and

further shall include a clause calling for liquidated damages to protect the **CITY** due to the Contractor's failure to complete the work in the time specified.

B. Basic Services

1. Preliminary Design Phase

- 1.1 Confer with and provide general consultation and advice to the **CITY** with respect to project requirements, finances, schedules and other pertinent preliminary design requirements of the **PROJECT** formulated under Programming Services, including coordination with **FAA**, **FDOT** and other concerned agencies on matters affecting the **PROJECT** and attendance at the Pre-design Conference.
- 1.2 Plan, prepare and direct, as authorized by the **CITY**, engineering surveys, or specialty consultants services as may be necessary for the preliminary design of the **PROJECT**.
- 1.3 Develop design schematics, sketches, environmental and aesthetic considerations, project recommendations, preliminary layouts, and preliminary cost estimates.

2. Final Design Phase

Upon approval of the Preliminary Design Phase, the **PROFESSIONAL** shall:

- 2.1 Collect engineering data and undertake field investigation not included in the Preliminary Design Phase. Subconsultant ASC Geosciences, Inc. will conduct all materials testing and deliver the data assembled for **PROFESSIONAL'S** use.
- 2.2 Provide general consultation and advice to the **CITY** with respect to the final design of the **PROJECT**, including meetings and design conferences to obtain information and to coordinate or resolve final design matters.
- 2.3 Prepare plans, specifications, contract documents, and detailed construction cost estimates for award of a construction contract as coordinated with, reviewed by and approved by the **CITY**, the **FDOT**, and the **FAA**.
- 2.4 Prepare an engineering report as required by the **CITY**, **FDOT**, and **FAA** to describe and justify the proposed design of the **PROJECT**.
- 2.5 Assist the **CITY** in preparing technical support data for State and Federal applications, grants or advances.
- 2.6 Furnish the **CITY** with one set of reproducible drawings, CAD files, and five (5) sets of the final plans, specifications and contract documents for agency coordination and suitable for advertising for construction bids.

C. Additional Services

If authorized in writing by the **CITY**, **PROFESSIONAL** will furnish or obtain from specialty consultants the following services in connection with the **PROJECT**.

1. Perform Bid, Award and Construction Phase services on the project.
2. Prepare permit applications with supporting drawings, figures and attachments.
3. Make major revisions to completed or partially completed design plans and specifications to incorporate changes made to the scope of work after approval of the preliminary plans by reviewing agencies provided that these revisions are not attributable to any errors or omissions of **PROFESSIONAL**.
4. Prepare to serve as consultant, witness or representative for the **CITY** in any public hearing, public information meeting or other administrative proceeding involving the **PROJECT**. Such consultation and representation in connection with litigation or other legal proceeding involving the **PROJECT** shall be covered under subsequent supplemental agreement.
5. Prepare drawings from field measurements or existing construction when required for planning additions or alterations thereto where they are not included in the original scope of the **PROJECT**.
6. Perform other than routine services when required by audit subsequent to the completion of the **PROJECT**.
7. Additional services not otherwise provided for by this Work Order as may be determined as necessary to accomplish the **PROJECT** and authorized in writing by the **CITY**. Compensation for changes to the scope of the project, additional services or additional work are subject to negotiations between the **CITY** and **PROFESSIONAL**.

**SECTION 3 – SPECIFICATIONS**

FAA Standard Specifications for Construction will be used on this assignment.

**SECTION 4 – CITY RESPONSIBILITIES**

The **CITY'S** responsibilities shall include the following:

1. Coordinate the **CITY's** requirement for the **PROJECT** with **PROFESSIONAL**.

2. Provide copies of pertinent documents, reports, plans, specifications, photography, standard forms and other similar data available to the **CITY** that are required by **PROFESSIONAL** for the proper performances of these services.
3. Provide information and make decisions as may be required to prosecute the work in a timely manner.
4. Perform or authorize **PROFESSIONAL** to arrange to have specialty consultants perform all necessary engineering surveys as may be required by **PROFESSIONAL**.

**SECTION 5 – TIME OF PERFORMANCE**

**PROFESSIONAL** shall commence work within ten (10) business days after issuance of a written notice-to-proceed. A mutually agreeable project schedule will be developed at the project pre-design conference.

**SECTION 6 – COMPENSATION**

**CITY** agrees to pay and **PROFESSIONAL** agrees to accept, for services rendered pursuant to the Scope of Services and Specifications identified in this Work Order and in accordance with the conditions set forth in this Work Order and the Master Agreement, a not-to-exceed fee under this Work Order of \$63,157.00. This fee and the payment schedule for said fee is itemized as follows:

	<u>TOTAL</u>
Design Phase	\$ 54,507.00
Testing	\$ 4,300.00
Expenses	\$ 4,350.00
TOTAL	\$63,157.00

**SECTION 7 – OTHER/ADDITIONAL CONDITIONS**

N/A

**SECTION 8 – RELATION TO MASTER AGREEMENT**

All conditions set forth in the Master Agreement shall control unless otherwise specified in this Work Order.

**SECTION 9 - DESIGNATED PROFESSIONAL REPRESENTATIVE.**

**PROFESSIONAL** designates the following listed individual as **PROFESSIONAL'S** representative, to represent **PROFESSIONAL** in all matters pertaining to this Work Order:

Name: Steve Henriquez  
Title: Vice President  
Street Address: 7650 W. Courtney Campbell Causeway, Suite 700  
Mailing Address: 7650 W. Courtney Campbell Causeway, Suite 700  
Tampa, Florida 33607-1462  
Telephone: 813-636-2422  
Facsimile: 813-675-6665

**SECTION 10 - DESIGNATED CITY REPRESENTATIVE.**

**CITY** designates the following listed individual as **CITY'S** designated representative, to represent **CITY** in all matters pertaining to this Work Order.

Name: Ericson W. Menger  
Title: Airport Director  
Street Address: 3400 Cherokee Drive  
Mailing Address: P.O. Box 1389  
Vero Beach, Florida 32961-1389  
Telephone: 772-978-4930  
Facsimile: 772-567-3459

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

**PROFESSIONAL SERVICES PROVIDER:**

**WITNESSED BY:**

URS CORPORATION SOUTHERN

(full legal name of service provider)

Sign: [Signature]  
Print: David Schmidgall

BY: [Signature]  
Sign: Steven Henriquez  
Print: Steven Henriquez  
Title: Vice President

Sign: [Signature]  
Print: Steve Kamarainen

Sign: [Signature]  
Print: Allan Nagy  
Title: Vice President

STATE OF Florida  
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 18 day of February, 2010 by Steven Henriquez & Allan Nagy, as Vice President of URS Corporation, who  is personally known to me; OR  presented \_\_\_\_\_ as identification.

**NOTARY PUBLIC**

Sign: [Signature]  
Print: Diane Kline  
State of Florida at Large (seal)  
Commission No.: DD871901  
My Commission Expires: 5-9-13

**CITY OF VERO BEACH, FLORIDA:**

**ATTEST:**

**CITY OF VERO BEACH**

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

BY: \_\_\_\_\_  
Sign: \_\_\_\_\_  
Print: Kevin Sawnick  
Title: Mayor

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

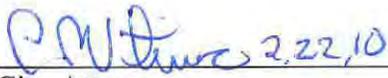
The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_, and attested by Tammy K. Vock, as City Clerk, of the City of Vero Beach, Florida. They are both known to me.

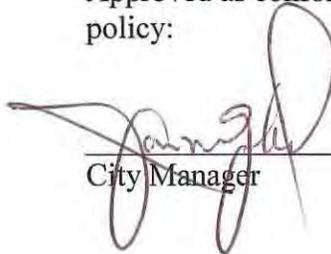
**NOTARY PUBLIC**

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

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

  
\_\_\_\_\_  
City Attorney

  
\_\_\_\_\_  
City Manager

Approved as to technical requirements:

  
\_\_\_\_\_  
Airport Director

**EXHIBIT A**  
**PROJECT NARRATIVE AND FEE PROPOSAL**  
**REHABILITATE SECTIONS OF RUNWAY 11R-29L AND TAXIWAY C**

**Qualification Statement:** The fee proposal for this project is developed based on the following scope assumptions. Should the **City of Vero Beach** find the scope assumptions unacceptable or require modifications which increase or decrease the level of engineering services estimated to prepare documents, the fee will be negotiated to the mutual benefit of both parties.

The services covered by this scope of services include the preparation of construction plans, specifications, reports and related services for the future bid, award and construction of the Rehabilitation of Taxiway C between the Taxiway C-4 and Taxiway D.

This portion of the taxiway will be rehabilitated by a combination of milling the surface, sealing cracks in the pavement, placing a stress relief engineering fabric on the cracks and overlaying with a 3" nominal structural asphalt surface course. The remainder of the taxiway will have all cracks cleaned and sealed.

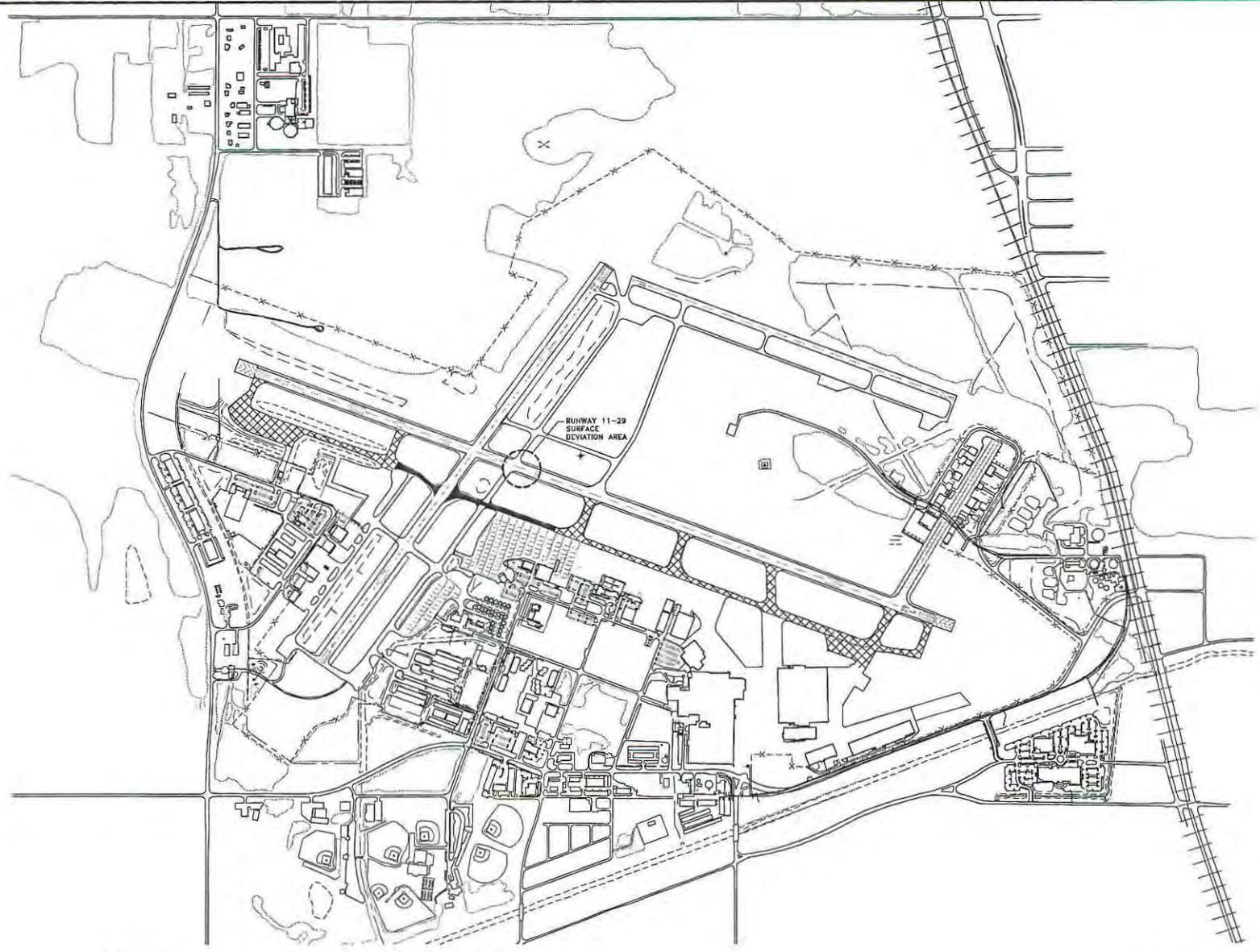
In addition, a surface deviation on Runway 11R-29L will be investigated and a repair completed as part of the project. A project sketch is attached.

For the purpose of the fee proposal the following has been assumed:

1. Existing horizontal geometry will remain the same. Vertical geometry of the overlay will be in conformance with FAA Advisory Circulars.
2. Taxiway edge lights will be raised if required.
3. Infield drainage improvements and/or permitting should not be required and is not included in this scope of work.
4. Design includes field work to map pavement cracking.
5. Contract Drawings will be prepared on standard 22" x 34" sheet size. The number of estimated drawings is included in the manhour and fee estimate. Contract drawings will be delivered both in hard copy and electronic format to the CITY, FAA and FDOT.
6. Survey will be completed by the City of Vero Beach to verify topography, layout borings, obtain pavement elevations at tie-in locations, etc.

7. FAA Standard Construction Specifications will be used, supplemented by FDOT Standard Specifications for Roadway and Bridge Construction if necessary.
8. Bid, Award and Construction Phase Services are not included in this scope of work.
9. Subconsultant ASC Geoscience, Inc. will be used for geotechnical field and laboratory testing.
10. Up to five (5) sets of documents will be printed for review and/or distribution. Additional printing costs will be reimbursed at cost.
11. URS shall, as part of its basic services, prepare and submit an opinion of probable construction cost for the project based on URS's experience and judgement and based on generally available construction cost data sources. This opinion of probable cost shall be exclusive of URS's fees and costs. URS makes no warranty either express or implied, or representation as to the accuracy and reliability of the opinions provided.

J:\VERO\VERO PLANNING\REPORT EXHIBITS\FIG 2.2.DWG 06/25/16 08:50



TAXIWAY "C" MILL AND OVERLAY

TAXIWAY "C" CRACK SEALING

1000 0 1000  
GRAPHIC SCALE IN FEET

VERO BEACH MUNICIPAL AIRPORT  
Vero Beach, Florida  
UTMS

RUNWAY 11R-29L AND TAXIWAY "C" REHABILITATION  
PROJECT SKETCH

FIGURE:  
1

**SUMMARY OF ENGINEERING FEES  
REHABILITATE SECTIONS OF RUNWAY 11R-29L AND TAXIWAY C  
VERO BEACH MUNICIPAL AIRPORT**

Design Phase	\$ 54,507.00
Design Testing	\$ 4,300.00
Expenses	<u>\$ 4,350.00</u>
<b>TOTAL</b>	<b>\$ 63,157.00 Not-To-Exceed</b>

**URS CORPORATION  
MAN-HOUR AND LABOR COST ESTIMATE**

LOCATION: Vero Beach Municipal Airport  
PROJECT: Rehabilitate Sections of Runway 11R-29L and Taxiway C

DATE: 02/18/10  
PREPARED BY: SGH/dk

CONTRACT:

EMPLOYEE CLASSIFICATION	Project Manager		Senior Engineer/Planner		Engineer		CADD Technician		Clerical		TOTAL Hours	TOTAL Fee
	Rate:	\$185.00	Rate:	\$145.00	Rate:	\$95.00	Rate:	\$80.00	Rate:	\$58.00		
TASK DESCRIPTION	Hours	Amount	Hours	Amount	Hours	Amount	Hours	Amount	Hours	Amount		
<i><b>ENGINEERING DESIGN</b></i>												
General Consulting / Proj. Mgmt / Client Meetings	12	\$2,220	4	\$580	4	\$380	0	\$0	8	\$464	28	\$3,644
Develop Survey and Testing Program	4	\$740	0	\$0	8	\$760	0	\$0	4	\$232	16	\$1,732
Site Inspection	8	\$1,480	12	\$1,740	12	\$1,140	0	\$0	0	\$0	32	\$4,360
Final Plans	31	\$5,735	48	\$6,960	144	\$13,680	136	\$10,880	0	\$0	359	\$37,255
Final Specifications & Engineer's Report	12	\$2,220	8	\$1,160	4	\$380	0	\$0	32	\$1,856	56	\$5,616
Quality Control Review	4	\$740	8	\$1,160	0	\$0	0	\$0	0	\$0	12	\$1,900
<b>SUBTOTAL</b>	71	\$13,135	80	\$11,600	172	\$16,340	136	\$10,880	44	\$2,552	503	\$54,507
<b>TOTALS</b>	71	\$13,135	80	\$11,600	172	\$16,340	136	\$10,880	44	\$2,552	503	\$54,507

**URS CORPORATION**  
**DRAWING LIST AND MANHOOR ESTIMATE**

**LOCATION: Vero Beach Municipal Airport**

**PROJECT: Rehabilitate Sections of Runway 11R-29L and Taxiway C**

**CONTRACT NO.:**

Date: 2/18/2010

Prepared by: SGH/dk

EMPLOYEE CLASSIFICATION		PROJ. MGR.	SENIOR ENG.	ENG.	CADD TECH	TOTAL HOURS
NUMBER OF DRAWINGS	DRAWING DESCRIPTION	Hours	Hours	Hours	Hours	
1	Cover Sheet				2	2
2	Summary of Quantities & Safety & Security Notes	1		2	4	7
3	Contract Layout Plan & Notes	2		4	6	12
4-5	Phasing Plan & Notes	6	4	8	8	26
6	Typical Pavement Sections & Details	2	2	6	8	18
7-11	Existing Conditions Survey & Crack Map	2	4	28	16	50
12-14	Grading Plans	10	14	40	28	92
15-17	Spot Elevation Plan	2	4	12	4	22
18	Taxiway C Profiles	2	4	4	8	18
19	Erosion Control Plan & Details		2	2	4	8
20-24	Pavement Marking / Signing / Lighting Plan		2	8	8	18
25-26	Marking Details			2	4	6
27	Lighting & Electrical Details	2	8	12	12	34
28-30	Cross-Sections	2	4	16	24	46
<b>TOTAL</b>		<b>31</b>	<b>48</b>	<b>144</b>	<b>136</b>	<b>359</b>

**VERO BEACH MUNICIPAL AIRPORT  
REHABILITATE SECTIONS OF RUNWAY 11R-29L AND TAXIWAY C  
DESIGN TESTING PROGRAM**

<b>Equipment Mobilization:</b>					<b>= \$500</b>
<b>Pavement Core &amp; Patching:</b>	<b>10</b>	<b>EA</b>	<b>@</b>	<b>\$100</b>	<b>= \$1,000</b>
<b>Standard Penetration Tests:</b>	<b>50</b>	<b>LF</b>	<b>@</b>	<b>\$25</b>	<b>= \$1,250</b>
<b>Grain Size Analysis:</b>	<b>10</b>	<b>EA</b>	<b>@</b>	<b>\$40</b>	<b>= \$400</b>
<b>Moisture Content:</b>	<b>10</b>	<b>EA</b>	<b>@</b>	<b>\$10</b>	<b>= \$100</b>
<b>Organic Content:</b>	<b>4</b>	<b>EA</b>	<b>@</b>	<b>\$25</b>	<b>= \$100</b>
<b>Atterberg Limits:</b>	<b>1</b>	<b>EA</b>	<b>@</b>	<b>\$100</b>	<b>= \$100</b>
<b>Report Reproduction:</b>			<b>@</b>		<b>= <u>\$300</u></b>
				<b>Subtotal</b>	<b>\$3,750</b>
				<b>15% +/- Contingency</b>	<b>\$550</b>
				<b>TOTAL</b>	<b><u>\$4,300</u></b>

URS CORPORATION

OUT-OF-POCKET EXPENSE ESTIMATE:

LOCATION: Vero Beach Municipal Airport  
 PROJECT: Rehabilitate Sections of Runway 11R-29L and Taxiway C

Date: 2/18/2010  
 Prepared By: SGH/dk

CONTRACT NUMBER: 03036624

DESCRIPTION	ESTIMATED QUANTITY	UNITS	UNIT PRICE	ESTIMATED TOTAL PRICE
<b>I. TRAVEL EXPENSES</b>				
Mileage	1000	miles	@ \$0.50	\$500.00
Meals	5	trips	@ \$40.00	\$200.00
Lodging	3	trips	@ \$150.00	\$450.00
<b>SUBTOTAL TRAVEL EXPENSES</b>				<b>\$1,150.00</b>
<b>II. COMMUNICATION EXPENSES</b>				
U.S. Postage / Express Service	1	lump sum	@ \$500.00	\$500.00
<b>SUBTOTAL COMMUNICATION EXPENSES</b>				<b>\$500.00</b>
<b>III. PRODUCTION / PRESENTATION EXPENSES</b>				
Prints	10	sets	@ \$150.00	\$1,500.00
Photocopying	1	lump sum	@ \$1,000.00	\$1,000.00
Report Printing / Binding / Graphic / Covers, Etc.	1	lump sum	@ \$200.00	\$200.00
Presentation Graphics			@	\$0.00
Boards / Signs			@	\$0.00
Slides			@	\$0.00
Video			@	\$0.00
Model			@	\$0.00
Reference Materials			@	\$0.00
Aerial Photography			@	\$0.00
Quad Sheets / Maps			@	\$0.00
Coordinate Data			@	\$0.00
Microfilm		lump sum	@	\$0.00
<b>SUBTOTAL PRODUCTION / PRESENTATION EXPENSES</b>				<b>\$2,700.00</b>
<b>TOTAL PROJECT OUT-OF-POCKET EXPENSES</b>				<b>\$4,350.00</b>

**COUNCIL AGENDA REPORT**  
**MEETING OF MARCH 2, 2010**

**TO:** The Honorable Mayor and Members of the City Council

**FROM:** James M. Gabbard, City Manager

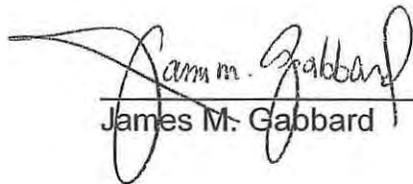
**DATE:** February 23, 2010

**SUBJECT: PROPOSED LEASE TERMINATION AGREEMENTS REQUESTED BY BRIDGETON REAL FUND III, LP: AIRPORT PARCELS 17 AND 19**

---

Attached is a memorandum from Ericson Menger, Airport Director, dated February 22, 2010, which provides background information and a recommendation on the above-referenced agreements.

**It is the recommendation of the City Manager's Office that Council approve the Lease Termination Agreements for Airport Parcels 17 and 19, with Bridgeton Real Fund III, LP, and authorize the Mayor to execute these documents.**

  
James M. Gabbard

:jav  
Attachments

xc: Ericson Menger  
Stephen Maillet

**MEMORANDUM**

**TO:** James M. Gabbard, City Manager  
**VIA:** Charles P. Vitunac, City Attorney  
**FROM:** Ericson W. Menger, Airport Director  
**DATE:** February 22, 2010  
**SUBJECT: PROPOSED LEASE TERMINATION AGREEMENTS REQUESTED BY BRIDGETON REAL FUND III, LP: AIRPORT PARCELS 17 AND 19**

---

Attached, for your review and approval, are copies of two proposed lease termination agreements requested by owners and management of Bridgeton Real Fund III, LP, pertaining to Airport parcels 17 and 19.

**BACKGROUND:**

Both of these vacant parcels are on Airport property located immediately adjacent to Aviation Boulevard and containing 8.02 acres of commercially zoned land. On October 5, 2005, City Council approved both of these leases concurrently for an initial term of 30 years. Parcel 17 currently produces monthly rent (including sales tax) for the Airport in the amount of \$4,502.85, while the monthly rent for Parcel 19 is \$3,207.08. Total annual rent from both parcels is currently \$92,519.16.

Bridgeton Real Fund III, LP, is a business entity formed for the primary purpose of developing these two parcels. Due to the severe economic downturn, the loss of a major league baseball tenant on property across the road from these parcels, the delays in the road improvement project for Aviation Boulevard, and the inability to secure tenants for planned developments on these parcels, Bridgeton has been unsuccessful in their development effort. Other properties on the Airport which were developed by Bridgeton limited partnerships are having substantial difficulties in finding or keeping tenants for those buildings. Without the ability to secure tenants for a building, the developer is also unable to secure construction financing or to service long term debt for an extended period of time. After paying rent on this vacant land for over 4 years, Bridgeton is now requesting termination of the two agreements.

After several discussions with representatives from Bridgeton, staff negotiated the attached termination agreements. Both agreements provide for termination effective upon timely payment to the Airport of: 1) one year rent in advance (\$92,519.16), 2) payment of all property taxes due for 2009 (due this year) and estimated for 2010 (due next year) to the Indian River County Tax Collector, and 3) reimbursement of expenses to procure an updated Environmental Phase I Audit on the vacant land (to ensure that Bridgeton leaves the property environmentally clean). In addition, the company has agreed to 4) forfeit both security deposits in the total amount of \$20,495 to the Airport. Payment of the sums in items 1) and 4) above are due to the Airport within 5 business days of City Council approval of this agreement.

**RECOMMENDATION:**

I respectfully request that this matter be scheduled to be considered by the Vero Beach City Council on March 2, 2010. I recommend approval by the City Council and authorization for the Mayor to execute both termination agreements on behalf of the City.

EWM/jm  
Attachments

cc: Airport Commission Members (via email and/or USPS)  
Joyce Vonada, City Manager's Office (via email)



February 5, 2010

Eric Menger  
Joe Malfait  
City of Vero Beach  
Office of the Airport Director  
P.O. Box 1389  
Vero Beach, Florida 32961-1389

Dear Sirs:

Due to the current economic conditions, we will be unable to fulfill the development requirements referenced in Section 12 of Attachment B on our lease for Parcels 17 and 19 located at the Vero Beach Municipal Airport. Therefore, we request the lease to be terminated effective February 28, 2010 upon our payment of one full-year rent in addition to forfeiture of the lease deposit on hand.

Please feel free to contact our office with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen Roseme', with a stylized flourish at the end.

Stephen Roseme  
Bridgeton Real Fund III, LP

## AGREEMENT TO TERMINATE COMMERCIAL LEASE

### AIRPORT PARCEL 17

This Agreement to Terminate Commercial Lease (hereinafter referred to as "Agreement") entered into the date last entered below by and between the **CITY OF VERO BEACH**, a Florida municipal corporation whose mailing address is P.O. Box 1389, Vero Beach, Florida 32961-1389 ("LANDLORD"); and **BRIDGETON REAL FUND III, LP**, a foreign limited partnership whose mailing address is 7535 Windsor Drive, Suite 306, Allentown, PA 18195 ("TENANT").

WHEREAS, LANDLORD owns certain real property located at the Vero Beach Municipal Airport commonly identified as Parcel 17, as more fully described in Attachment "A" to this Agreement; and

WHEREAS, the aforementioned real property is the subject of a lease between LANDLORD and TENANT dated September 9, 2005, for an initial term of 30 years commencing on October 1, 2005, and terminating on September 30, 2035; and

WHEREAS, TENANT has informed LANDLORD that TENANT is unable to meet TENANT'S Lease obligation to develop the land within the time frames set forth in the Lease or to continue to pay rent due to financial difficulties arising out of the ongoing slowdown in the local, national, and global economic environment; and

WHEREAS, TENANT submitted a written request to LANDLORD dated February 5, 2010, requesting that LANDLORD terminate the Lease; and,

WHEREAS, upon the consideration that TENANT will not dispute the forfeiture of the rent security deposit to LANDLORD, TENANT will tender a cashier check in the amount of the deposit, (currently secured by a Certificate of Deposit number 221146752 with Indian River National Bank), plus one (1) full year rental payment within five (5) days after TENANT receives notice that this Agreement has been approved by the Vero Beach City Council, and that TENANT will reimburse LANDLORD for the cost of procuring an updated Phase I Environmental Assessment along with any and all further costs incurred, if any, pursuant to Paragraph 5(f), SPECIAL CONDITIONS, of the Lease and Paragraph 19, ENVIRONMENTAL PROVISIONS, of Attachment "B" to the Lease; and,

WHEREAS, LANDLORD and TENANT have determined that it is to their mutual advantage to terminate the Lease on amicable terms.

NOW, THEREFORE, in consideration of the foregoing, LANDLORD and TENANT agree as follows:

1. TENANT shall pay LANDLORD the sum of \$12,000.00 no later than five (5) days after the City Council of Vero Beach approves this Agreement, or upon failure to timely make said payment to LANDLORD, LANDLORD may immediately withdraw all funds, including interest, from the Certificate of Deposit, account number 221146752, at Indian River National Bank, or its successor, to satisfy the rent payment security obligation.

2. TENANT shall also pay LANDLORD one (1) year rent in the sum of \$54,034.20 no later than (5) days after the City Council of Vero Beach approves this Agreement.

3. TENANT shall pay any and all taxes now due, or which arise out of this tenancy and will become due, expenses, liens, or other obligations incurred by TENANT or which have otherwise attached to the leasehold prior to termination of the Lease pursuant to this Agreement. TENANT shall pay current ad valorem taxes now due for the tax year 2009, together with the estimated ad valorem taxes estimated by the Indian River County Tax Collector to be due and payable for the 2010 tax year. All of these obligations shall be formally released by the creditor or paid by TENANT or its guarantors no later than five (5) days of execution of this Agreement by all parties to this Agreement.

4. TENANT, its general partner, and its guarantors, shall reimburse LANDLORD for the cost of an updated PHASE I ENVIRONMENTAL ASSESSMENT procured by LANDLORD pursuant to Paragraph 5(f), SPECIAL CONDITIONS of the Lease, within 10 days of receipt of a copy of the report and a copy of the invoice from LANDLORD.

5. TENANT, its general partner, and each of its guarantors reconfirm their obligations pursuant to Paragraph 19, ENVIRONMENTAL PROVISIONS, of Attachment "B" to the Lease, which shall survive the early termination of the Lease.

6. Except as to any continuing obligations stated above, the payment of the sums in paragraphs 1, 2, 3, and 4, above shall terminate the September 9, 2005, Lease for all other intents and purposes, and shall forever bar TENANT'S and LANDLORD'S rights and obligations there under. TENANT'S failure to timely make all payments or to procure formal releases of any or all obligations hereunder shall render this Agreement null and void and of no further effect, and the Lease shall continue in full force and effect.

7. Termination of the September 9, 2005 Lease shall be effective upon payment and performance of all other obligations enumerated herein by TENANT.

8. TENANT warrants that the Leased Premises are vacant, clean, and in good condition.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**LANDLORD – CITY OF VERO BEACH**  
(This section to be completed by Landlord only)

ATTEST:

LANDLORD:

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: Tammy K. Vock

Print: Kevin Sawnick

Title: City Clerk

Title: Mayor

Date: \_\_\_\_\_

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 both known to me and did not take an oath.

NOTARY PUBLIC:

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

State of Florida at Large [SEAL]

Commission No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**TENANT – Bridgeton Real Fund III, LP**  
(This section to be completed by Tenant only)

WITNESSED BY:

Sign: 

Print: Jeff Mikula

Sign: 

Print: BENJAMIN CLARK

TENANT:

Sign: 

Print: Stephen J. Roseme  
Title: Individually and as Managing Member  
of Bridgeton Properties, LLC., General  
Partner of Bridgeton Real Fund III, LP.

Date: 2-18-10

[AFFIX CORPORATE SEAL HERE]  
[SEAL]

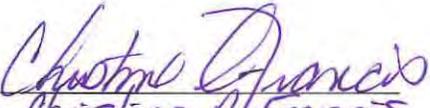
STATE OF FLORIDA

COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of February, 2010, by Stephen J. Roseme, Individually and as Managing Member of Bridgeton Properties, LLC., General Partner of Bridgeton Real Fund III, LP. He is personally known to me or produced \_\_\_\_\_ as identification and did/did not take an oath.

NOTARY PUBLIC:



Sign:   
Print: Christine A. Francis  
State of FL at Large [SEAL]  
Commission No. DD0884621  
My Commission Expires: 7/24/13

**TENANT – Bridgeton Real Fund III, LP**  
(This section to be completed by Tenant only)

WITNESSED BY:

Sign: [Signature]

Print: Jeff Moten

Sign: [Signature]

Print: BENJAMIN CLARK

TENANT:

Sign: [Signature]

Print: David R. Fretz  
Title: Individually and as Managing Member  
of Bridgeton Properties, LLC., General  
Partner of Bridgeton real Fund III, LP.

Date: 2-18-10

[AFFIX CORPORATE SEAL HERE]  
[SEAL]

STATE OF FLORIDA

COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of February, 2010, by David R. Fretz, Individually and as Managing Member of Bridgeton Properties, LLC., General Partner of Bridgeton Real Fund III, LP. He is personally known to me or produced \_\_\_\_\_ as identification and did/did not take an oath.

NOTARY PUBLIC:



Sign: [Signature]

Print: Christine A. Francis

State of FL at Large [SEAL]

Commission No. DD0884621

My Commission Expires: 7/24/13

**TENANT – Bridgeton Real Fund III, LP**  
(This section to be completed by Tenant only)

WITNESSED BY:

Sign: Christine Francis

Print: Christine A. Francis

Sign: [Signature]

Print: MIKE KUTLINSKI

TENANT:

Sign: [Signature]

Print: John M. Malek  
Title: Individually and as Managing Member  
of Bridgeton Properties, LLC., General  
Partner of Bridgeton Real Fund III, LP. Sign:

Date: 2/19/10

[AFFIX CORPORATE SEAL HERE]  
[SEAL]

STATE OF FLORIDA

COUNTY OF Indian River

The foregoing instrument was acknowledged before me this 19th day of February, 2010, by John M. Malek, Individually and as Managing Member of Bridgeton Properties, LLC., General Partner of Bridgeton Real Fund III, LP. He is personally known to me or produced \_\_\_\_\_ as identification and did/did not take an oath.

NOTARY PUBLIC:



Sign: Christine Francis

Print: Christine A. Francis

State of FL at Large [SEAL]

Commission No. DD0884621

My Commission Expires: 7/24/13

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**CITY MANAGEMENT**

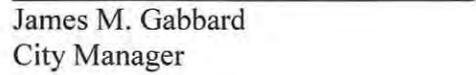
(This section to be completed by City Management Staff only)

Approved as to form  
and legal sufficiency:



Charles P. Vitunac  
City Attorney

Approved as conforming to  
municipal policy:



James M. Gabbard  
City Manager

Approved as to technical  
requirements:



Ericson W. Menger  
Airport Director

**AGREEMENT TO TERMINATE COMMERCIAL LEASE**  
**AIRPORT PARCEL 19**

This Agreement to Terminate Commercial Lease (hereinafter referred to as "Agreement") entered into the date last entered below by and between the **CITY OF VERO BEACH**, a Florida municipal corporation whose mailing address is P.O. Box 1389, Vero Beach, Florida 32961-1389 ("LANDLORD"); and **BRIDGETON REAL FUND III, LP**, a foreign limited partnership whose mailing address is 7535 Windsor Drive, Suite 306, Allentown, PA 18195 ("TENANT").

WHEREAS, LANDLORD owns certain real property located at the Vero Beach Municipal Airport commonly identified as Parcel 19, as more fully described in Attachment "A" to this Agreement; and

WHEREAS, the aforementioned real property is the subject of a lease between LANDLORD and TENANT dated September 9, 2005, for an initial term of 30 years commencing on October 1, 2005, and terminating on September 30, 2035; and

WHEREAS, TENANT has informed LANDLORD that TENANT is unable to meet TENANT'S Lease obligation to develop the land within the time frames set forth in the Lease or to continue to pay rent due to financial difficulties arising out of the ongoing slowdown in the local, national, and global economic environment; and

WHEREAS, TENANT submitted a written request to LANDLORD dated February 5, 2010, requesting that LANDLORD terminate the Lease; and,

WHEREAS, upon the consideration that TENANT will not dispute the forfeiture of the rent security deposit to LANDLORD, TENANT will tender a cashier check in the amount of the deposit, (currently secured by a Certificate of Deposit number 221146753 with Indian River National Bank), plus one (1) full year rental payment within five (5) days after TENANT receives notice that this Agreement has been approved by the Vero Beach City Council, and that TENANT will reimburse LANDLORD for the cost of procuring an updated Phase I Environmental Assessment along with any and all further costs incurred, if any, pursuant to Paragraph 5(f), SPECIAL CONDITIONS, of the Lease and Paragraph 19, ENVIRONMENTAL PROVISIONS, of Attachment "B" to the Lease; and,

WHEREAS, LANDLORD and TENANT have determined that it is to their mutual advantage to terminate the Lease on amicable terms.

NOW, THEREFORE, in consideration of the foregoing, LANDLORD and TENANT agree as follows:

1. TENANT shall pay LANDLORD the sum of \$8,495.00 no later than five (5) days after the City Council of Vero Beach approves this Agreement, or upon failure to timely make said payment to LANDLORD, LANDLORD may immediately withdraw all funds, including interest, from the Certificate of Deposit, account number 221146753, at Indian River National Bank, or its successor, to satisfy the rent payment security obligation.

2. TENANT shall also pay LANDLORD one (1) year rent in the sum of \$38,484.96 no later than (5) days after the City Council of Vero Beach approves this Agreement.

3. TENANT shall pay any and all taxes now due, or which arise out of this tenancy and will become due, expenses, liens, or other obligations incurred by TENANT or which have otherwise attached to the leasehold prior to termination of the Lease pursuant to this Agreement. TENANT shall pay current ad valorem taxes now due for the tax year 2009, together with the estimated ad valorem taxes estimated by the Indian River County Tax Collector to be due and payable for the 2010 tax year. All of these obligations shall be formally released by the creditor or paid by TENANT or its guarantors no later than five (5) days of execution of this Agreement by all parties to this Agreement.

4. TENANT, its general partner, and its guarantors, shall reimburse LANDLORD for the cost of an updated PHASE I ENVIRONMENTAL ASSESSMENT procured by LANDLORD pursuant to Paragraph 5(f), SPECIAL CONDITIONS of the Lease, within 10 days of receipt of a copy of the report and a copy of the invoice from LANDLORD.

5. TENANT, its general partner, and each of its guarantors reconfirm their obligations pursuant to Paragraph 19, ENVIRONMENTAL PROVISIONS, of Attachment "B" to the Lease, which shall survive the early termination of the Lease.

6. Except as to any continuing obligations stated above, the payment of the sums in paragraphs 1, 2, 3, and 4, above shall terminate the September 9, 2005, Lease for all other intents and purposes, and shall forever bar TENANT'S and LANDLORD'S rights and obligations there under. TENANT'S failure to timely make all payments or to procure formal releases of any or all obligations hereunder shall render this Agreement null and void and of no further effect, and the Lease shall continue in full force and effect.

7. Termination of the September 9, 2005 Lease shall be effective upon payment and performance of all other obligations enumerated herein by TENANT.

8. TENANT warrants that the Leased Premises are vacant, clean, and in good condition.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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**LANDLORD – CITY OF VERO BEACH**  
(This section to be completed by Landlord only)

ATTEST:

LANDLORD:

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: Tammy K. Vock

Print: Kevin Sawnick

Title: City Clerk

Title: Mayor

Date: \_\_\_\_\_

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 both known to me and did not take an oath.

NOTARY PUBLIC:

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

State of Florida at Large [SEAL]

Commission No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

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**TENANT – Bridgeton Real Fund III, LP**  
(This section to be completed by Tenant only)

WITNESSED BY:

Sign: 

Print: Jeff Roseme

Sign: 

Print: BENJAMIN CLARK

TENANT:

Sign: 

Print: Stephen J. Roseme  
Title: Individually and as Managing Member  
of Bridgeton Properties, LLC., General  
Partner of Bridgeton Real Fund III, LP.

Date: 2-18-10

[AFFIX CORPORATE SEAL HERE]  
[SEAL]

STATE OF FLORIDA

COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of February, 2010, by Stephen J. Roseme, Individually and as Managing Member of Bridgeton Properties, LLC., General Partner of Bridgeton Real Fund III, LP. He is personally known to me or produced \_\_\_\_\_ as identification and did/did not take an oath.

NOTARY PUBLIC:



Sign:   
Print: Christine A. Francis  
State of FL at Large [SEAL]  
Commission No. DD0884621  
My Commission Expires: 7/24/13

**TENANT – Bridgeton Real Fund III, LP**  
(This section to be completed by Tenant only)

WITNESSED BY:

Sign: \_\_\_\_\_

Print: Jeff Poteh

Sign: \_\_\_\_\_

Print: BENJAMIN CUREX

TENANT:

Sign: \_\_\_\_\_

Print: David R. Fretz  
Title: Individually and as Managing Member of Bridgeton Properties, LLC., General Partner of Bridgeton real Fund III, LP.

Date: 2.18.10

[AFFIX CORPORATE SEAL HERE]  
[SEAL]

STATE OF FLORIDA

COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of February, 2010, by David R. Fretz, Individually and as Managing Member of Bridgeton Properties, LLC., General Partner of Bridgeton Real Fund III, LP. He is personally known to me or produced \_\_\_\_\_ as identification and did/did not take an oath.

NOTARY PUBLIC:



Sign: Christine Francis  
Print: Christine A. Francis  
State of FL at Large [SEAL]  
Commission No. DD0884621  
My Commission Expires: 7/24/13

**TENANT – Bridgeton Real Fund III, LP**  
(This section to be completed by Tenant only)

WITNESSED BY:

Sign: Christine Francis

Print: Christine A. Francis

Sign: [Signature]

Print: MIKE KULIOWSKI

TENANT:

Sign: [Signature]

Print: John M. Malek  
Title: Individually and as Managing Member  
of Bridgeton Properties, LLC., General  
Partner of Bridgeton Real Fund III, LP. Sign:

Date: 2/19/10

[AFFIX CORPORATE SEAL HERE]  
[SEAL]

STATE OF FLORIDA

COUNTY OF Indian River

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of February, 2010, by John M. Malek, Individually and as Managing Member of Bridgeton Properties, LLC., General Partner of Bridgeton Real Fund III, LP. He is personally known to me or produced \_\_\_\_\_ as identification and did/did not take an oath.

NOTARY PUBLIC:



Sign: Christine Francis  
Print: Christine A. Francis  
State of FL at Large [SEAL]  
Commission No. DD0884621  
My Commission Expires: 7/24/13

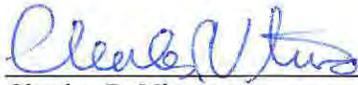
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**CITY MANAGEMENT**

(This section to be completed by City Management Staff only)

Approved as to form  
and legal sufficiency:



Charles P. Vitunac  
City Attorney

Approved as conforming to  
municipal policy:

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James M. Gabbard  
City Manager

Approved as to technical  
requirements:



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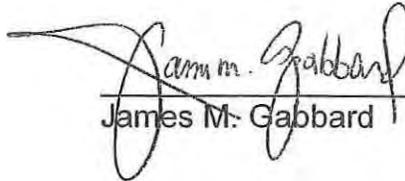
Ericson W. Menger  
Airport Director

**COUNCIL AGENDA REPORT**  
**MEETING OF MARCH 2, 2010**

**TO:** The Honorable Mayor and Members of the City Council  
**FROM:** James M. Gabbard, City Manager  
**DATE:** February 24, 2010  
**SUBJECT: DISCUSSION REGARDING THE ELECTRIC UTILITY**

---

I plan to have John Lee discuss with the City Council the attached documentation regarding the Electric Utility.

  
James M. Gabbard

JMG:jav  
Attachments

xc: John Lee

N:\AGENDA\CITYMANAGER\2010\DISCUSSION OF 2.16.10 COUNTY COMMISSION MEETING.DOC



The Reliable One®

Date: 02/09/10  
Account: 194680  
Page: 1

**Billing Address:**  
City of Vero Beach  
PO Box 1389  
jstevens@covb.org  
jlee@covb.org  
DO NOT MAIL - EMAIL  
Vero Beach FL 32961-1389

**Customer Address:**  
City of Vero Beach  
PO Box 1389  
jstevens@covb.org  
jlee@covb.org  
DO NOT MAIL - EMAIL  
Vero Beach FL 32961-1389

Invoice Date	Invoice Number	Type	Item	Due Date	Description of Charges	Amount
02/09/10	18578	Invoice	001	02/24/10	January 2010 Billing	1,583,653.12
Please use the following reference on your wire payment MISC-OW						
<b>Total Amount Invoiced</b>						1,583,653.12
<b>Balance Due</b>						\$ 1,583,653.12

**Remit payment by check to:**

Orlando Utilities Commission  
Attention: Treasury Management  
P. O. Box 3193  
Orlando, FL 32802

\*\*\* Return this portion of the invoice with your payment \*\*\*

**Remit payment by bank wire or ACH to:**

SunTrust Bank  
Orlando Utilities Commission  
Wire or ACH #061000104  
Account #1000077778602

City of Vero Beach  
Account Number: 194680

**Remit payment online by credit card or check:**

Go to [www.ouc.com](http://www.ouc.com)  
Click on "Pay your bill"  
Click "Pay with e-Check" or "Pay with Speedpay"  
Please note: SpeedPay charges a fee of \$5.95 per transaction

Total Amount Due: \$ 1,583,653.12  
Due Date: 02/24/10  
Invoice Number: 18578

If you have billing inquiries, please contact Accounts Receivable at 407.423.9122.



Florida Municipal Power Agency

Invoice Date: February 04, 2010

Bill To:

City of Vero Beach

P.O.Box 1389  
1053 20th Place  
Vero Beach, FL 32961-1389

# INVOICE

INVOICE #

018477

Due Date

February 25, 2010

Description	FMPA Billing Rate	Billing Determinant	Due
<b>Stanton Participation Costs for: JANUARY 2010</b>			
MONTHLY FIXED COSTS			\$423,423.00
ENERGY COST THIS MONTH	30.12309 \$/	13,981.538 mwh	\$421,167.13
SUB TOTAL			\$844,590.13
VER02 - DEVELOPMENT FUND			\$1,747.69
VER02 - TRUE-UP			(\$10,613.15)

TOTAL DUE

\$835,724.67

Schedule Values

Stanton Project Scheduled Net MWH At OUC InterConnection	13,641.000 mwh
OUC Transmission Loss Factor	2.4400
Net Stanton Energy @ SEC Bus	13,981.538 mwh

Stanton Participant Data:

Participant Energy Costs	\$835,724.67
Estimated MWH Received	13,342.000 mwh
Average Cost	\$62.64 \$/ mwh
Vero Beach Total Energy Of Project Scheduled @ OUC InterConnection	13,641.000 mwh

PAYMENT SHOULD BE MADE BY WIRE TRANSFER:  
 SUNTRUST BANK, ATLANTA  
 ABA #061-000-104  
 A/C # 9088000415  
 A/C NAME: ENDOWMENTS AND FOUNDATIONS  
 FFC: #6735922 STANTON O&M  
 ATTN: JIM BOYLE



Florida Municipal Power Agency

Invoice Date: February 05, 2010

Bill To:

City of Vero Beach

P.O.Box 1389  
Vero Beach, FL 32961  
USA

# INVOICE

INVOICE #  
018497

Due Date  
February 25, 2010

Description	FMPA Billing Rate	Billing Determinant	Due
<b>Stanton II Participation Costs for: JANUARY 2010</b>			
MONTHLY FIXED COSTS			\$319,928.00
ENERGY COST THIS MONTH	28.89271 \$/	11,552.891 mwh	\$333,794.33
SUB TOTAL			\$653,722.33
VER03 - DEVELOPMENT FUND			\$1,444.11
VER03 - TRUE-UP			(\$1,656.99)

TOTAL DUE

\$653,509.45

Schedule Values

Stanton II Project Scheduled Net MWH At OUC InterConnection	11,271.000 mwh
OUC Transmission Loss Factor	2.4400
Net Stanton II Energy @ SEC Bus	11,552.891 mwh

Stanton Participant Data:

Participant Energy Costs	\$653,509.45
Estimated MWH Received	11,024.000 mwh
Average Cost	\$59.28 \$/ mwh
Vero Beach Total Energy Of Project Scheduled @ OUC InterConnection	11,271.000 mwh

PAYMENT SHOULD BE MADE BY WIRE TRANSFER:  
 SUNTRUST BANK, ATLANTA  
 ABA #061-000-104  
 A/C # 9088000415  
 A/C NAME: ENDOWMENTS AND FOUNDATIONS  
 FFC: #6735928 STANTON II O&M  
 ATTN: JIM BOYLE



Florida Municipal Power Agency

Invoice Date: February 04, 2010

Bill To:

Vero Beach Municipal Power

P.O.Box 1389  
Vero Beach, FL 32961-1389  
USA

# INVOICE

INVOICE #

018468

Due Date

February 25, 2010

Description

Total Due

**St. Lucie #2 Participation Costs for: JANUARY 2010**

Participant's Share in MW: 11.214

BUDGETED MONTHLY POWER COSTS

\$521,996.00

VER01 - TRUE-UP

\$29,263.76

Total Due

\$551,259.76

PLEASE DO NOT PAY!!!  
WE WILL AUTOMATICALLY DEBIT YOUR  
ACCOUNT ON THE ABOVE DUE DATE.



Payment Coupon

/610105300004300350000823631394810820008010101

General Mail Facility  
Miami, FL. 33188-0001

B 01053 0000823631 0 8 01 01 01  
Please mail this portion with your check

Cust. No.: 430035		Inv. No.: 823631	
This Month's Charges Past Due After 03/03/2010		Amount Due This Invoice 280,184.93	

Make check payable to FPL in US funds and mail payment to address below

CITY OF VERO BEACH  
UTILITIES DIRECTOR  
P. O. BOX 1389  
VERO BEACH FL 32961-1389

FPL  
GENERAL MAIL FACILITY  
MIAMI FL 33188-0001

Florida Power & Light Company

Federal Tax ID#: 59-0247775

**INVOICE**

Customer Name and Address

CITY OF VERO BEACH  
UTILITIES DIRECTOR  
P. O. BOX 1389  
VERO BEACH FL 32961-1389

Customer Number: 430035  
Invoice Number: 823631  
Invoice Date: 02/10/2010

B 01053 0000823631 0 8 01 01 01  
Please Retain This Portion for your Records

**CURRENT CHARGES AND CREDITS**

Customer No: 430035 Invoice No: 823631

DESCRIPTION	QUANTITY	PRICE	AMOUNT
PWD-TRANSMISSION SERVICE NETWORK SERVICE - JANUARY 2010	1	280,184.93	280,184.93
For Inquiries Contact: GARY FALASCA Phone: (305) 529-6115		<b>Total Amount Due</b>	<b>\$280,184.93</b>
		This Month's Charges Past Due After	03/03/2010

Messages

PLEASE REFERENCE INVOICE # 823631 ON PAYMENT. THANK YOU.

WIRE/ACH INSTRUCTIONS:

BANK OF AMERICA, ATLANTA, GEORGIA

ABA #026009593 for WIRE

ABA #111000012 for ACH

FLORIDA POWER & LIGHT COMPANY, GENERAL FUND ACCOUNT #3750132076

Florida Power & Light Company  
General Mail Facility  
Miami, FL. 33188-0001



The Reliable One®

Date: 02/22/10  
Account: 194680  
Page: 1

**Billing Address:**  
City of Vero Beach  
PO Box 1389  
jstevens@covb.org  
jlee@covb.org  
DO NOT MAIL - EMAIL  
Vero Beach FL 32961-1389

**Customer Address:**  
City of Vero Beach  
PO Box 1389  
jstevens@covb.org  
jlee@covb.org  
DO NOT MAIL - EMAIL  
Vero Beach FL 32961-1389

Invoice Date	Invoice Number	Type	Item	Due Date	Description of Charges	Amount
02/22/10	18673	Invoice	001	03/24/10	January 2010 Services	1,260.00
Contact Person: Jim Stevens Please refer to attached detail						
<b>Total Amount Invoiced</b>						1,260.00
<b>Balance Due</b>						\$ 1,260.00

**Services for NERC Compliance**

**Remit payment by check to:**

Orlando Utilities Commission  
Attention: Treasury Management  
P. O. Box 3193  
Orlando, FL 32802

\*\*\* Return this portion of the invoice with your payment \*\*\*

**Remit payment by bank wire or ACH to:**

SunTrust Bank  
Orlando Utilities Commission  
Wire or ACH #061000104  
Account #100007778602

City of Vero Beach  
Account Number: 194680

**Remit payment online by credit card or check:**

Go to [www.ouc.com](http://www.ouc.com)  
Click on "Pay your bill"  
Click "Pay with e-Check" or "Pay with Speedpay"  
Please note: SpeedPay charges a fee of \$5.95 per transaction

Total Amount Due: \$ 1,260.00  
Due Date: 03/24/10  
Invoice Number: 18673

If you have billing inquiries, please contact Accounts Receivable at 407.423.9122.

**COUNCIL AGENDA REPORT**  
**MEETING OF MARCH 2, 2010**

**TO:** The Honorable Mayor and Members of the City Council

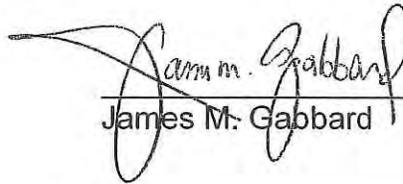
**FROM:** James M. Gabbard, City Manager

**DATE:** February 24, 2010

**SUBJECT: DISCUSSION REGARDING THE COUNTY COMMISSION MEETING OF  
2/16/2010**

---

I plan to have a discussion with the City Council regarding the above-referenced subject at the March 2, 2010 City Council Meeting.

  
James M. Gabbard

JMG:jav

***Daniel P. Stanley***

1721 80<sup>th</sup> Avenue  
Vero Beach, FL 32966  
(772) 563-0568

February 19, 2010

9B-1  
FEB 2010  
CITY CLERK'S  
OFFICE

City of Vero Beach  
Attention: City Clerk  
P. O. Box 1389  
Vero Beach, FL 32961-1389

The Korean War Veterans Association, Indian River County, Florida Chapter 318 has a bronze plaque honoring those who served in the conflict which we wish to place on Veterans Memorial Island.

We respectfully request the approval of the City of Vero Beach Council subject to the terms agreed upon by The Indian River County Veterans Council and Veterans Memorial Island Sanctuary Advisory Committee.

Attached is the form requesting that this item be placed on the agenda for the March 2, 2010 meeting of the City Council.

Sincerely,

*Daniel P. Stanley*

DPS/t  
Attachment - 1

MEMORIAL ISLAND

Vince H.

FOR YOUR PROJECT

Regulations Regarding Memorial Island Veterans Memorials

1. All groups wishing to place a memorial must apply to the Veteran's Council and the City of Vero Beach. The memorial must be approved by both the Veteran's Council and the City of Vero Beach.
2. Location, materials and wording of the memorial must be approved for each memorial by the Veteran's Council and the City of Vero Beach.
3. The standard memorial is to have a concrete base with a sand finish painted white. Monument base must be 1'4" x 1'4", 2' x 1', 2' x 2' or 2'6" x 2'. Bases are to be 1, 2, or 3 feet high off the ground with a sloped top. The slope may be 5 degrees to 15 degrees. ?
4. Memorial plaques are to be placed on the sloped top of the memorial base. The plaque is to have a 2 to 2 1/2" border of monument base top exposed as a frame to the memorial plaque. This means the actual plaque size is 1' x 2' or 1'8" x 8", 1'8" x 1'8" or 2'2" x 1'8".
5. Plaque material is to be: (BUD GIBBS IS TO SUPPLY THIS INFO)
6. All memorials are to be placed 10' outside of the memorial perimeter walk. Each memorial is to include a 5' wide concrete walk to the memorial which matches the existing sidewalks, mulched area around the monument base and one tree to be planted near the monument area. The exact location of all items are to be approved on site.
7. Special monuments other than the plaque memorials will be individually handled with strict Veteran Council and City of Vero Beach review required.
8. The cost for each memorial is solely the responsibility of the organization establishing the memorial.

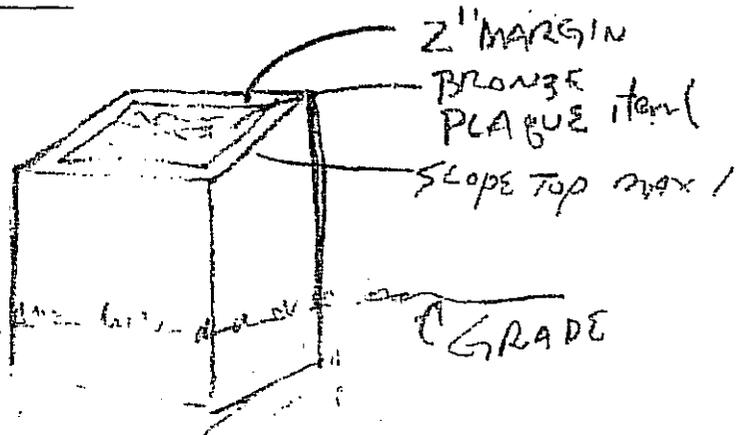
TOTAL THE PROJECT

PROJECT  
The cost includes:

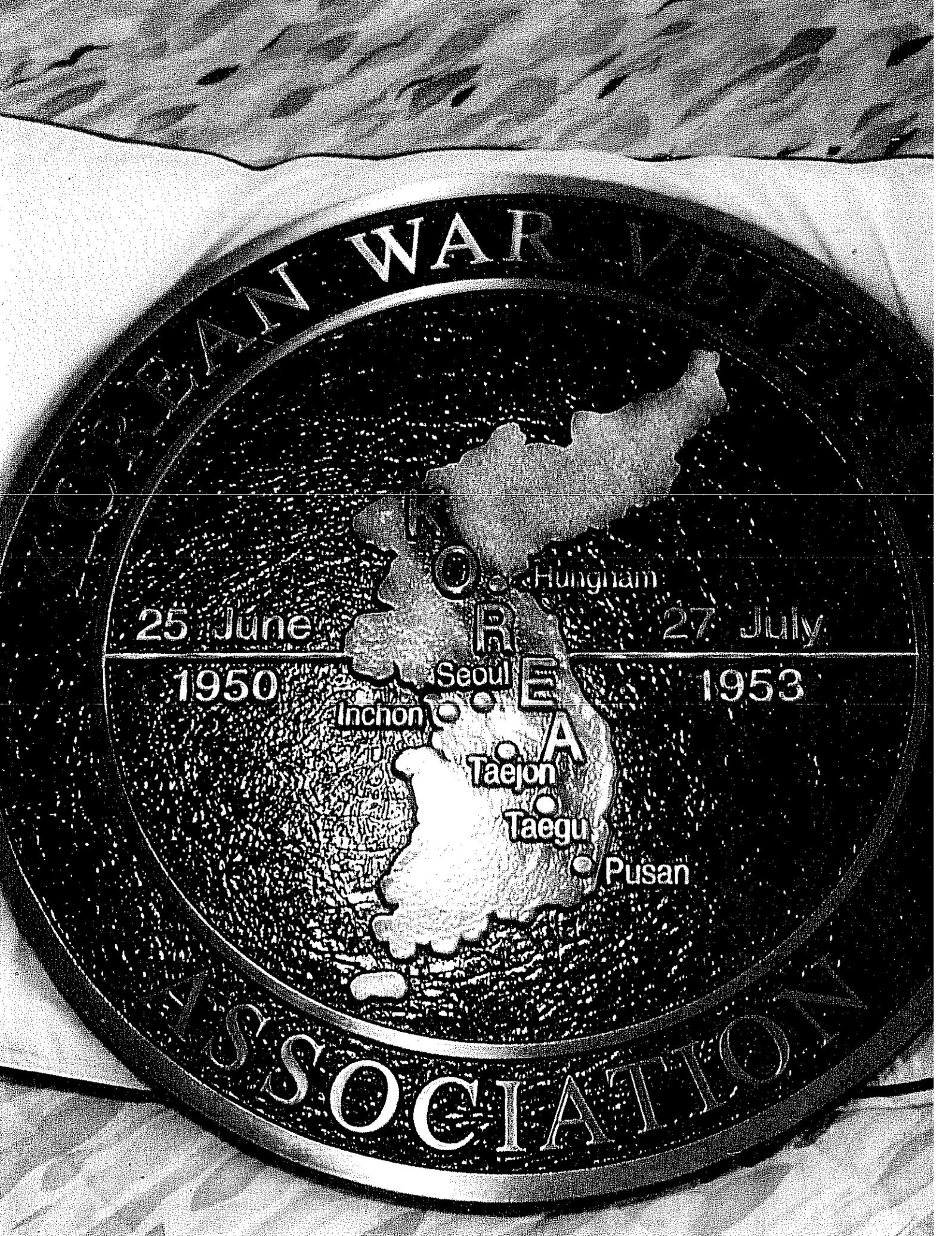
- Monument insulation \_\_\_\_\_
- Monument base \_\_\_\_\_
- Sidewalk \_\_\_\_\_
- Mulch \_\_\_\_\_
- Monument plaque \_\_\_\_\_

9. Monument sketch:

TREE?  
SIZE SEE  
ITEM (3)



ARMY HEIGHT - ?  
NAVY "



KOREAN WAR

25 June  
1950

27 July  
1953

Hunghnam  
Seoul  
Inchon  
Taejon  
Taegu  
Pusan

ASSOCIATION

## **B) Location for the Placement of the Korean War Veterans Plaque**

Mr. Dexter gave the Committee members a map of the old layout for the Island and a map of the existing layout of the Island (on file in the City Clerk's office). He suggested a few locations on the south and southeast corner of the Island for future monuments.

Mr. Horton suggested that they place the Korean War Veterans monument on the south end of the Island.

A member of the Korean War Veterans of Port St. Lucie reported that the plaque has been paid for and they had some funds to help pay for the base of the monument. He showed the Committee members a photograph of the monuments that were placed in Port St. Lucie, Ft. Pierce and Martin County and asked that the City consider the same base for the Veterans Memorial Island Sanctuary. He felt that the south end of the Island would be an ideal place for the monument. If money was a problem they would come up with the funds.

Mr. Matthews agreed with placing the monument on the south end of the Island. He noted that the funding for the monument would come from the organization and not from the City.

Mr. Vincent Abatte, President of the Indian River County Korean War Veterans, did not think they would have a problem raising the funds to pay for the monument. There would be no cost to the City other than the walkway to the monument.

Ms. Loy explained to Mr. Abatte that the walkway, base, etc. would be at their organization's expense.

Mr. Dexter explained that the City provides the labor for the installation, but not the materials. He estimated about \$300 to \$500 for the sidewalk and monument base.

Mr. Abatte said that he was looking at the possibility of using granite for the base.

Mrs. Glenn said that would make the base different than the other monuments on the Island.

Mr. Dexter reported that the bases on the Island were made of concrete.

Mr. Abatte said that they would keep the base simple and use concrete.

Dr. Daniel Stanley suggested that they contact Mr. John Dean, Architect, to draw a picture with the dimensions of the monument prior to bringing it before the City Council for their approval.

**Ms. Loy made a motion to authorize the placement of the Korean War Veterans monument on the south end of the Island between the Coastguard and Marine Corp monuments. Mr. Matthews seconded the motion and it passed unanimously.**

**MEMORANDUM**

**TO:** Mayor Kevin Sawnick and  
City Councilmembers

**FROM:** Ken Daige *Ken Daige*  
City Councilmember

**DATE:** February 23, 2010

**SUBJECT:** Economic Goals Summit

I would respectfully ask that a Special Call meeting be held for Vero Beach to conduct an Economic Goals Summit. This meeting needs to be held as soon as possible. Thank you for your consideration in this matter.

KD/tv

**XC:** James Gabbard  
City Manager

Charles Vitunac  
City Attorney

## MEMORANDUM

**TO:** Mayor Kevin Sawnick and  
City Councilmembers

**FROM:** Ken Daige *Ken Daige*  
City Councilmember

**DATE:** February 23, 2010

**RE:** City Council Workshop

---

I am in agreement with Councilmember White's request (attached memo dated February 17, 2010) to hold a meeting to discuss utility rates and the pro's and con's of selling our utilities. I would like this meeting to be a Special Call meeting, but it is my intention not to have any votes taken at the meeting. I also request that discussion of utility surcharge, as well as electric and water and sewer rates are added to the agenda. I would like to have your response on when this meeting will be held as soon as possible.

Thank you for your consideration in this matter.

KD/sp

cc: James Gabbard, City Manager  
Charles Vitunac, City Attorney  
John Lee, Acting Electric Utilities Director  
Rob Bolton, Water and Sewer Director

**MEMORANDUM**

**TO:** Mayor Kevin Sawnick and  
City Councilmembers

**FROM:** Thomas P. White *T.P.W.*  
City Councilmembers

**DATE:** February 17, 2010

**SUBJECT:** City Council Workshop

I would like to request that City Council hold a workshop to discuss our utility rates, as well as discussing the pro's and con's of selling our utilities. It also seems that it would behoove us to send a Resolution to the County asking them to remove the 6% surcharge that they charge utility ratepayers. This would give some relief to County customers.

Thank you for your help in this matter.

TW/tv

XC: James Gabbard  
City Manager

Charles Vitunac  
City Attorney

John Lee  
Acting Utilities Director



## OFFICE OF THE CITY ATTORNEY

## MEMORANDUM

**To:** Mayor and Council  
**From:** Ken Daige, Councilmember *KD*  
**Subject:** **Discussion of County 6% Franchise Fee and City 10% Utility Tax**  
**Date:** February 24, 2010

I would like to suggest several topics to discuss which might lower the cost of our electric service for both in-city and out-city customers.

First, the City Council might consider formally asking that Indian River County reduce or eliminate its 6% franchise fee on the out-city customers of our system. This would result in an immediate and significant reduction in their monthly bill.

Secondly, if the County chooses to keep its franchise fees, I would suggest that the city replace its 10% utility tax imposed on in-city customers with a 6% franchise fee identical to that charged by the county for the out-city customers. The result of this latter method would be that both in-city and out-city customers would pay exactly the same charge for the same service, thus making it clear that *all* customers of our electric system are treated the same, whether they are within the city boundaries or not.

## MEMORANDUM

**TO:** John Lee  
Acting Utilities Director

**FROM:** Ken Daige *Ken Daige*  
City Councilmember

**DATE:** February 23, 2010

**SUBJECT:** Utility Matters

Please provide me with copies of any wire transfers or any money being paid to OUC to provide services to the City of Vero Beach beginning January 1, 2010. This would also apply to any wire transfers, wholesale bills, or any money being paid to FMPA or any other power providers.

Also, I would like to get a copy of the number of customers who are billed by the City of Vero Beach for electric services every month.

Thank you for your help in this matter. If you have any questions regarding my request, please feel free to call me at anytime.

KD/tv