

**CITY OF VERO BEACH, FLORIDA
FEBRUARY 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 – Pastor Dawn Reichart, Christ by the Sea
- C. Pledge of Allegiance

2. PRELIMINARY MATTERS

- A. Agenda Additions, Deletions, and Adoption
- B. Proclamations
- C. Public Comment
- D. Adoption of Consent Agenda
 - 1. Regular City Council Minutes – January 19, 2010
 - 2. Special Call City Council Minutes – January 14, 2010
 - 3. Florida Boating Improvement Program Grant Agreement
 - 4. Mayor Sawnick attending APPA Legislative Rally

(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 58 “Personnel and Retirement,” Article II, Division 4 of the Code of Ordinances of the City of Vero Beach to provide for Compliance with Chapter 2009-97, Laws of Florida; providing for Repeal of all Ordinances in conflict herewith; providing for severability; providing for codification and providing an effective date.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

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

6. CITY CLERK'S MATTERS

7. CITY MANAGER'S MATTERS

- A) Request from Historic Preservation Commission for the City Staff to Prepare a Property Tax Exemption Ordinance for Historic Designated Properties
- B) Orlando Utilities Commission and the City of Vero Beach Compliance Services Agreement
- C) Oil Purchase and GSAP 2 Refund
- D) December 2009 Financial Update to be Presented by Finance Director Stephen Maillet

8. CITY ATTORNEY'S MATTERS

- A) OUC Contract

9. CITY COUNCIL MATTERS

- A. Old Business
- B. New Business

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

- A. Mayor Kevin Sawnick's Matters
 - 1. Correspondence
 - 2. Committee Reports
 - 3. Comments
 - A) Civic Education
 - B) Citywide Green Initiatives
- B. Vice Mayor Sabin Abell's Matters
 - 1. Correspondence
 - 2. Committee Reports
 - 3. Comments
- C. Councilmember Tom White's Matters
 - 1. Correspondence
 - 2. Committee Reports
 - 3. Comments

- D. Councilmember Brian Heady's Matters
 - 1. Correspondence
 - 2. Committee Reports
 - 3. Comments

- A) Trip report/request
- B) Internet connection for meetings
- C) OUC Contract

- D) Tallahassee/League of Cities
- E) Brainstorming Session Report

- E. Councilmember Ken Daige's Matters
 - 1. Correspondence
 - 2. Committee Reports
 - 3. Comments

11. ADJOURNMENT

Council Meetings will be televised on Channel 13 and replayed.

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

SUBJECT TO CHANGE

AGENDA

CITY MANAGER'S OFFICE
FEBRUARY 2, 2010

Consent Agenda

1. Regular City Council Minutes – January 19, 2010
2. Florida Boating Improvement Program Grant Agreement – Marina South Complex Re-Rack

City Manager's Matters

- A) Request for Historic Preservation Commission for the City Staff to Prepare a Property Tax Exemption Ordinance for Historic Designated Properties
- B) Orlando Utilities Commission and the City of Vero Beach Compliance Services Agreement
- C) Oil Purchase and GSAP 2 Refund
- D) December 2009 Financial Update to be Presented by Finance Director Stephen Maillet

COUNCIL AGENDA REPORT
MEETING OF FEBRUARY 2, 2010

TO: The Honorable Mayor and Members of the City Council

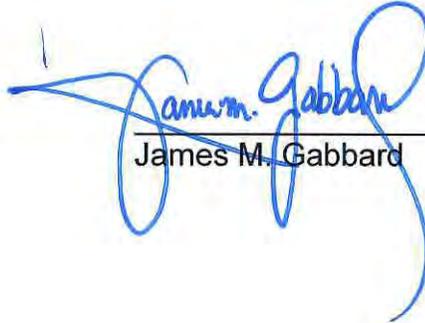
FROM: James M. Gabbard, City Manager

DATE: January 25, 2010

SUBJECT: FLORIDA BOATING IMPROVEMENT PROGRAM (FBIP) GRANT AGREEMENT – MARINA SOUTH COMPLEX RE-RACK

Please find attached a memo from Tim Grabenbauer, dated January 11, 2010, which provides background information and a recommendation on the above-referenced item. Also attached is a copy of the proposed lease.

It is the recommendation of the City Manager's Office that Council approve the Florida Boating Improvement Program Grant Agreement for the Marina South Complex Re-Rack.



James M. Gabbard

:jav
Attachments

xc: Tim Grabenbauer
Stephen Maillet

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Memo

To: James Gabbard, City Manager

From: Tim Grabenbauer, Marina Director 

CC:

Date: 1/25/2010

Re: AGENDA ITEM FOR REGULAR CITY COUNCIL MEETING FEBRUARY 2ND, 2010

ITEM:

Florida Boating Improvement Program Grant Agreement with the City of Vero Beach.

RECOMMENDATION:

Recommend executing agreement.

BACKGROUND INFORMATION:

The City applied for \$30,000 for the replacement of our dry storage rack system. We were awarded the full amount.



January 11, 2010

**Florida Fish
and Wildlife
Conservation
Commission**

Commissioners

Rodney Barreto
Chair
Miami

Kathy Barco
Vice Chair
Jacksonville

Ronald M. Bergeron
Fort Lauderdale

Richard A. Corbett
Tampa

Dwight Stephenson
Delray Beach

Kenneth W. Wright
Winter Park

Brian S. Yablonski
Tallahassee

Executive Staff

Nick Wiley
Executive Director

Greg Holder
Assistant Executive Director

Karen Ventimiglia
Deputy Chief of Staff

Division of
Law Enforcement
Colonel Jim Brown

(850) 488-6251
(850) 921-6453 FAX

*Managing fish and wildlife
resources for their long-term
well-being and the benefit
of people.*

620 South Meridian Street
Tallahassee, Florida
32399-1600
Voice: (850) 488-4676

Hearing/speech impaired:
(800) 955-8771 (T)
(800) 955-8770 (V)

MyFWC.com

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

RE: Contract No. 09025
Florida Boating Improvement Program (FBIP) Grant Agreement
Marina South Complex Re-Rack

Dear Mr. Grabenbauer:

Enclosed are two (2) originals of the Grant Agreement for the FY 09/10 FBIP grant award to the City of Fernandina Beach. Please have the Grant Agreement reviewed, signed by the authorized designee and return all originals to me. Upon full execution, an original will be returned to your office.

If you have any questions or need further information, please call me at (850) 410-0656, extension 17173, or e-mail tim.woody@MyFWC.com. You may also contact Katrina Thompson at (850) 410-0656, extension 17382, or email katrina.thompson@MyFWC.com.

Sincerely,

A handwritten signature in cursive script that reads "Katrina Thompson".

for Tim Woody, Program Administrator
Florida Boating Improvement Program
Boating and Waterways Section

/tw
Enclosures

**FLORIDA BOATING IMPROVEMENT PROGRAM
GRANT AGREEMENT**

THIS AGREEMENT is entered into by and between the FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, whose address is 620 South Meridian Street, Tallahassee, Florida 32399-1600, hereafter "COMMISSION," and the CITY OF VERO BEACH whose address is 3611 Rio Vista Boulevard, Vero Beach, Florida 32963, hereafter "GRANTEE" to conduct a two-phase project entitled **Marina South Complex Re-Rack**, hereafter "Project," using funds from the Florida Boating Improvement Program, hereafter "Program."

NOW THEREFORE, the COMMISSION and the GRANTEE, for the considerations hereafter set forth, agree as follows:

GRANTEE ELIGIBILITY

1. By acceptance of this Agreement, the GRANTEE warrants that it has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good-faith performance as a responsible recipient, and that the GRANTEE shall comport with Chapter 287, F.S., and all other applicable rules and laws.
2. The GRANTEE shall be licensed as necessary to perform under this Agreement as may be required by law, rule, or regulation, and shall provide evidence of such compliance to the COMMISSION upon request.

SCOPE OF SERVICES

3. It is understood and agreed that this Agreement shall consist of two phases: Phase I – Project Construction, and Phase II – Project Management. During Phase I the GRANTEE shall complete the project, as described in Attachment A, *Scope of Work*, attached hereto and made a part hereof, and *Florida Boating Improvement Program (FBIP) Grant Application No. 09-030*, incorporated herein by reference. All Phase I activities must be completed during the time span provided herein for that portion of the Agreement. During Phase II the parties shall cooperate in the ongoing and continuous management of the Project under the terms and conditions provided herein.
4. It is the GRANTEE's responsibility to contract, manage and inspect all aspects of the Project, including the construction contract, materials purchase, engineering, master plan or force account labor performed at any Project site.
5. The GRANTEE agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be fully responsible for the payment of all monies due under any subcontract. It is understood and agreed by the GRANTEE that the COMMISSION shall not be liable to any sub-grantee (or subcontractor) for any expenses or liabilities incurred under the subcontract and that **the GRANTEE shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.**
6. The GRANTEE shall comply with all applicable federal, state, and local rules and regulations in providing services to the COMMISSION under this Agreement. The GRANTEE acknowledges that this requirement includes compliance with all applicable federal, state and local health and safety rules and regulations. The GRANTEE further agrees to include this provision in all subcontracts issued as a result of this Agreement.
7. The GRANTEE shall commence work on Phase I of the Project within six (6) months of execution of the Agreement. Failure by the GRANTEE to begin work shall constitute a breach of the Agreement and may result in termination of the Agreement by the COMMISSION.

8. The GRANTEE shall forward one copy of the bid package to the COMMISSION's Program Administrator for review prior to soliciting for quotations or commencing any work. The COMMISSION's Program Administrator shall have 30 working days for review. This review shall ensure that minimum guidelines for the Project's scope of work are adhered to. The GRANTEE shall forward one copy of the bid tabulation to the COMMISSION's Program Administrator to ensure the requirements of Chapter 287, F.S., have been met.
9. The GRANTEE shall provide a draft of any study or brochure to be produced with grant funds to the COMMISSION for approval prior to final printing and submission for payment. Further, at least 21 days prior to printing the COMMISSION shall review and approve all proposed publications that will be funded by this Agreement to ensure that environmental and boating safety issues are effectively addressed. At its discretion, the COMMISSION may elect to have its representative inspect printed material prior to its release from the printing vendor. The GRANTEE agrees to inform the COMMISSION at the completion of printing of any materials so that the COMMISSION may exercise this option.
10. The GRANTEE agrees not to proceed with Phase I construction until all necessary permits are obtained.
11. The GRANTEE, at its expense, shall purchase, erect and maintain a permanent sign, not less than three (3) feet by four (4) feet in size, displaying the COMMISSION's official logo for launching projects, or shall attach a permanent plaque for marine projects, or use some other manner of acknowledgement for non-construction projects, approved by the COMMISSION, identifying the COMMISSION and the Program as a funding source for the Project. Such acknowledgement shall be maintained for a period of 20 years or the duration of the Agreement. Failure by the GRANTEE to maintain such acknowledgement shall be considered a breach of the Agreement.
12. The GRANTEE, at its expense, shall purchase, erect and maintain directional signs, approved by the COMMISSION, on main public highways to direct public users to each boating facility funded through the Program. The GRANTEE agrees to provide and maintain such signs at its expense for a period of 20 years or the duration of the Agreement. Failure by the GRANTEE to erect and maintain such signs shall be considered a breach of the Agreement.
13. All engineering must be completed by a professional engineer or architect registered in the State of Florida. All work must meet or exceed minimum design standards and guidelines established by all applicable local, state and federal laws.
14. For Phase II of this Agreement, which shall include the entire term of the Agreement, the GRANTEE shall provide and be responsible for any and all costs associated with ordinary and routine operations and maintenance of the Project, including any and all personnel, equipment or service and supplies costs beyond the costs approved for reimbursement in Phase I of this Agreement.
15. The GRANTEE shall allow unencumbered access to the Project site to the COMMISSION, its employees or agent for the duration of the Agreement for the purpose of site visit or inspection to verify the facility is being maintained, in operation and is open and available to the public. As part of the inspection, the COMMISSION may request maintenance and use information from the GRANTEE to validate the condition of the facility.

REPORTING REQUIREMENTS

16. The GRANTEE shall submit to the COMMISSION monthly activity reports outlining the progress of Phase I of the Project, identifying any problems that may have arisen, and actions taken to correct such problems. Such reports shall be submitted on the form provided by the COMMISSION, Attachment B, attached hereto and made a part hereof, and due to the COMMISSION's Program Administrator by the 15th of each month until the *Certification of Completion* is submitted.

17. During Phase I, the GRANTEE shall provide progress and final photographs of any construction project documenting satisfactory progress and completion prior to requesting payment from the COMMISSION. Final photographs shall be submitted with the *Certification of Completion* form.
18. Upon completion of Phase I, the Project Manager for the GRANTEE shall sign a *Certification of Completion* form, Attachment C, attached hereto and made a part hereof, that certifies Phase I of the Project was completed in accordance with the prepared plans and specifications and the terms of this Agreement.

PROJECT INSPECTION

19. The COMMISSION may inspect the Project site prior to and during the construction of the Project. The GRANTEE shall notify the COMMISSION's Program Administrator when the Project has reached substantial completion so that inspection may occur in a timeframe allowing for the timely submission and processing of the final invoice. The COMMISSION's Program Administrator, or designee, shall inspect the work accomplished on the Project and, if deemed complete and in compliance with the terms of the Agreement, approve the request for payment.

SITE DEDICATION

20. The GRANTEE agrees that land owned by the GRANTEE that is developed with Program funds shall be dedicated for a minimum of twenty (20) years as a site for the use and benefit of the public. Upon completion of Phase I, Attachment D, *Site Dedication*, shall be completed by the GRANTEE and recorded in public property records. Land under control other than by ownership by the GRANTEE (i.e. lease, management agreement, cooperative agreement, inter-local agreement or other similar instrument) and developed with Program funds shall be managed by the GRANTEE for a minimum period of twenty (20) years from the completion date set forth in the Project *Certification of Completion* (Attachment C). Title to all improvements shall be retained by the GRANTEE upon final payment by the COMMISSION.
21. Should the GRANTEE, within the 20-year period set forth above, convert all or any part of the Project to other than COMMISSION approved uses, the GRANTEE shall replace the area, facilities, resource or site at its own expense with a project acceptable to the COMMISSION of comparable scope and quality. In the event the Project is converted to use for other purposes during this period and not replaced with a like project acceptable to the COMMISSION, the GRANTEE agrees to return to the COMMISSION all funds tendered for the original Project.

TERM OF AGREEMENT

22. This Agreement shall begin upon execution by both parties and end **June 30, 2031**, inclusive. **However, the GRANTEE shall complete all Phase I project services on or before December 15, 2011.** The GRANTEE shall not be eligible for reimbursement for services rendered prior to the execution date of this Agreement nor after the termination date of the Agreement.
23. The GRANTEE shall execute this Agreement within 90 days of formal COMMISSION approval. Failure to execute this Agreement shall render the award of funds null and void, and shall result in termination of this Agreement.

COMPENSATION

24. For satisfactory completion of Phase I of the Project, **Marina South Complex Re-Rack**, by the GRANTEE under the terms of this Agreement, the COMMISSION shall pay the GRANTEE on a cost reimbursement basis in an amount not to exceed \$ 30,000.

25. The GRANTEE agrees to provide 34.5% of the total project cost as indicated in *FBIP Grant Application No. 09-030*, incorporated herein by reference. The total compensation by the COMMISSION shall not exceed 65.5% of the total project cost.

PAYMENTS

26. The COMMISSION shall pay the GRANTEE for satisfactory service upon submission of a final invoice, accompanied by required reports or deliverables, and after acceptance of services and deliverables in writing by the Commission's Program Administrator. **The invoice must be submitted within 30 days after completion of Phase I of the Project.** The invoice shall include the FWC Contract Number and the Grantee's Federal Employer Identification (FEID) Number and should be in a format similar to Attachment E, *Sample Invoice Form*. An original and three (3) copies of the invoice shall be submitted. The COMMISSION shall not provide advance payment. All bills for amounts due under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
27. Program funds shall be disbursed to the GRANTEE only after pre-approved phase or final completion of Phase I of the Project occurs and work is verified by COMMISSION staff. Payment will be made only for documented and verified costs. **The COMMISSION will not pre-approve or disburse any Program funds in advance. Failure to complete the Project and make final payment request to the COMMISSION within the stipulated period shall result in termination of this Agreement. Any funds not disbursed or expended by the end of the stipulated period are subject to the provisions of Chapter 216.301, Florida Statutes.**
28. No travel expenses are authorized under the terms of this Agreement.
29. The GRANTEE shall be reimbursed on a cost reimbursement basis in accordance with Comptroller Contract Payment Requirements as shown in the Department of Financial Services, Bureau of Accounting and Auditing, Voucher Processing Handbook, Chapter 4., C., I., attached hereto and made a part hereof as Attachment F.
30. The COMMISSION shall have 45 working days to inspect and approve goods and services.
31. Any Phase I Project deficiencies, as noted in the final Project inspection, shall be corrected by the GRANTEE prior to final Project acceptance and payment by the COMMISSION. The COMMISSION may restrict any or all payment of Program funds pending correction of such deficiencies.
32. For contracts whose term extends beyond the State fiscal year in which encumbered funds were appropriated, the State of Florida's performance and obligation to pay is contingent upon an annual appropriation by the Legislature.
33. In order to make best use of the agency's resources, the COMMISSION reserves the right to utilize Federal funds for payments under this Agreement. In the event Federal funds become available for such use, and subject to the mutual agreement of the parties hereto, the Agreement shall be amended to include applicable Federal Requirements.
34. Invoices, including backup documentation, shall be submitted to:

Florida Fish and Wildlife Conservation Commission
Division of Law Enforcement
Boating and Waterways Section
Florida Boating Improvement Program
620 South Meridian Street
Tallahassee, FL 32399-1600

TERMINATION

- 35. This Agreement shall terminate immediately upon the COMMISSION giving written notice to the GRANTEE in the event of fraud, willful misconduct, or breach of this Agreement.
- 36. The COMMISSION may terminate this Agreement at any time with or without cause by a written notice by certified mail, return receipt requested, from the COMMISSION to the GRANTEE. The GRANTEE will stop all work immediately upon receipt of the written notice. The COMMISSION will pay the GRANTEE in *quantum meruit* for the work that was satisfactorily completed prior to the date the notice of termination was received.
- 37. Upon termination of this Agreement, the GRANTEE shall promptly render to the COMMISSION all property belonging to the COMMISSION. For the purposes of this section, property belonging to the COMMISSION shall include, but shall not be limited to, all books and records kept on behalf of the COMMISSION.

TAXES

- 38. The GRANTEE recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Agreement.

NOTICE

- 39. Unless a notice of change of address is given, any and all notices shall be delivered to the parties at the following addresses:

GRANTEE

City of Vero Beach
 3611 Rio Vista Blvd.
 Vero Beach, FL 32963

Phone: (772) 231-2819
 Fax: (772) 231-6893
 Email: tgrabenbauer@covb.org
 Attn: Tim Grabenbauer, Marina Director

COMMISSION

Fish and Wildlife Conservation Commission
 Division of Law Enforcement
 Boating and Waterways Section
 620 South Meridian Street
 Tallahassee, FL 32399-1600
 Phone: (850) 488-5600
 Fax: (850) 488-9284
 Email: fbip@MyFWC.com
 Attn: Tim Woody, Program Administrator

AMENDMENT OR MODIFICATION

- 40. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and lawfully executed by the parties.
- 41. The COMMISSION may at any time, by written order designated to be a Modification, make any change in the work within the general scope of this Agreement (e.g., specifications, schedules, method or manner of performance, requirements, etc.). However, all Modifications are subject to the mutual agreement of both parties as evidenced in writing. Any Modification that causes an increase or decrease in the GRANTEE's cost or the term of the Agreement shall require a formal amendment.

RELATIONSHIP OF THE PARTIES

- 42. The GRANTEE shall perform as an independent agent and not as an agent, representative, or employee of the COMMISSION.
- 43. The GRANTEE covenants that it presently has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of services required.

44. The parties agree that there is no conflict of interest or any other prohibited relationship between the GRANTEE and the COMMISSION.

INSURANCE REQUIREMENTS

45. To the extent required by law, the GRANTEE will either be self-insured for Worker's Compensation claims, or will secure and maintain during the life of this Agreement, Workers' Compensation Insurance for all of its employees connected with the work of this project. If any work is subcontracted, the GRANTEE shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the GRANTEE. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation statutes, the GRANTEE shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the COMMISSION, for the protection of his employees not otherwise protected.
46. Employers who have employees who are engaged in work in Florida must use Florida rates, rules, and classifications for those employees. In the construction industry, only corporate officers of a corporation or any group of affiliated corporations may elect to be exempt from workers' compensation coverage requirements. Such exemptions are limited to a maximum of three per corporation and each exemption holder must own at least 10% of the corporation. Independent contractors, sole proprietors and partners in the construction industry cannot elect to be exempt and must maintain workers' compensation insurance.
47. The GRANTEE warrants and represents that it is self-funded for liability insurance, appropriate and allowable under Florida law, and that such self-insurance offers protection applicable to the GRANTEE's officers, employees, servants and agents while acting within the scope of their employment with the GRANTEE.

CANCELLATION UNDER CHAPTER 119, FLORIDA STATUTES

48. This Agreement may be unilaterally canceled by the COMMISSION for refusal by the GRANTEE to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the GRANTEE in conjunction with this Agreement.

RECORD KEEPING REQUIREMENTS

49. The GRANTEE shall maintain accurate books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement, in accordance with generally accepted accounting principals. The GRANTEE shall allow the COMMISSION, the State, or other authorized representatives, access to periodically inspect, review or audit such documents as books, vouchers, records, reports, canceled checks and any and all similar material. Such audit may include examination and review of the source and application of all funds whether from the state, local or federal government, private sources or otherwise. These records shall be maintained for five (5) years following the close of this Agreement. In the event any work is subcontracted, the GRANTEE shall require each subcontractor to similarly maintain and allow access to such records for audit purposes.

LIABILITY

50. Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.

NON-DISCRIMINATION

51. No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Agreement.

PROHIBITION OF DISCRIMINATORY VENDORS

52. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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.

NON-ASSIGNMENT

53. This Agreement is an exclusive contract for services and may not be assigned in whole or in part without the written approval of the COMMISSION.

PERFORMANCE AND REMEDIES

54. The GRANTEE shall perform the services in a proper and satisfactory manner as determined by the COMMISSION.

55. It is understood by the parties that remedies for damages or any other remedies provided for herein shall be construed to be cumulative and not exclusive of any other remedy otherwise available under law.

SEVERABILITY AND CHOICE OF VENUE

56. This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida.

NO THIRD PARTY RIGHTS

57. The parties hereto do not intend nor shall this Agreement be construed to grant any rights, privileges or interest to any third party.

JURY TRIAL WAIVER

58. As consideration of this Agreement, the parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Agreement.

PROPERTY/EQUIPMENT

59. The GRANTEE is not authorized to use funds provided herein for the purchase of any non-expendable equipment or personal property valued at \$1,000 or more for performance under this Agreement.

FEDERAL/FLORIDA SINGLE AUDIT ACTS REQUIREMENTS

60. In accordance with section 215.97, Florida Statutes, the Florida Single Audit Act requires all non-State organizations that are recipients of State financial assistance to comply with the audit requirements of the Act. In addition, recipients and subrecipients of federal financial assistance must comply with the Federal Single Audit Act requirements of OMB Circular A-133. Therefore, the GRANTEE shall be required to comply with the audit requirements outlined in Attachment G, titled *Requirements of the Federal and Florida Single Audit Acts*, attached hereto and made a part of the Agreement, as applicable.
61. In accordance with section 216.347, Florida Statutes, the GRANTEE is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.

RIGHTS IN PROPERTY, COPYRIGHTS, AND INVENTIONS

62. All items, materials or products, of any description, produced or developed by the GRANTEE on behalf of the COMMISSION in connection with this Agreement shall be the exclusive property of the COMMISSION and may be copyrighted, patented, or otherwise restricted by the COMMISSION as provided by Florida law. Neither the GRANTEE nor any of its subcontractors shall have any proprietary interest in the products and materials developed under this Agreement.
63. The COMMISSION reserves the right to determine the disposition of title and rights to any inventions and/or processes that may result from any experimental or developmental research performed under this Agreement. If Federal funding is involved in support of this Agreement, the Federal Government may reserve ultimate jurisdiction over title and right privileges.
64. Regardless of title or ownership of the products and materials developed under this Agreement, the COMMISSION and the State of Florida shall reserve a royalty-free, nonexclusive, irrevocable right to reproduce, publish, or otherwise use said work for governmental purposes. If Federal funding is involved in support of this Agreement, the Federal Government shall also reserve a royalty-free, nonexclusive, irrevocable right to reproduce, publish, or otherwise use said work for governmental purposes.

ENTIRE AGREEMENT

65. This Agreement with all incorporated attachments and exhibits represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, and duly signed by each of the parties hereto, unless otherwise provided herein.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed through their duly authorized signatories on the day and year last written below.

CITY OF VERO BEACH

**FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION**

Mayor, or designee*

Executive Director, or designee

Date

Date

Name (Print)

Approved as to form and legality:

Grantee Name



Commission Attorney

Address

City, State, and Zip Code

Federal Employer Identification Number (FEID)

Approved to form and legality:



Grantee Attorney 0176672

List of attachments/exhibits included as part of this Agreement:

- Attachment A: Scope of Work
- Attachment B: Monthly progress report form
- Attachment C: Certification of Completion form
- Attachment D: Site Dedication form
- Attachment E: Sample invoice form
- Attachment F: Comptroller Cost Reimbursement Requirements
- Attachment G: Federal/Florida Single Audit Act Requirements
- Exhibit 1: Funds awarded pursuant to agreement

*If someone other than the Mayor signs the Agreement, a resolution, statement or other document authorizing the person to sign the Agreement on behalf of the local governing body must accompany the Agreement.

SCOPE OF WORK

Marina South Complex Re-Rack

INTRODUCTION

The purpose of the project is to upgrade the dry storage facility at the Vero Beach City Marina. The current dry storage racks were configured more than 30 years ago. Also, the racks are composed of painted steel which must be routinely de-scaled and repainted. The new dry storage racks will be constructed of hot-dipped, galvanized steel to lower maintenance costs. In addition, the new rack system can be adjusted vertically and horizontally to accommodate a greater variety of hull sizes.

This project shall consist of two phases: Phase I – Project Construction, and Phase II – Project Management. During Phase I, **CITY OF VERO BEACH** (GRANTEE) shall complete the tasks in this scope of work. During Phase II, the GRANTEE and the Florida Fish and Wildlife Conservation Commission (COMMISSION) shall cooperate in the ongoing and continuous management of the Project for the term of the Agreement.

TASKS

During Phase I of the project, the GRANTEE shall be responsible for completion of the following tasks:

Task 1 – Dry Racks

Provide all labor, materials, and supplies to:

- A. Demolish and remove the existing painted steel dry storage racks at the Vero Beach City Marina
- B. Construct and install new, hot-dipped, galvanized dry storage racks to accommodate 64 vessels
- C. Provide photographs of existing dry storage racks prior to demolition and photographs of new racks during and after installation

Task 2 – Acknowledgement Sign

- A. The GRANTEE shall provide a draft copy of the permanent sign for approval prior to displaying on site.
- B. The GRANTEE, at its expense, shall purchase, erect and maintain a permanent sign, not less than three (3) feet by four (4) feet in size, displaying the COMMISSION's official logo identifying the COMMISSION as a funding source for the Project.

REPORTS

A. Monthly Activity Reports

The GRANTEE shall submit to the COMMISSION monthly activity reports outlining the progress of Phase I of the Project, identifying any problems that may have arisen, and actions taken to correct such problems. Such reports shall be submitted on the form provided by the COMMISSION and due to the COMMISSION's Program Administrator by the 15th of each month until the *Certification of Completion* is submitted.

B. Bid Package

The GRANTEE shall forward one copy of the bid package to the COMMISSION's Program Administrator for review prior to soliciting for quotations or commencing any work. The COMMISSION's Program Administrator shall have 30 working days for review. This review shall ensure that minimum guidelines for the Project's scope of work are adhered to. The GRANTEE shall forward one copy of the bid tabulation to the COMMISSION's Program Administrator to ensure the requirements of Chapter 287, F.S., have been met.

C. Photographs

During Phase I, the GRANTEE shall provide progress and final photographs of any construction project documenting satisfactory progress and completion prior to requesting payment from the COMMISSION. Final photographs shall be submitted with the *Certification of Completion* form.

D. Certification of Completion

Upon completion of Phase I, the engineer, architect or other appropriate professional for the GRANTEE shall sign a *Certification of Completion* form, provided by the COMMISSION, that certifies Phase I of the Project was completed in accordance with the prepared plans and specifications.

INVOICES AND PAYMENTS

For satisfactory completion of the above services, the COMMISSION agrees to pay the GRANTEE on a cost reimbursement basis an amount not to exceed \$30,000. The GRANTEE shall submit a request for reimbursement, accompanied by the required reports, no later than 30 days following completion of Phase I. The request for reimbursement shall include the following: an invoice in a form similar to Attachment E, Sample Invoice Form; a signed Certification of Completion form, Attachment C; final photographs; required documents as described in Attachment F, Comptroller Contract Payment Requirements.

**FLORIDA BOATING IMPROVEMENT PROGRAM
PROJECT PROGRESS REPORT**

Mail to FWC at 620 South Meridian Street, Tallahassee, FL 32399-1600 or fax to (850) 488-9284.

FWC Contract # _____ **Reporting Period (Month/Year):** _____
(Due 15 days after the end of each month)

Grantee: _____

Project Title: _____

1. Describe progress of project, including percent completed for each task in the Scope of Work:

2. List reports/deliverables provided to FWC this month:

3. Describe work scheduled for next month:

4. Is project currently on schedule for completion by Phase I due date? YES _____ NO _____

Anticipated Phase I completion date: _____

(If project is not on schedule, please explain any problems encountered and/or possible delays)

Project Manager

Date



**FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION**
Florida Boating Improvement Program

CERTIFICATION OF COMPLETION STATEMENT

I, _____
(Print Name and Title)

representing _____
(Name of Local Government)

do hereby certify that the Florida Boating Improvement Program project funded by FWC Contract No. _____ has been completed in compliance with all terms and conditions of said Agreement; that all amounts payable for materials, labor and other charges against the project have been paid; and that no liens have been attached against the project.

(Signature) (Date)

WARNING: "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083." § 837.06, Florida Statutes.

CERTIFICATE BY COMMISSION

I certify: That, to the best of my knowledge and belief, the work on the above-named project has been satisfactorily completed under the terms of the Agreement.

Division: _____

By: _____ Date: _____

Name: _____

Title: _____

SITE DEDICATION

This Site Dedication gives notice that the Real Property identified as described in Exhibit A, Legal Description, attached hereto, (the "Property") has been developed with financial assistance provided by the Florida Legislature, through the Fish and Wildlife Conservation Commission, under the grant program called the Florida Boating Improvement Program (FBIP). In accordance with Chapter 68-1.003, F.A.C., and the Program Guidelines of the FBIP, the Property is hereby dedicated to the public as a boating access facility for the use and benefit of the general public for a minimum period of twenty (20) years from the date of this dedication.

DEDICATOR

Original signature

Witness

Printed Name

Printed Name

Title

Witness

Date

Printed Name

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____
by _____, who is personally known to me or who
produced _____ as identification.

Stamp:

Notary Public, State of Florida

INVOICE

Billed to:

Fish and Wildlife Conservation Commission
 Florida Boating Improvement Program
 620 South Meridian Street
 Tallahassee, Florida 32399-1600

Remit payment to:

Grantee: _____
 FEID #: _____
 Address: _____

FWC Contract #: _____

Dates of Service:

Amount of Grant Award: \$ _____

Start date: _____

Invoice Date: _____

Completion date: _____

PROJECT COSTS:

Cost Items: Non-cash	Amount
In-kind service: Administration	\$
In-kind service: Project Management	\$
In-kind service: Other	\$
Cost Items: Cash expenditures	Amount
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$

Total Project Cost: \$ _____

Grantee Matching Funds (____ %): - \$ _____

Amount for Reimbursement: \$ _____

I hereby certify that the above costs are true and valid costs incurred in accordance with the project Agreement, and that the matching funds, in-kind or cash, were utilized toward the project in this Agreement.

Signed: _____
 Project Manager

Date: _____

Comptroller Contract Payment Requirements
Department of Financial Services, Bureau of Accounting and Auditing
Voucher Processing Handbook (10/07/97)
Cost Reimbursement Contracts

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.) Supporting documentation must be provided for each amount for which reimbursement is being claimed indicating that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved contract budget should be reimbursed.

Listed below are examples of types of documentation representing the minimum requirements:

- (1) Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.
- (2) Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.
- (3) Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.
- (4) Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.
- (5) In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.
- (6) Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

REQUIREMENTS OF THE FLORIDA AND FEDERAL SINGLE AUDIT ACTS

The administration of resources awarded by the Florida Fish and Wildlife Conservation Commission (Commission) to the Contractor/Grantee (recipient) may be subject to audits and/or monitoring by the Commission as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Commission staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Commission. In the event the Commission determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Commission staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Comptroller or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

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 1 to this agreement indicates Federal resources awarded through the Commission 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 Commission. 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.

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, as revised.

If the recipient expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the recipient expends less than \$500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).

PART II: STATE FUNDED

This part is applicable if the recipient is a non-state entity as defined by Section 215.97(2)(l), Florida Statutes.

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 of such recipient, 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 Executive Office of the Governor and the Comptroller; and Chapters 10.550 (local governmental entities)

or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates state financial assistance awarded through the Commission 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 Commission other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements.

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)(d), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

PART III: OTHER AUDIT REQUIREMENTS

There are no other audit requirements

PART IV: REPORT SUBMISSION

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

The Commission at the following address:

Audit Director
Florida Fish and Wildlife Conservation Commission
Bryant Building, Room 170
620 S. Meridian St.
Tallahassee, FL 32399-1600

The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

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

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

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, as revised, and any management letter issued by the auditor, to the Commission at the following address:

Audit Director
Florida Fish and Wildlife Conservation Commission
Bryant Building, Room 170
620 S. Meridian St.
Tallahassee, FL 32399-1600

Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:

The Commission at the following address:

Audit Director
Florida Fish and Wildlife Conservation Commission
Bryant Building, Room 170
620 S. Meridian St.
Tallahassee, FL 32399-1600

The Auditor General's Office at the following address:

Auditor General's Office
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

Copies of reports or the management letter required by PART III of this agreement shall be submitted by or on behalf of the recipient directly to:

The Commission the following address:

Audit Director
Florida Fish and Wildlife Conservation Commission
Bryant Building, Room 170
620 S. Meridian St.
Tallahassee, FL 32399-1600

Any reports, management letter, or other information required to be submitted to the Commission pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Recipients, when submitting financial reporting packages to the Commission 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 recipient in correspondence accompanying the reporting package.

Contact the Commission's Audit Director by phone at (850) 488-6068.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued, and shall allow the Commission or its designee, Comptroller, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Commission or its designee, Comptroller, or Auditor General upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Commission.

EXHIBIT – 1

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

None.

COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

None.

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

MATCHING RESOURCES FOR FEDERAL PROGRAMS:

None.

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

State Agency:	Florida Fish and Wildlife Conservation Commission
State Program:	Florida Boating Improvement Program
CSFA No.:	77.006
Recipient:	City of Vero Beach
Amount:	\$ 30,000.00

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

1. Project activities must occur on public lands owned outright or managed under agreement with another party with lease terms exceeding 20 years.
2. Project activities must not create a boating safety hazard and/or increase the potential for damage to natural resources.
3. Recipient must comply with the Florida Boating Improvement Program Guidelines, January 2008.
4. Recipient must comply with all Commission rules, policies and procedures as well as all other state and federal rules.

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 Exhibit 1 be provided to the recipient.

ORDINANCE NO. __-__

A ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING CHAPTER 58 "PERSONNEL AND RETIREMENT," ARTICLE II, DIVISION 4 OF THE CODE OF ORDINANCES OF THE CITY OF VERO BEACH TO PROVIDE FOR COMPLIANCE WITH CHAPTER 2009-97, LAWS OF FLORIDA; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 2009 Florida Legislature enacted Chapter 2009-97, Law of Florida, which mandates certain amendments to the City of Vero Beach Police Officers' Retirement Fund; and

WHEREAS, recent changes to State statutes require several amendments to the Plan in order to maintain eligibility for receipt of state premium tax revenues; and

WHEREAS, an amendment to the City code is necessary to permit such new obligations and conditions; and

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

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

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

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

Section 1. That the foregoing whereas clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. Technical Amendments.

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

Section 3. Amendment.

Section 58-99 of Chapter 58, Article II, Division 4 of the Code of Ordinances of the City of Vero Beach is hereby amended as follows:

Sec. 58-99. Administration of fund.

(1) The fund shall be administered and payment made therefrom as provided by F.S. ch. 185; provided, however, that the amount of monthly retirement income payable to a police officer who retires on or after his normal retirement date shall be an amount equal to the number of his years of credited service multiplied by three percent of his average final compensation. The average final compensation shall be based on the best five years of employment and disability benefits shall be based on benefits accrued to date of disability with a minimum of 50 percent of the final average compensation; provided further, that there shall be no eligibility restrictions period for in-line-of-duty disabilities.

(2) There is hereby created a board of trustees of the City of Vero Beach Police Officers' Retirement Fund, which shall be solely responsible for administering the trust fund. The membership of the board of trustees shall consist of five members, two of whom, unless otherwise prohibited by law, shall be legal residents of the City of Vero Beach, who shall be appointed by the City Commission, and two of whom shall be police officer participants of this Fund and shall be elected by a majority of the active police officers who are members of this Fund. The fifth member shall be chosen by a majority of the previous four members, and such person's name shall be submitted to the City Commission and shall, as a ministerial duty, be appointed to the board of trustees. The fifth member shall have the same rights as each of the other four members appointed or elected as herein provided, shall serve as trustee for a period of 4 years, and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of 4 years, unless sooner replaced by the City Commission at

whose pleasure the member shall serve, and may succeed himself or herself as a trustee. Each police officer member shall serve as trustee for a period of 4 years, unless he or she sooner leaves the employment of the municipality as a police officer, whereupon a successor shall be elected in the same manner as an original appointment. Each police officer may succeed himself or herself in office

(3) The board of trustees may, upon written request by a retiree of the Fund, or by the retiree's beneficiary, authorize the plan administrator to withhold from the monthly retirement payment those funds that are necessary to pay for benefits being received through the city, the certified bargaining agent, alimony, child support or medical payments to a former spouse or minor child, and to pay for accident, health, and long-term care insurance premiums for the recipient, the recipient's spouse and the recipient's dependents. The Pension Fund shall not incur any liability for making or failing to make such withholdings.

Section 4. Amendment.

Section 58-105 of Chapter 58, Article II, Division 4 of the Code of Ordinances of the City of Vero Beach is hereby amended as follows:

Sec. 58-105. Distribution generally.

(a) Commencing with the first plan year beginning after December 31, 1986, the entire interest of a member shall be distributed to him not later than April 1 of the calendar year following the calendar year in which he attains age 70 1/2 even though the member has not retired.

(b) In the alternative, distribution shall commence no later than the commencement date set out in subsection (a) of this section and be distributable over a period of time not exceeding the limitations set forth in this section:

(1) Distributions to a member shall not extend beyond the life of the member or the lives of the member and his designated beneficiary, or over a period not extending beyond the life expectancy of the member and his designated beneficiary.

(2) If distribution has commenced to a member, and such member dies before receiving his entire interest, the remainder of such interest shall be distributed over a period at least as rapidly as under the method of distribution in effect prior to such member's death.

(3) If a member dies prior to the commencement of benefits, the entire remainder interest of such deceased member shall be distributed within five years of the member's death except to the extent that an election is or has been made to receive distributions per subsections (b)(3)a or b of this section:

a. If any portion of the member's interest is payable to a designated beneficiary, distributions may be made in substantially equal installments over the life expectancy of such beneficiary commencing no later than one year after the member's death;

b. If the designated beneficiary is the member's surviving spouse, the date distributions are required to begin in accordance with subsection (b)(3)a of this section shall not be earlier than the date on which the member would have attained age 70 1/2 and, if the spouse dies before payments begin, subsequent distributions shall be made as if the spouse had been the member.

c. In the event a Member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the Member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the Member had resumed employment and then died while employed.

Section 5. Amendment.

Section 58-108 of Chapter 58, Article II, Division 4 of the Code of Ordinances of the City of Vero Beach is hereby amended as follows:

Sec. 58-108. Same--Investment guidelines.

(a) A maximum of 50 percent of the plan's assets, plus or minus 20 percent, may be invested in pooled common stock funds, other equity securities or convertible securities that may be converted to common stocks. Generally, but not exclusively, the assets will only be invested in major companies of high quality, have a current rating in one of the three highest classifications by a major rating service, with at least \$50,000,000.00 in market capitalization. The companies shall be in a leadership position in their market and have an established proven record for growth potential. The actual proportion of equities held at any one time will be based upon a professional determination of market conditions at the time such investment or reinvestment is made. In

selected conditions, equities of foreign corporations that are actively traded in American markets may be used where permitted by applicable regulations, as long as such corporations meet the quality standards established by American corporations. Foreign securities will not at any time amount to more than ten twenty-five percent of the equity investment portfolio at market value. No more than five percent of the portfolio may be invested in any one company.

(b) Publicly traded bonds, in a professionally managed pool, can be used as investments providing the combined pool of bond investments has an overall quality rating that would command a rating in one of the three highest classifications by a major rating service. Investments should be made generally in United States corporate and United States government and/or agency obligations. However, issues of foreign corporations and/or government obligations can be used as a minor (~~ten~~twenty-five percent or less of the bond portfolio) portion of this form of investment subject to similar quality ratings as domestic bonds. Maximum exposures to risk in bonds should be limited to no more than 25 percent in one industry or five percent in any single credit. Bond investments will be diversified among industries and among companies within industries.

(c) Private placement bonds or securities can be used to produce a higher rate of return than is obtainable through a fund composed of publicly traded bonds. Such private placements shall be with companies that have investment quality ratings from a major rating service on their outstanding debt. The aggregate pool of investments shall warrant a combined rating in one of the three highest classifications by a major rating service. No more than 25 percent of the funds allocated to private placements will be invested in any single industry. No more than 20 percent of the entire funds assets can be used for private placements. The average maturity of new private placements should generally not exceed 15 years.

(d) Short-term investments can be used to provide a relatively safe investment with emphasis on generating a level of current income consistent with capital preservation. Investment grade, short-term investment instruments such as: money market instruments with a maturity of less than two years, commercial paper, bank certificates of deposits, as well as banker's acceptances, may be used. Investments in commercial paper can be used, but will be generally those bearing a rating in one of the three highest classifications by a major rating service.

(e) The board shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in Florida Statutes,

Section 215.473, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in such company beginning January 1, 2010 and shall thereafter be prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the board or any employee, officer, director, or advisor of such board based upon the divestiture of any security pursuant to this paragraph.

Section 6. Amendment.

Section 58-109 of Chapter 58, Article II, Division 4 of the Code of Ordinances of the City of Vero Beach is hereby amended as follows:

Sec. 58-109. Credited service; police pension plan.

"Credited service" means the aggregate number of years of service and fractional parts of years of service of any police officer, including unused paid medical leave days in excess of 120 days, omitting intervening years and fractional parts of years when such police officer may not have been employed by the city subject to the following conditions:

(1) No police officer shall receive credited service for years or fractional parts of years of service if they have withdrawn their contributions to the fund for those years or fractional parts of years of service, unless the police officer repays into the fund the contributions they have withdrawn, plus interest as determined by the board of trustees, within 90 days after reemployment with the city. Credited service shall not be granted for service for which the member is entitled to receive a benefit from another governmental or military retirement or pension system.

(2) Credited service under this section shall be provided for service as a police officer, as defined in F.S. § 185.02(11), for any law enforcement agency and for voluntary or involuntary military service in the Armed Forces of the United States.

(3) In determining the credited service of any police officer, credit for voluntary or involuntary time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service with the city, in accordance with F.S. § 185.02(5) and the Uniform Services Employment and

Reemployment Rights Act (USERRA), 38 USC § 4301 et seq., as they may be amended.

(4) Election to purchase credited service, for prior service with the city, service with any other law enforcement agency or military service, shall be made in writing to the board of trustees within 30 days following the date on which the member attains ten years of credited service in the retirement fund; or for a member who has already attained ten years of credited service in the retirement fund within 30 days following notice of eligibility from the city. The cost of credited service purchased for prior service with the city or any other law enforcement agency shall be the full actuarial cost of all credited service purchased hereunder computed as a lump sum payment into the fund. The cost of credited service purchased for military service shall be computed as a lump sum payment into the fund at the rate of five percent of the member's current base salary for each year that is being purchased. Actual payment may, at the member's option, be extended over a period of time not to exceed five years. Provided that as permitted by federal law pretax trustee-to-trustee transfer of amounts in a member's deferred compensation account (Internal Revenue Code Sec. 457) for the purchase of such credited service shall be allowed. For purposes of determining credit for prior service as a police officer, in addition to service as a police officer in this state, credit may be given for federal, other state, or county service if the prior service is recognized by the Florida Department of Law Enforcement as provided under chapter 633, or the police officer provides proof to the board of trustees that his or her service is equivalent to the service required to meet the definition of a police officer under subsection 185.02(5)(c).

Section 7. Repeal of conflicting ordinances.

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

Section 8. Severability.

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

Section 9. Codification.

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

Section 10. Effective date.

This ordinance shall take effect upon adoption.

This ordinance was ready for the first time on the _____ day of _____, 20__, and was advertised in the Vero *Beach Press Journal* on the _____ day of _____, 20__, for a public hearing to be held on the ____ day of _____, 20__, at which time it was moved for adoption by Councilmember _____, seconded by Councilmember _____ and adopted by the following vote:

Mayor Kevin Sawnick	_____
Vice Mayor Sabin Abell	_____
Councilmember Thomas P. White	_____
Councilmember Brian Heady	_____
Councilmember Charlie Wilson	_____

ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Vock, City Clerk

Kevin Sawnick, Mayor

Approved as to form and legal sufficiency:

Approved as to technical requirements:

Charles P. Vitunac, City Attorney

James M. Gabbard, City Manager

Approved as to technical requirements:

Steve Maillet, Finance Director

COUNCIL AGENDA REPORT
MEETING OF FEBRUARY 2, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: January 25, 2010

**SUBJECT: REQUEST BY HISTORIC PRESERVATION COMMISSION FOR
THE CITY STAFF TO PREPARE A PROPERTY TAX
EXEMPTION ORDINANCE FOR HISTORIC DESIGNATED
PROPERTIES**

Please find attached a memorandum from Tim McGarry, dated January 25, 2010, which provides background information and a recommendation on the above-referenced item.

It is the recommendation of the City Manager's Office that Council authorize City staff to prepare a Property Tax Exemption Ordinance for Historic Designated Properties.



James M. Gabbard

JMG:jav

xc: Tim McGarry

N:\AGENDA\PLANNING\2010\PROPERTY TAX EXEMPTION ORDINANCE.DOCX

DEPARTMENTAL CORRESPONDENCE

TO: James M. Gabbard, City Manager

FROM: Timothy J. McGarry, AICP 
Director of Planning and Development

DATE: January 25, 2010

SUBJECT: **Request by Historic Preservation Commission for the
City Staff to Prepare a Property Tax Exemption
Ordinance for Historic Designated Properties**

Request

The Planning and Development Department staff requests that the above request by the Historic Preservation Commission be placed for consideration on the City Council's February 2, 2009, agenda under City Manager's Matters.

Background

On July 15, 2008, the City Council enacted an ordinance governing historic preservation in Chapter 76 of the City Code. Section 76.58(b) of that chapter provides that properties designated as historic under the City's ordinance are eligible for tax exemption for the assessed value of all improvements which would result in restoration, renovation, or rehabilitation of the property, if an ordinance establishing such an exemption is adopted.

Section 196.1997, Florida Statutes (F.S.), authorized local governments to provide an exemption from ad valorem taxation for historic designated properties on the above improvements, if the municipality adopts an ordinance pursuant to the statutory guidelines. Under the guidelines of Section 196.1997, F.S. a locality may authorize, with the approval of its governing body, an exemption from ad valorem taxation of up to 100 percent of the assessed value of all improvements to historic properties which result from the restoration, renovation, or rehabilitation of such property.

The exemption is only for property taxes of that locality. The exemption may run up to 10 years. The property owner must enter into a covenant or agreement with the governing body for the term of the exemption. The owner of the property is required to maintain the character of the property and qualifying improvements to the property consistent with the U.S. Secretary of the Interior's Standards for Rehabilitation.

Section 196.1998, F.S., also provides that a historic designated property that is used for nonprofit or governmental purposes and is regularly and frequently open for the public's visitation, use, and benefit, the local governing body may authorize an exemption from ad valorem taxation of up to 100 percent of the assessed value of the real property, as improved, for a period up to 10

years; however, the assessed value of the improvement must be equal to at least 50 percent of the total assessed value of the real property as improved.

Objectives of Ordinance

A tax exemption ordinance for historic properties is intended to accomplish the following objectives:

- Provide a financial incentive for seeking local designation as a historic property;
- Encourage more restoration, rehabilitation and renovation of historic properties;
- Stabilize and improve property values, and enhance the property tax base of the City by encouraging improvement of designated structures;
- Improve the appearance of designated historic properties and historic districts, if designated; thereby enhancing their appeal as places to live, to work, or to visit; and
- Support the neighborhood revitalization efforts of property owners in the City's older neighborhoods, such as Osceola Park and Original Town.

Action by the Historic Preservation Commission

As the tax exemption ordinance has financial implications for the City of Vero Beach, the Planning and Development Department was concerned about drafting an ordinance without some commitment or direction from City Council. Therefore, the Planning Director requested that the Historic Preservation Commission request that the City Council indicate its support of a tax exemption ordinance and direct the City Manager to have staff prepare a draft ordinance.

At its regularly scheduled January 13, 2010, meeting, the Historic Preservation Commission unanimously approved the request to City Council regarding the support for and preparation of a draft ordinance.

Recommendation

The staff recommends that the City Council make a motion supporting the preparation of a tax abatement ordinance for historic properties and direct the City Manager to prepare such an ordinance.

TJM/tf

COUNCIL AGENDA REPORT
MEETING OF FEBRUARY 2, 2010

TO: The Honorable Mayor and Members of the City Council

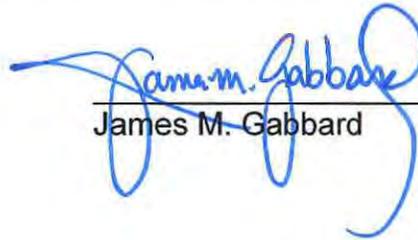
FROM: James M. Gabbard, City Manager

DATE: January 26, 2010

**SUBJECT: ORLANDO UTILITIES COMMISSION AND THE CITY OF VERO BEACH
COMPLIANCE SERVICES AGREEMENT**

Please find attached a memo from John Lee, dated January 26, 2010, which provides information on the above-referenced subject, along with a copy of the agreement.

It is the recommendation of the City Manager's Office that Council approve the Compliance Services Agreement between Orlando Utilities Commission and the City of Vero Beach.


James M. Gabbard

:jav
Attachments

xc: John Lee

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City of Vero Beach
Finance/Customer Service - Memorandum

To: James Gabbard, City Manager
From: John T. Lee, Acting Electric Director
Subject: Agenda Item – Compliance Services
Date: January 26, 2010

The attached agreement is between the City of Vero Beach and Orlando Utilities Commission. The agreement covers compliance services for a period of one year. These services are required by the Florida Reliability Coordinating Council, a regional entity with delegated authority from the North American Reliability Corporation.

Previously, these compliance services were provided by the Florida Municipal Power Agency. Orlando Utilities Commission has been performing the compliance services for the City of Vero Beach, under a memorandum of understanding, pending the approval of the attached agreement.

I recommend the approval of the agreement.



John T. Lee, Acting Electric Director

January 12, 2010

FEDERAL EXPRESS

Mr. Randall McCamish
3455 Airport West Drive
Vero Beach, FL 32961

Re: Orlando Utilities Service Agreement

Mr. McCamish,

Rich Kinas of Orlando Utilities Commission (OUC) asked that I forward to you the three clean execution drafts of the Compliance Services Agreement between OUC and the City of Vero Beach. Please forward these documents to Mr. John Lee for processing and counter-signature by the City of Vero Beach.

I have also provided you a document comparison that shows the final typos and cleanup items that OUC made in this last draft based on the conversations between Mr. Kinas and representatives of the City of Vero Beach. Please return two of the fully executed documents to my attention when finally signed by the City of Vero Beach.

Please call if there are any issues with the drafts or if you have questions about the final cleanup items.

Very truly yours,



W. Christopher Browder
Vice President & General Counsel

WCB:pan
Enclosures

CC: Rich Kinas





ORLANDO UTILITIES COMMISSION AND THE CITY OF VERO BEACH

COMPLIANCE SERVICES AGREEMENT

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This COMPLIANCE SERVICES AGREEMENT (this "Agreement") is entered into as of the ___ calendar day of ____, 2010, ("Effective Date") by and between THE CITY OF VERO BEACH, a municipal corporation in the State of Florida, duly constituted under Florida law ("Vero Beach"), and the ORLANDO UTILITIES COMMISSION, a statutory municipal utility organized under the State of Florida ("OUC"). Vero Beach and OUC are referred to also individually as a "Party," or collectively as the "Parties."

WHEREAS, Vero Beach is a public agency as defined in Section 163.01(3)(b), Florida Statutes, and a municipally-owned electric distribution utility;

WHEREAS, Vero Beach is the owner of an electric generating plant at 100 17th Street, Vero Beach, Florida, consisting of five generating units with a total capacity of 150 MW on a 19 acre site on the West Bank of the Indian River and associated electric transmission and distribution system ("Vero Beach System");

WHEREAS, Vero Beach and OUC entered into that Agreement for the Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management dated April 21, 2005 (the "Purchase and Sale Agreement");

WHEREAS, Vero Beach desires OUC to perform and OUC is willing to perform certain functions of Vero Beach's obligations as the operating entity under the North American Electric Reliability Corporation regulations;

WHEREAS the Parties agree and acknowledge that the provision of Compliance Services (as defined later herein) by OUC to Vero Beach and the supply of electric service by OUC to Vero Beach under the Purchase and Sale Agreement are transactions that are mutually dependent upon one another so that termination of either the Purchase and Sale Agreement or this Agreement shall cause a termination of the other agreement;

WHEREAS, in addition and supplemental to their other powers, OUC and Vero Beach, pursuant to the Florida Interlocal Cooperation Act of 1969, Chapter 163, Part I, Florida Statutes, as amended, and specifically Section 163.01(15) thereof (the "Interlocal Act"), are authorized and empowered to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of government organizations that will best accord with geographic, economic, electrical generation requirements and other factors;

WHEREAS, this Agreement is entered into by OUC and Vero Beach, as an interlocal agreement, invoking all of the powers of the Interlocal Act, for the purpose of providing a structure for OUC in participation with Vero Beach, to participate jointly in an electric project, in full compliance with the Interlocal Act;

NOW, THEREFORE, for and in consideration of the foregoing, the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of exercising powers enumerated in the Interlocal Act and the Florida Joint Power Act, Part II of Chapter 361, Florida Statutes, as amended, OUC and Vero Beach, as public agencies, within the meaning of the aforementioned Acts, hereby designates this Agreement as an interlocal agreement pursuant to the Interlocal Act, and the Parties hereby agree as follows:

1 DEFINITIONS

“Agreement” shall mean this document “Orlando Utilities Commission and the City of Vero Beach Compliance Services Agreement”.

“As-Found Load Curve Testing” shall mean industry accepted test which includes Full Load (FL), Light Load (LL), Power Factor (PF), and element tests; and a series of tests run from 1.0 to 5.0 amps at 1.0 amp intervals for generating an accuracy load curve for the meter.

“Balancing Authority Area” shall mean the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

“Bulk Electric System” shall have the same meaning as that defined by the FRCC Operating Committee and approved by the FRCC Board of Directors or in the absence of an FRCC approved definition, shall have the same meaning as that defined within the NERC glossary.

“Category A” shall mean no contingencies.

“Category B” shall mean event resulting in the loss of a single element.

“Category C” shall mean event(s) resulting in the loss of two or more (multiple) elements.

“Category D” shall mean extreme event resulting in the loss of two or more (multiple) elements removed or Cascading out of service.

“Codes and Standards” shall mean NERC Reliability Standards.

“Compliance Services” shall mean services which support maintaining compliance with NERC Reliability Standards.

“Critical Asset Identification Methodology” shall mean a risk based methodology developed by OUC used to identify assets critical to the reliable operation of the Bulk Electric System (Critical Assets)

“Critical Cyber Asset Identification Methodology” shall mean a methodology developed by OUC used to identify cyber assets critical to the reliable operation of Critical Assets (Critical Cyber Assets).

“Effective Date” shall mean January 1st, 2010.

“Event of Default” shall have the meaning set forth in Article 7.2.

“Excluded Liability (ies)” shall have the meaning set forth in Article 2.

“FERC” shall mean Federal Energy Regulatory Commission.

“FRCC” shall mean the Florida Reliability Coordinating Council.

“FRCC Operating Committee” shall mean the standing committee of the FRCC responsible for the coordination, operations planning, operation and maintenance of bulk electric system in the FRCC Region.

“Firm Transmission” shall mean the highest quality (priority) transmission service offered to customers under a filed rate schedule that anticipates no planned interruption.

“Force Majeure” shall have the meaning set forth in Section 12.2.

“GWh” shall mean gigawatthours.

“Government Regulations” shall mean NERC Reliability Standards and applicable FERC Orders.

“Governmental Requirements” shall mean all laws, codes, ordinances, orders, judgments, decrees, injunctions, licenses, rules, permits, approvals, regulations and requirements of every governmental authority having jurisdiction over the matter in question, whether federal, state or local, which may be applicable to OUC or Vero Beach or the Services..

“IROL” shall mean interconnection reliability operating limit.

“Interchange Schedules” shall mean agreements for authorizing the flow of energy across a transmission system

“Interest Rate” shall mean for any applicable day, the per annum prime lending rate published in *The Wall Street Journal* under “Money Rates” on that day, or for any day on which *The Wall Street Journal* is not published the rate appearing in the most recently published edition, plus two percentage points (200 basis points). In no event shall the Interest Rate exceed the maximum rate permitted by applicable Laws.

“Interlocal Act” shall mean the Florida Interlocal Cooperation Act of 1969, Chapter 163, Part I, Florida Statutes, as amended, and specifically Section 163.01(15) thereof.

“Laws” shall mean any statute, regulation, ordinance, rule, government approval, agreement, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any governmental authority, whether now or hereafter in effect.

“Longer-term planning horizon” shall mean years six through ten under the term of this Agreement.

“MWh” shall mean Megawatt Hours.

“Meter Programming Verification” shall mean the witnessed interrogation and verification of the meter programming to be correct for the given meter and the given installation location.

“NERC” shall mean North American Electric Reliability Corporation.

“NERC Reliability Standards” shall mean those standards which support the reliability of the Bulk Electric System, and have been approved by FERC

“Near-term planning horizon” shall mean years one through five under the term of this Agreement.

“Net Energy for Load” shall mean the net Balancing Authority Area generation, plus energy received from other Balancing Authority Areas, less energy delivered to Balancing Authority Areas through interchange. It includes Balancing Authority Area losses but excludes energy required for storage at energy storage facilities.

“Network Customer” shall mean an entity receiving transmission service pursuant to the terms of a Transmission Provider's Network Integration Transmission Service under Part III of the providers Tariff.

“Network Load” shall mean the load that a Network Customer designates for Network Integration Transmission Service under Part III of the providers Tariff.

“Network Resources” shall mean any designated generating resource owned, purchased or leased by a Network Customer under the Network Integration Transmission Service Tariff.

“Network Secondary Transmission” shall mean delivery of energy to Network Loads from resources that have not been designated as Network Resources

“OUC” shall mean the Orlando Utilities Commission.

“OUC Compliance Administrator” shall mean the OUC designated manager of standards compliance.

“Parties/Party” shall have the meaning set forth in the introductory paragraph.

“Payment Request” shall have the meaning set forth in Section 5.1.

“Planning Horizon” shall mean the period of time in the future for which a Party performs system load and generation analysis for purposes of capital improvements and capital investment planning.

“Pre-contingency” shall mean the state of the BES prior to an event.

“Purchase and Sale Agreement” shall mean that Agreement for the Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management dated April 21, 2005.

“Regional Reliability Organizations” shall mean the FRCC

“Requesting Party” shall have the meaning set forth in Section 11.2.

“Review Committee” shall mean the committee consisting of the authorized representative from each Party, which committee provides oversight and review of issues that may arise from time to time as may be identified by OUC as Vero Beach’s Compliance Services provider or by the Vero Beach compliance administrator.

“SOL” shall mean system operating limit.

“TPL standards” shall mean the currently enforced version of the NERC transmission planning standards TPL-001, TPL-002, TPL-003 and TPL-004.

“Term” shall have the meaning set forth in Article 9.

“Turnover Date” shall mean January 1st 2010.

“VB Compliance Coordinator” shall have the meaning set forth in Section 4.1.

“VB Planning Coordinator” shall have the meaning set forth in Section 4.1.

“VB Operating Coordinator” shall have the meaning set forth in Section 4.1.

“Vero Beach” or “VB” shall mean the City of Vero Beach.

“Vero Beach Dispatch Procedure” shall have the meaning set forth in Section 4.2 subsection 4.

“Vero Beach System” shall mean the Vero Beach power transmission system.

“Vero Beach Transmission Planning Area” shall mean the 69kV and higher transmission facilities owned by Vero Beach. In the case of transformers, this only includes transformers where the low voltage side is 69kV or higher. This also includes any generators and their step up transformers that the MMWG, FRCC, OUC or Vero Beach determine need to be individually modeled, regardless of voltage.

2 GENERAL APPROACH FOR SERVICES

During the term of this Agreement, OUC will perform certain Compliance Services on behalf of Vero Beach for NERC compliance purposes as further detailed in Article 5.0. Vero Beach will carry out certain supporting duties as detailed in Article 6.0 as necessary to allow OUC to perform the Compliance Services. The Parties acknowledge and agree that OUC is not assuming responsibility for any fines, penalties or compliance violations that may have been assessed prior to the Execution Date or which may be assessed after the Effective Date against the Vero Beach System or Vero Beach or any obligation to upgrade, repair or replace facilities of Vero Beach in order to bring the Vero Beach System into compliance with Governmental Regulations, including any such impositions or improvements required by NERC, FRCC or other agency (an “Excluded Liability(ies)”).

2.1 OUC Compliance Administrator

OUC shall within thirty (30) calendar days after the date of this Agreement, designate one primary and one alternate person to act as the OUC Compliance Administrator. The OUC Compliance Administrator shall represent and act on behalf of OUC in implementing the Compliance Services under this Agreement and to receive communications from Vero Beach on a twenty-four hour/calendar day basis. The OUC Compliance Administrator shall act on behalf of OUC as the principal interface with the Vero Beach Compliance Administrator.

2.2 Executive Committee

The Parties hereby establish a Review Committee. The Review Committee shall consist of an authorized representative from each Party. The Review Committee will provide oversight and review of issues that may arise from time to time as may be identified by OUC as Vero Beach's Compliance Service provider or by the Vero Beach Compliance Administrator. Decisions by the Review Committee will be made by consensus and shall be subject to final approval by the respective governing boards of the Parties as appropriate. The initial designees on the Review Committee are as follows:

To OUC:

Vice President, Energy Delivery Business Unit
6003 Pershing Avenue
Orlando, Florida 32822
Tel: 407-423-9100
Fax: 407-384-4148
Email: cbullock@ouc.com

To Vero Beach:

Director of Electric Utilities, City of Vero Beach
P.O. Box 1389
Vero Beach Florida, 32961-1389
Tel: 772-978-4710
Fax: 772-978-4716
Email: rmccamish@covb.org

The Parties may from time to time replace any such designees by 30 days prior written notice to the other setting out the relevant information regarding the substitute designee.

3 OUC RESPONSIBILITIES

OUC's responsibilities as the compliance services provider under this Agreement shall be to provide the following services ("Compliance Services"):

3.1 System Planning

OUC shall perform the following System Planning duties as part of the Services.

3.1.1 NERC Compliance Standards TPL-001-0, TPL-002-0, TPL-003-0, TPL-004-0

OUC shall annually perform a valid assessment of the Vero Beach interconnected transmission system. To be considered valid the assessment shall:

1. Be performed for each contingency category (A, B, C and D as defined within NERC Transmission Planning standards)
2. Be performed annually
3. Be conducted for near-term and longer-term planning horizons
4. Be supported by a current or past study and/or system simulation testing that addresses each of the following categories
 - a. Cover critical system conditions and study years
 - b. Be conducted annually unless changes to system conditions do not warrant such analysis
 - c. Be conducted beyond the five-year horizon only as needed to address identified marginal conditions that may have longer lead-time solutions
 - d. Have established normal (pre-contingency) operating procedures in place
 - e. Have all projected firm transfers modeled
 - f. Be performed for selected demand levels over the range of forecast system demands
 - g. Demonstrate that system performance meets Category criteria
 - h. Include existing and planned facilities
 - i. Include Reactive Power resources to ensure that adequate reactive resources are available to meet system performance
5. Address any planned upgrades needed to meet the performance requirements of Category criteria

3.1.2 NERC Compliance Standard FAC-010.

OUC shall assist Vero Beach with the develop and maintenance and provide the Vero Beach Compliance Administrator with a System Operating Limit (SOL) methodology document for identifying SOL's of the Vero Beach System within the planning horizon.

3.1.3 NERC Compliance Standards FAC-014-1 R3, R4.

OUC shall assist Vero Beach with establishment and maintenance of Vero Beach SOLs, including IROLs, for Vero Beach Transmission Planning Area that are consistent with Vero Beach Planning Authority's SOL Methodology.

3.1.4 NERC Compliance Standards FAC-014-1 R5.3, R5.4.

OUC shall as necessary under applicable Government Regulations provide Vero Beach's SOLs and IROLs to those entities to which Vero Beach must report under Government Regulations or NERC/FRCC rules.

3.1.5 NERC Compliance Standards MOD-011-0 R1.

OUC shall compile and provide appropriate Vero Beach equipment characteristics, system data, and existing and future [Interchange Schedules] in compliance with its respective interconnection regional steady-state modeling and simulation data requirements and reporting procedures as defined in Reliability Standard MOD-011-0_R 1. (MOD-010-0 R1) within thirty (30) days after a request from any such entity or per any pre-determined reporting schedule. This will be based on the documented Vero Beach has available for their equipment and past data submittals.

3.1.6 NERC Compliance Standard MOD-010-0 R2

OUC shall compile and provide, Vero Beach steady-state modeling and simulation data to the Regional Reliability Organization (Regional Entity), NERC, and those entities specified in Reliability Standard MOD-011-0_R 1 within thirty (30) days after a request from any such entity or per any pre-determined reporting schedule. This will be based on the documented data Vero Beach has available for their equipment and past data submittals.

3.1.7 NERC Compliance Standards MOD-012-0 R1

OUC shall compile and provide Vero Beach equipment characteristics and system data as required for Vero Beach to comply with the respective interconnection-wide regional dynamics system modeling and simulation data requirements and reporting procedures as defined in Reliability Standard MOD-013-0_R1. This will be based on the documented Vero Beach has available for their equipment and past data submittals.

3.1.8 NERC Compliance Standard MOD-012-0 R2

OUC shall compile and provide Vero Beach dynamics system modeling and simulation data to Regional Reliability Organization(s), NERC, and those entities specified within the applicable reporting procedures identified in Reliability Standard MOD-013-0_R 1 within thirty (30) days after a request from any such entity or per any pre-determined reporting schedule. This will be based on the documented Vero Beach has available for their equipment and past data submittals.

3.1.9 NERC Compliance Standard FAC-001-0

OUC shall help develop and maintain Vero Beach facility connection requirements as required in FAC-001-0.

3.1.10 NERC Compliance Standard FAC-002

OUC shall support all Vero Beach System connection assessments.

3.1.11 NERC Compliance Standard MOD-017-0 R1

OUC shall provide Vero Beach the following information relating to the Vero Beach system in support of Vero Beach providing the information annually to NERC and the FRCC.

1. Integrated hourly demands in megawatts (MW) for the prior year;
2. Monthly and annual peak hour actual demands in MW and Net Energy for Load in gigawatthours (GWh) for the prior year;
3. Monthly peak hour forecast demands in MW and Net Energy for Load in GWh for the next two years;
4. Annual Peak hour forecast demands (summer and winter) in MW and annual Net Energy for Load in GWh for at least five years and up to ten years into the future, as requested.

3.2 Operations

OUC shall as part of the Compliance Services, implement a base operations planning package required to support and implement the following operational tasks for the Vero Beach System:

3.2.1 NERC Compliance Standard TOP-002-2 R19

OUC shall maintain accurate computer models utilized for analyzing and planning Vero Beach system operations as performed and as defined within this contract.

3.2.2 NERC Compliance Standard FAC-014 R2

OUC will support Vero Beach in its identification of SOLs in the operating horizon.

3.2.3 NERC Compliance Standard Compliance-002 R11

OUC will perform seasonal, next-day, and current-day Bulk Electric System studies to assist Vero Beach in determining SOLs.

3.2.4 NERC Compliance Standard EOP-005-1 R7

OUC shall verify the Vero Beach system restoration plan either through coordination of actual testing, by simulation or through a combination of both, whichever OUC deems necessary for Vero Beach to maintain compliance with NERC reliability standards.

3.3 Compliance and Training

OUC shall perform the following compliance and training duties as part of the Compliance Services.

3.3.1 NERC Compliance Standard CIP-002-1

1. OUC shall provide Vero Beach (annually and as may be otherwise updated) a Critical Asset Identification Methodology and will assist in its application.

2. OUC shall provide Vero Beach (annually and as may be otherwise updated) a Critical Cyber Asset Identification Methodology and will assist in its application.

3.4 Short-Term Network Secondary and Point-to-Point Transmission Service

OUC will assist Vero Beach in acquiring Network Secondary and Point to Point Transmission Service, when it is available, to allow resources to flow in and out of the Vero Beach System as needed. OUC shall perform this function in accordance with the OUC/COVB Dispatch procedure agreed to and accepted by the OUC/COVB Operating committee. OUC will perform the scheduling function at no cost to Vero Beach for calendar year 2010. Thereafter, the pricing set out in Section 5.1 shall apply for such scheduling services.

3.5 Revenue Meter Testing and Maintenance Service

OUC shall, on a regular basis or at FPL's request, test, calibrate, verify and validate the metering equipment used to determine Vero Beach Network Load.

Metering equipment:

- 2 meters (primary and secondary) monitoring the FPL Emerson line at Sub 7
- 2 meters (primary and secondary) monitoring the FPL Barefoot line at Sub 7
- 2 meters (primary and secondary) monitoring the 1380820 line at Sub 20
- 2 meters (primary and secondary) monitoring the Fort Pierce Garden City line at Sub 20
- 13 primary meters at the COVB power plant
- 13 secondary meters at the COVB power plant

Testing will consist of "As-Found Load Curve Testing" and "Meter Programming Verification".

4 VERO BEACH'S RESPONSIBILITIES

4.1 Vero Beach's Representative and Staff

Vero Beach shall within thirty (30) calendar days after the Effective Date of this Agreement designate the following positions to represent and act on behalf of Vero Beach and receive communications from OUC on a twenty-four hour/calendar day basis during the term of this Agreement:

- Compliance Coordinator ("VB Compliance Coordinator")
- Planning Coordinator ("VB Planning Coordinator")
- Operating Coordinator ("VB Operating Coordinator")

Such designations shall include the contact information of each individual, title and job descriptions.

4.2 Support Services

Vero Beach shall do the following to support and allow OUC to carry out the Compliance Services:

1. Vero Beach shall provide its own representative at the FRCC Operating Committee and all its subcommittee, working groups and tasks forces to address those issues requiring Vero Beach to take a position on a matter under discussion or decision by Vero Beach.
2. Vero Beach shall develop all real time mitigation plans for the Vero Beach System required as a result of a current day, next day planning studies. Vero Beach shall promptly provide copies of all such documents.
3. Vero Beach shall make all decisions relating to implementation of any actions identified as necessary for compliance with applicable Governmental Regulations as a result of system performance studies performed under the TPL standards.
4. Vero Beach shall develop, and submit to the Operating Committee for approval, the operating procedure “Vero Beach Dispatch Procedure” to be used by OUC in determining the proper course of action when attempting to provide generation resources during situations involving limited network resources.
5. Vero Beach will promptly provide OUC load data for the Vero Beach System and other modeling data for the Vero Beach System as requested by OUC.
6. Vero Beach will promptly review, for approval, all material requisition requests, as submitted by OUC and identified as required to perform a specified compliance service under this agreement. Any request not approved by Vero Beach shall be considered a request by Vero Beach to cease performance of referenced compliance service, and shall remove OUC from any obligation to continue performance of said service, until such time that Vero Beach approves the request.

4.3 Payment

Vero Beach shall makes timely payments of sums due and payable to OUC pursuant to Article 5 of this Agreement.

4.4 Budget

Vero Beach agrees that the yearly capital plan and operating budget for the Vero Beach System shall include all monies reasonably necessary to carry out repairs and maintenance required in OUC’s reasonable opinion to avoid a violation of Governmental Regulations. Likewise, Vero Beach shall operate and maintain the Vero Beach System in accordance with (i) applicable operation and maintenance recommendations provided by OUC, (ii) Laws, (iii) Codes and Standards and (iv) Prudent Utility Practices

4.5 Availability of information

Vero Beach shall make available to OUC such operation and maintenance manuals, as-built drawings, specifications, warranties, diagrams, test results, process manuals, procedures and all

other documents and information as requested by OUC and related to the Compliance Service functions.

4.6 Governmental Requirements

Vero Beach shall secure and maintain any and all Governmental Requirements and permitting necessary for the continuous operation of the Vero Beach System and as required to implement the Compliance Services.

4.7 Taxes

Vero Beach shall pay any duty or tax, other than duties or taxes for which OUC is responsible for its own income, as may arise out of or relate to the OUC's performance of the Compliance Services.

4.8 Permits and Licenses

Vero Beach has or will secure and maintain for the term of this Agreement all permits and licenses (other than any licenses needed by OUC to operate its business organization), to allow OUC to perform Compliance Services under this Agreement. Vero Beach shall maintain such permits and licenses during the term of this Agreement and any extension hereto.

5 PAYMENTS BY VERO BEACH

5.1 Payments

Starting on January 1st 2010, Vero Beach shall pay OUC each month for the performance of Compliance Services under this agreement. OUC shall submit a monthly invoice to Vero Beach in a written payment request ("Payment Request") and shall identify the tasks performed, the scope of worked to which the tasks belong, the hours performed, and the associated labor classification Rate (according to the table below) times a multiplier covering overhead and profit.

Scope of Work	Labor Classification	Rate
3.1.1, 3.1.5, 3.1.7, 3.1.9, 3.1.10, 3.2,3.2.1	Project Planning Engineer	\$43
3.1.2, 3.1.3, 3.1.4 ,3.1.6, 3.1.8, 3.1.11	Planning Engineer	\$35
3.2.3,3.2.4	Sr. System Operator	\$42
3.2.2, 3.4	System Operator	\$35
3.3.1.1, 3.3.1.2	Compliance Coordinator	\$48
3.5	Meter Technician	\$32

5.2 Payment Procedure

OUC shall submit an invoice each month through a written Payment Request, beginning February 1st, 2010 and on the first calendar day of each calendar month thereafter. Each Payment Request shall be due and payable within 30 calendar days after receipt thereof. Each such Payment Request shall be in an amount equal to the costs of performing compliance services for

the previous month and be a combination of labor identified according to Section 5.1 and material as approved under Section 4.2.

5.3 Interest on Late Payments.

Any amounts not timely paid to OUC in accordance with this Article 5 shall accrue interest from the fifth calendar day following the calendar day on which such amounts become due and owing to the calendar day on which such amounts and the interest thereon are paid to OUC at the Interest Rate.

6 WARRANTIES AND REPRESENTATIONS

Each Party hereby represents and warrants to the other that:

It is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly qualified to do business in all jurisdictions where such qualification is required.

It has or will have prior to the Effective Date full power and authority to enter this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary municipal action and do not and will not contravene its organizational documents or conflict with, result in a breach of, or entitle any party (with due notice or lapse of time or both) to terminate, accelerate or declare a default under, any agreement or instrument to which it is a party or by which it is bound. The execution, delivery and performance by it of this Agreement will not result in any violation by it of any law, rule or regulation applicable to it. It is not a party to, nor subject to or bound by, any judgment, injunction or decree of any court or other governmental entity which may restrict or interfere with the performance of this Agreement by it or may materially and adversely affect the business, property, financial condition, results of operations or prospects of such Party. This Agreement is its valid and binding obligation, enforceable against it in accordance with its terms, except as (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) the remedy of specific performance and injunctive relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

Except for those approvals listed in Exhibit "A" hereto, no consent, waiver, order, approval, authorization or order of, or registration, qualification or filing with, any court or other governmental agency or authority or other person is required for the execution, delivery and performance by such Party of this Agreement and the consummation by such Party of the transactions contemplated hereby. No consent or waiver of any party to any contract to which such Party is a party or by which it is bound is required for the execution, delivery and performance by such Party of this Agreement that has not been or will by the Effective Date have been duly obtained.

There is no action, suit, grievance, arbitration or proceeding pending or, to the knowledge of such Party, threatened against or affecting such Party at law or in equity, before any federal,

state, municipal or other governmental court, department, commission, board, arbitrator, bureau, agency or instrumentality which prohibits or impairs its ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby. Such Party has not received written notice of and otherwise is not aware of any such pending or threatened investigation, inquiry or review by any governmental entity.

7 EVENTS OF DEFAULT

7.1 Events of Default by OUC

Any one or more of the following shall constitute an “Event of Default” hereunder with respect to OUC:

7.1.1 OUC shall fail to pay any amounts to be paid by OUC hereunder to Vero Beach and such failure shall continue for more than 10 calendar days beyond the due date.

7.1.2 A default shall occur in the performance of any other material covenant or condition to be performed by OUC hereunder (other than a default for failure to timely pay as set out above) and such default shall continue unremedied for a period of 30 calendar days after notice from Vero Beach specifying the nature of such default.

7.1.3 A custodian, receiver, liquidator or trustee of OUC or of all or substantially all of the property of either, is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than 60 calendar days; or OUC makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature; or OUC is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against OUC; or all or substantially all of the material property of either is sequestered by court order and the order remains in effect for more than 60 calendar days; or a petition is filed against OUC under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within 60 calendar days after filing.

7.1.4 OUC files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of OUC or all or substantially all of the property of either.

7.2 Events of Default by Vero Beach

Any one or more of the following shall constitute an “Event of Default” hereunder with respect to Vero Beach:

7.2.1 Vero Beach shall fail to pay any amounts to be paid to OUC and such failure shall continue for a period of more than 10 calendar days beyond the due date.

7.2.2 Default shall occur in the performance of any material covenant or condition to be performed by Vero Beach hereunder (other than a default for failure to timely pay) and such default shall continue unremedied for a period of 30 calendar days after notice from OUC specifying the nature of such default.

7.2.3 A custodian, receiver, liquidator or trustee of Vero Beach or of all or substantially all of either of their property is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than 60 calendar days; or Vero Beach makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature; or Vero Beach is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against Vero Beach; or all or substantially all of the material property of Vero Beach is sequestered by court order and the order remains in effect for more than 60 calendar days; or a petition is filed against Vero Beach under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within 60 calendar days after filing.

7.2.4 Vero Beach files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of Vero Beach or all or substantially all of its property.

7.2.5 Vero Beach operates the Vero Beach System in a manner which (i) is outside of that which would comply with Prudent Utility Practices or (ii) jeopardizes OUC's ability to carry out the duty as Compliance Services without violating Governmental Requirements or Laws and such default shall continue unremedied for a period of 30 calendar days after notice from OUC specifying the nature of such default.

8 DEFAULT REMEDIES

8.1 Events of Default

The Parties shall have the following remedies available to them with respect to the occurrence of an Event of Default with respect to the other Party hereunder:

8.1.1 Upon the occurrence of an Event of Default by either Party hereunder, the non-defaulting Party shall have the right to (i) collect all amounts then due to it from the defaulting Party hereunder, and (ii) terminate this Agreement at any time during the continuation of such Event of Default upon written notice to the defaulting Party. Notwithstanding any other provision of this Agreement, after the occurrence of an Event of Default and for so long as the Event of Default is continuing and has not been cured, the non-defaulting Party shall have the right, upon written notice to the defaulting Party, to suspend all performance under this Agreement until such Event of Default has been cured.

8.1.2 If Vero Beach terminates this Agreement as a result of the occurrence of an Event of Default by OUC, then Vero Beach shall thereafter have no further obligations hereunder and shall have all rights and remedies available to it under applicable law.

8.1.3 If OUC terminates this Agreement as a result of the occurrence of an Event of Default by Vero Beach, then OUC shall thereafter (a) have no further obligations hereunder and shall have all rights and remedies available to it hereunder and under applicable law, including the right to transfer back to Vero Beach Compliance Services duties for the Vero Beach System and recover damages.

8.12.3 NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER INDEMNITY PROVISIONS OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, COST OF CAPITAL; LOSS OF USE, LOSS OF GOODWILL, REPLACEMENT POWER OR CLAIMS OF CUSTOMERS.

8.2 Limitation of Liability for Compliance Services

Vero Beach acknowledges that OUC does not assume any liability associated with Excluded Liabilities nor does OUC warrant such Compliance Services but rather, warrants that it will carry out Compliance Services in a manner compliant with Prudent Utility Practices. If OUC fails to perform its duties, responsibilities, obligations or functions hereunder in accordance with Prudent Utility Practice or applicable Law, then, following receipt of written notice of any such failure from Vero Beach, OUC shall have thirty (30) calendar days to cure such failure, or if such failure cannot reasonably be cured within such thirty (30) calendar day period then such reasonable period necessary to cure such failure using due diligence; *provided, however*, that notwithstanding the foregoing cure period, Vero Beach shall have the right to take reasonable action necessary to protect against immediate harm to facilities or personnel or violations of Law or Government Regulations . If OUC fails to cure any failure arising under the immediately preceding sentence within the applicable cure period, then Vero Beach shall have the right to correct the defective performance. OUC's maximum liability with respect to any act or omission shall be Twenty Five Thousand (\$25,000.00) Dollars, whether a claim is brought under contract, tort or any other theory of recovery. If Vero Beach can demonstrate such act or omission by OUC is the result of gross negligence or willful misconduct, OUC's limits of liability shall be One Million (\$1,000,000.00) Dollars.

9 TERM AND TERMINATION

The "Term" of this Agreement shall be deemed to be the period beginning on the Turnover Date and continuing unless sooner terminated in accordance with the provisions of this Agreement, for an initial period of one (1) year.

In the event that the Purchase and Sale Agreement terminates, either Party may terminate this Agreement upon ninety (90) Calendar Days' prior written notice.

Either Party may terminate under the terms of Section 8.1.1 and 13.10.

In the event of a termination by either Party under this Article 9, then OUC shall turn over to Vero Beach the compliance function.

10 INDEMNITIES

10.1 Indemnification by OUC

To the extent permitted by Florida Law and subject to the limits in Section 8.2, OUC shall indemnify, defend and hold harmless Vero Beach and its respective officers, directors, agents, representatives and employees from and against any and all loss, costs, expense, claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all claims relating to or arising out of:

1. Any willful misconduct or illegal acts of OUC
2. Any damages awarded against Vero Beach in a claim by a third party to the extent arising from the negligent acts or omissions of OUC or any of its agents or employees in exercising its rights or performing its obligations hereunder after the Turnover Date

10.2 Indemnification by Vero Beach

To the extent permitted by Florida law, Vero Beach shall indemnify, defend and hold harmless OUC, its officers, directors, agents, employees and affiliates from and against any and all loss, costs, expense, claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all claims relating to or arising out of any:

1. Excluded Liabilities
2. Willful misconduct or illegal acts of Vero Beach
3. Damages awarded against OUC in a claim by a third party to the extent arising from the negligent acts or omissions of Vero Beach or any of its agents or employees in exercising its rights or performing its obligations hereunder after the Turnover Date.

11 DISPUTE RESOLUTION

11.1 Resolution by Officers of the Parties

In the event of any dispute between the Parties as to a matter referred to herein or as to the interpretation of any part of this Agreement, including this Section 11.1 or as to the determination of any rights or obligations or entitlements arising from or related to this Agreement or as to the calculation of any amounts payable under this Agreement, the Parties shall refer the matter to their respective duly authorized representatives, for resolution. Should such representatives of the respective Parties fail to resolve the dispute within twenty (20) calendar days from such referral, the Parties agree that any such dispute shall be first referred to non-binding mediation. Should mediation be unsuccessful within the times specified in Section 11.2, the Parties may pursue any legal or equitable remedies available under Florida law.

11.2 Mediation Procedures

A Party submitting a dispute to non-binding mediation (the “Requesting Party”) shall do so by delivering to the other Party a notice demanding or requesting, as the case may be, mediation of the dispute and naming three acceptable mediators. Within thirty (30) calendar days after the receipt of the notice from the Requesting Party, the other Party shall, in writing, serve upon the Requesting Party a notice of acceptance of one of the three mediators provided or offer three alternate mediators for consideration. Within twenty (20) calendar days, the Parties shall mutually agree and appoint a mediator from the lists provided. To the extent practicable, the mediator shall have special competence and experience with respect to the subject matter under consideration. No mediator appointed shall have the power to amend or add to this Agreement. Within twenty (20) calendar days after the mediator is named, a time and date for the mediation shall be scheduled and documented in writing. The mediator thereupon shall proceed promptly to hear and determine the controversy. The mediator shall fix a time within which the matter shall be submitted to him or her by both of the Parties. If mediation is successful, any settlement achieved through mediation shall be confidential and made in writing and in duplicate, and one copy shall be delivered to each of the Parties. Each Party shall pay the costs of its own counsel and share equally the cost of the mediator services. Each Party shall accept and abide by any mediation decision approved by the Parties. Judgment upon such award may be entered by the prevailing Party in any court having jurisdiction thereof, or application may be made by such Party to any such court for judicial acceptance of such award and an order of enforcement. Either Party shall have the right to seek a temporary or preliminary injunction from a court of competent jurisdiction prior to the mediation.

11.3 Binding Award

Once accepted by the Parties, the decision of the mediator and any award made hereunder shall be binding upon each Party and the successors and assigns and any trustee or receiver of each Party.

11.4 Legal Remedies

If mediation is unsuccessful, either Party may pursue any legal rights and remedies made available under Florida Law.

12 FORCE MAJEURE

12.1 Force Majeure Standard

OUC shall be excused from performing its obligations under this Agreement and shall not be liable in damages or otherwise, if and only to the extent that it is unable to so perform or is prevented from performing by an event of Force Majeure.

12.2 Force Majeure Definition

An event of “Force Majeure” means an event or circumstance that prevents or unduly frustrates the performance by OUC of its obligations under this Agreement which is not within the reasonable control of, or the result of the negligence of, OUC and which by the exercise of due

diligence OUC is unable to overcome or avoid . Force Majeure includes, without limitation, hurricanes, tornadoes, flood, lightning, drought, earthquake, fire, explosion, terrorist attack, civil disturbance, strikes, acts of God, acts of the public enemy, orders, directives (including the state security coordinator), restraints and requirements of the government and governmental agencies, either federal, state or local, civil or military, or any other cause beyond a Party's control.

12.3 Obligation to Diligently Cure Force Majeure

If OUC shall rely on the occurrence of an event of Force Majeure as a basis for being excused from performance of its obligations under this Agreement, then OUC shall:

1. Provide written notice to Vero Beach promptly but in no event later than five calendar days after the occurrence of the event or condition giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder
2. Exercise all reasonable efforts to continue to perform its obligations hereunder
3. Expeditiously take reasonable action to correct or cure the event or condition excusing performance, provided that settlement of strikes or other labor disputes shall be completely within the sole discretion of OUC
4. Exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action shall not adversely affect its own interests

13 MISCELLANEOUS

13.1 Assignment, Successors, and Assigns

This Agreement shall inure to the benefit of and bind the respective successors and permitted assigns of the Parties, including any successor to any Party by consolidation, merger, or acquisition of all or substantially all of the assets of such Party; provided, however, that no assignment by any Party (or any successor or assignee thereof) of its rights and obligations hereunder shall be made or become effective without the prior written consent of each other Party in each case obtained.

13.2 Notices

All notices, requests and other communications hereunder (herein collectively a "notice" or "notices") shall be deemed to have been duly delivered, given or made to or upon any Party if in writing and delivered by hand against receipt, or by certified or registered mail, postage pre-paid, return receipt requested, or to a courier who guarantees next business calendar day delivery or sent by telecopy (with confirmation by return telecopy) to such Party at its address set forth below or to such other address as such Party may at any time, or from time to time, direct by notice given in accordance with this Section 13.2.

To OUC:

Vice President, Energy Delivery Business Unit
6003 Pershing Avenue
Orlando, Florida 32822
Tel:407-423-9100
Fax: 407-384-4148
Email: cbullock@ouc.com

Copy to:

Office of General Counsel
Orlando Utilities Commission
100 W. Anderson Street
Orlando, Florida 32802
Tel: 407-423-9100
Fax: 407-236-9639
Email: cbrowder@ouc.com

To Vero Beach:

Director of Electric Utilities, City of Vero Beach
P.O. Box 1389
Vero Beach Florida, 32961-1389
Tel: 772-978-4710
Fax: 772-978-4716
Email: rmccamish@covb.org

The date of delivery of any such notice, request or other communication shall be the earlier of (i) the date of actual receipt or (ii) three (3) business calendar days after such notice, request or other communication is sent by certified or registered mail, (iii) if sent by courier who guarantees next business calendar day delivery, the business calendar day next following the calendar day such notice, request or other communication is actually delivered to the courier or (iv) the calendar day actually telecopied (with confirmation by return telecopy).

13.3 Governing Law

The rights and obligations of the Parties shall be construed and interpreted in accordance with the substantive law of the State of Florida without giving effect to its principles for choice of law.

13.4 No Partnership

Nothing contained in this Agreement shall be construed to create a partnership, joint venture or other relationship that may invoke fiduciary obligations between the Parties.

13.5 Fees and Expenses

Except as otherwise provided herein, Vero Beach and OUC shall pay all fees and expenses incurred by, or on behalf of, such Party in connection with, or in anticipation of, this Agreement and the consummation of the transactions contemplated hereby.

13.6 Captions

The captions to sections throughout this Agreement are intended solely to facilitate reading and reference to all sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

13.7 Entire Agreement and Amendments

This Agreement together with all of the exhibits, appendices and any attachments referred to herein sets forth the entire agreement of the Parties with respect to the subject matter herein and takes precedence over all prior understandings. This Agreement may not be amended except by an agreement in writing signed by the Parties.

13.8 Severability

The invalidity or unenforceability of any provisions of this Agreement shall not affect the other provisions hereof. If any provision of this Agreement is held to be invalid, such provision shall not be severed from this Agreement; instead, the scope of the rights and duties created thereby shall be reduced by the smallest extent necessary to conform such provision to the applicable law, preserving to the greatest extent the intent of the Parties to create such rights and duties as set out herein. If necessary to preserve the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision for the one deemed invalid or unenforceable that is legally binding and enforceable.

13.9 Further Assurances

In connection with this Agreement and the transactions contemplated hereby, each Party shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and such transactions and the intention of the Parties.

13.10 Laws and Regulations, Changes in Law

This Agreement and the rights, obligations, and performances of the Parties under this Agreement are subject to all applicable state and federal laws, and to all duly promulgated orders and other duly authorized actions of governmental authorities having jurisdiction. Each Party hereto shall be responsible for taking all necessary actions to satisfy any Governmental Requirements that may be imposed by any federal, state, or municipal statute, rule, regulation, or ordinance that may be in effect from time to time relative to the performance of such Party hereunder.

If and to the extent that, after the Effective Date of this Agreement, any Laws or Governmental Requirements which govern any transaction or duty of a Party contemplated herein shall change so as to (a) make this Agreement unlawful or (b) increase the cost to OUC of providing Compliance Services to Vero Beach, then OUC and Vero Beach hereby agree to use reasonable efforts to agree on such modifications to this Agreement as shall be reasonably necessary for the Agreement to accommodate any such legal or regulatory changes. If such efforts fail, either Party may terminate by 90 calendar days prior written notice.

13.11 Counterparts

This Agreement may be executed simultaneously in two or more counterparts, any of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same Agreement.

13.12 Independent Relationship

Nothing in this Agreement unless specifically outlined in this agreement shall be construed or interpreted to make Vero Beach or its employees or agents, the agent, representative or employees of OUC.

13.13 No Third-Party Beneficiaries

This Agreement shall not confer any rights or remedies upon any third party not a Party hereto.

13.14 Waivers

The failure of a Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of a Party thereafter to enforce each and every such provision. A waiver under this Agreement must be in writing and state that it is a waiver. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

13.15 Duty to Mitigate

Each Party agrees that it has a duty to mitigate damages and covenants that it will use

commercially reasonable efforts to minimize any damages it may incur as a result of any other Party's performance or non-performance of this Agreement.

ATTEST:

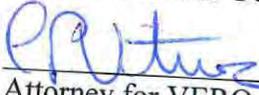
THE CITY OF VERO BEACH

By: _____

Name: _____

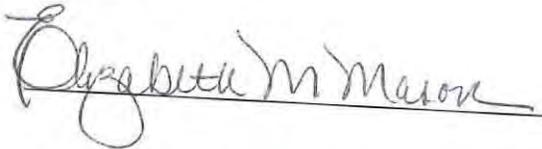
Title: _____

APPROVED AS TO FORM:



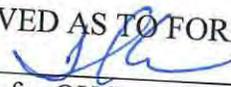
Attorney for VERO BEACH

ATTEST:



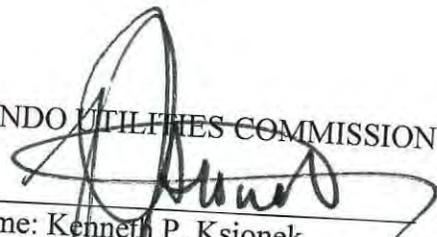
Elizabeth M. Mason

APPROVED AS TO FORM:



Attorney for OUC

ORLANDO UTILITIES COMMISSION

By: 

Name: Kenneth P. Ksionek

Title: General Manager & CEO

CITY OF VERO BEACH	APPROVED	DATE
City Manager		1/26/10
City Attorney		
City Clerk		
Utilities		
Public Works		
Finance		
Human Resources		
Planning		

EXHIBIT "A"

**OUTSTANDING GOVERNMENTAL CONSENTS,
APPROVALS OR AUTHORIZATIONS**

OUC:

NONE

VERO BEACH CONSENTS:

NONE

COMPARISON VERSION

Complete



ORLANDO UTILITIES COMMISSION AND THE CITY OF VERO BEACH

COMPLIANCE SERVICES AGREEMENT

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This COMPLIANCE SERVICES AGREEMENT (this “Agreement”) is entered into as of the ___ calendar day of ____, ~~2009~~2010, (“Effective Date”) by and between THE CITY OF VERO BEACH, a municipal corporation in the State of Florida, duly constituted under Florida law (“Vero Beach”), and the ORLANDO UTILITIES COMMISSION, a statutory municipal utility organized under the State of Florida (“OUC”). Vero Beach and OUC are referred to also individually as a “Party,” or collectively as the “Parties.”

WHEREAS, Vero Beach is a public agency as defined in Section 163.01(3)(b), Florida Statutes, and a municipally-owned electric distribution utility;

WHEREAS, Vero Beach is the owner of an electric generating plant at 100 17th Street, Vero Beach, Florida, consisting of five generating units with a total capacity of 150 MW on a 19 acre site on the West Bank of the Indian River and associated electric transmission and distribution system (“Vero Beach System”);

WHEREAS, Vero Beach and OUC entered into that Agreement for the Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management dated April 21, 2005 (the “Purchase and Sale Agreement”);

WHEREAS, Vero Beach desires OUC to perform and OUC is willing to perform certain functions of Vero Beach’s obligations as the operating entity under the North American Electric Reliability Corporation regulations;

WHEREAS the Parties agree and acknowledge that the provision of Compliance Services (as defined later herein) by OUC to Vero Beach and the supply of electric service by OUC to Vero Beach under the Purchase and Sale Agreement are transactions that are mutually dependent upon one another so that termination of either the Purchase and Sale Agreement or this Agreement shall cause a termination of the other agreement;

WHEREAS, in addition and supplemental to their other powers, OUC and Vero Beach, pursuant to the Florida Interlocal Cooperation Act of 1969, Chapter 163, Part I, Florida Statutes, as amended, and specifically Section 163.01(15) thereof (the “Interlocal Act”), are authorized and empowered to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of government organizations that will best accord with geographic, economic, electrical generation requirements and other factors;

WHEREAS, this Agreement is entered into by OUC and Vero Beach, as an interlocal agreement, invoking all of the powers of the Interlocal Act, for the purpose of providing a structure for OUC in participation with Vero Beach, to participate jointly in an electric project, in full compliance with the Interlocal Act;

NOW, THEREFORE, for and in consideration of the foregoing, the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of exercising powers enumerated in the Interlocal Act and the Florida Joint Power Act, Part II of Chapter 361, Florida Statutes, as amended, OUC and Vero Beach, as public agencies, within the meaning of the aforementioned Acts, hereby designates this Agreement as an interlocal agreement pursuant to the Interlocal Act, and the Parties hereby agree as follows:

1 DEFINITIONS

“Agreement” shall mean this document “Orlando Utilities Commission and the City of Vero Beach Compliance Services Agreement”.

“As-Found Load Curve Testing” shall mean industry accepted test which includes Full Load (FL), Light Load (LL), Power Factor (PF), and element tests; and a series of tests run from 1.0 to 5.0 amps at 1.0 amp intervals for generating an accuracy load curve for the meter.

“Balancing Authority Area” shall mean the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

“Bulk Electric System” shall have the same meaning as that defined by the FRCC Operating Committee and approved by the FRCC Board of Directors or in the absence of an FRCC approved definition, shall have the same meaning as that defined within the NERC glossary.

“Category A” shall mean no contingencies.

“Category B” shall mean event resulting in the loss of a single element.

“Category C” shall mean event(s) resulting in the loss of two or more (multiple) elements.

“Category D” shall mean extreme event resulting in the loss of two or more (multiple) elements removed or Cascading out of service.

“Codes and Standards” shall mean NERC Reliability Standards.

“Compliance Services” shall mean services which support maintaining compliance with NERC Reliability Standards.

“Critical Asset Identification Methodology” shall mean a risk based methodology developed by OUC used to identify assets critical to the reliable operation of the Bulk Electric System (Critical Assets)

“Critical Cyber Asset Identification Methodology” shall mean a methodology developed by OUC used to identify cyber assets critical to the reliable operation of Critical Assets (Critical Cyber Assets).

“Effective Date” shall mean January 1st, 2010.

“Event of Default” shall have the meaning set forth in Article 7.2.

“Excluded Liability (ies)” shall have the meaning set forth in Article 2.

“FERC” shall mean Federal Energy Regulatory Commission.

“FRCC” shall mean the Florida Reliability Coordinating Council.

“FRCC Operating Committee” shall mean the standing committee of the FRCC responsible for the coordination, operations planning, operation and maintenance of bulk electric system in the FRCC Region.

“Firm Transmission” shall mean the highest quality (priority) transmission service offered to customers under a filed rate schedule that anticipates no planned interruption.

“Force Majeure” shall have the meaning set forth in Section 12.2.

“GWh” shall mean gigawatthours.

“Government Regulations” shall mean NERC Reliability Standards and applicable FERC Orders.

“Governmental Requirements” shall mean all laws, codes, ordinances, orders, judgments, decrees, injunctions, licenses, rules, permits, approvals, regulations and requirements of every governmental authority having jurisdiction over the matter in question, whether federal, state or local, which may be applicable to OUC or Vero Beach or the Services..

“IROL” shall mean interconnection reliability operating limit.

“Interchange Schedules” shall mean agreements for authorizing the flow of energy across a transmission system

“Interest Rate” shall mean for any applicable day, the per annum prime lending rate published in *The Wall Street Journal* under “Money Rates” on that day, or for any day on which *The Wall Street Journal* is not published the rate appearing in the most recently published edition, plus two percentage points (200 basis points). In no event shall the Interest Rate exceed the maximum rate permitted by applicable Laws.

“Interlocal Act” shall mean the Florida Interlocal Cooperation Act of 1969, Chapter 163, Part I, Florida Statutes, as amended, and specifically Section 163.01(15) thereof.

“Laws” shall mean any statute, regulation, ordinance, rule, government approval, agreement, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any governmental authority, whether now or hereafter in effect.

“Longer-term planning horizon” shall mean years six through ten under the term of this Agreement.

“MWh” shall mean Megawatt Hours.

“Meter Programming Verification” shall mean the witnessed interrogation and verification of the meter programming to be correct for the given meter and the given installation location.

“NERC” shall mean North American Electric Reliability Corporation.

“NERC Reliability Standards” shall mean those standards which support the reliability of the Bulk Electric System, and have been approved by FERC

“Near-term planning horizon” shall mean years one through five under the term of this Agreement.

“Net Energy for Load” shall mean the net Balancing Authority Area generation, plus energy received from other Balancing Authority Areas, less energy delivered to Balancing Authority Areas through interchange. It includes Balancing Authority Area losses but excludes energy required for storage at energy storage facilities.

“Network Customer” shall mean an entity receiving transmission service pursuant to the terms of a Transmission Provider's Network Integration Transmission Service under Part III of the providers Tariff.

“Network Load” shall mean the load that a Network Customer designates for Network Integration Transmission Service under Part III of the providers Tariff.

“Network Resources” shall mean any designated generating resource owned, purchased or leased by a Network Customer under the Network Integration Transmission Service Tariff.

“Network Secondary Transmission” shall mean delivery of energy to Network Loads from resources that have not been designated as Network Resources

“OUC” shall mean the Orlando Utilities Commission.

“OUC Compliance Administrator” shall mean the OUC designated manager of standards compliance.

“Parties/Party” shall have the meaning set forth in the introductory paragraph.

“Payment Request” shall have the meaning set forth in Section 5.1.

“Planning Horizon” shall mean the period of time in the future for which a Party performs system load and generation analysis for purposes of capital improvements and capital investment planning.

“Pre-contingency” shall mean the state of the BES prior to an event.

“Purchase and Sale Agreement” shall mean that Agreement for the Purchase and Sale of Electric Energy and Capacity, Gas Transportation Capacity and Asset Management dated April 21, 2005.

“Regional Reliability Organizations” shall mean the FRCC

“Requesting Party” shall have the meaning set forth in Section 11.2.

“Review Committee” shall mean the committee consisting of the authorized representative from each Party, which committee provides oversight and review of issues that may arise from time to time as may be identified by OUC as Vero Beach’s Compliance Services provider or by the Vero Beach compliance administrator.

“SOL” shall mean system operating limit.

“TPL standards” shall mean the currently enforced version of the NERC transmission planning standards TPL-001, TPL-002, TPL-003 and TPL-004.

“Term” shall have the meaning set forth in Article 9.

“Turnover Date” shall mean January 1st 2010.

“VB Compliance Coordinator” shall have the meaning set forth in Section 4.1.

“VB Planning Coordinator” shall have the meaning set forth in Section 4.1.

“VB Operating Coordinator” shall have the meaning set forth in Section 4.1.

“Vero Beach” or “VB” shall mean the City of Vero Beach.

“Vero Beach Dispatch Procedure” shall have the meaning set forth in Section 4.2 subsection 4.

“Vero Beach System” shall mean the Vero Beach power transmission system.

“Vero Beach Transmission Planning Area” shall mean the 69kV and higher transmission facilities owned by Vero Beach. In the case of transformers, this only includes transformers where the low voltage side is 69kV or higher. This also includes any generators and their step up transformers that the MMWG, FRCC, OUC or Vero Beach determine need to be individually modeled, regardless of voltage.

2 GENERAL APPROACH FOR SERVICES

During the term of this Agreement, OUC will perform certain Compliance Services on behalf of Vero Beach for NERC compliance purposes as further detailed in Article 5.0. Vero Beach will carry out certain supporting duties as detailed in Article 6.0 as necessary to allow OUC to perform the Compliance Services. The Parties acknowledge and agree that OUC is not assuming responsibility for any fines, penalties or compliance violations that may have been assessed prior to the Execution Date or which may be assessed after the Effective Date against the Vero Beach System or Vero Beach or any obligation to upgrade, repair or replace facilities of Vero Beach in order to bring the Vero Beach System into compliance with Governmental Regulations, including any such impositions or improvements required by NERC, FRCC or other agency (an “Excluded Liability(ies)”).

2.1 OUC Compliance Administrator

OUC shall within thirty (30) calendar days after the date of this Agreement, designate one primary and one alternate person to act as the OUC Compliance Administrator. The OUC Compliance Administrator shall represent and act on behalf of OUC in implementing the Compliance Services under this Agreement and to receive communications from Vero Beach on a twenty-four hour/calendar day basis. The OUC Compliance Administrator shall act on behalf of OUC as the principal interface with the Vero Beach Compliance Administrator.

2.2 Executive Committee

The Parties hereby establish a Review Committee. The Review Committee shall consist of an authorized representative from each Party. The Review Committee will provide oversight and review of issues that may arise from time to time as may be identified by OUC as Vero Beach's Compliance Service provider or by the Vero Beach Compliance Administrator. Decisions by the Review Committee will be made by consensus and shall be subject to final approval by the respective governing boards of the Parties as appropriate. The initial designees on the Review Committee are as follows:

To OUC:

Vice President, Energy Delivery Business Unit
6003 Pershing Avenue
Orlando, Florida 32822
Tel: 407-423-9100
Fax: 407-384-4148
Email: cbullock@ouc.com

To Vero Beach:

Director of Electric Utilities, City of Vero Beach
P.O. Box 1389
Vero Beach Florida, 32961-1389
Tel: 772-978-4710
Fax: 772-978-4716
Email: rmccamish@covb.org

The Parties may from time to time replace any such designees by 30 days prior written notice to the other setting out the relevant information regarding the substitute designee.

3 OUC RESPONSIBILITIES

OUC's responsibilities as the compliance services provider under this Agreement shall be to provide the following services ("Compliance Services"):

3.1 System Planning

OUC shall perform the following System Planning duties as part of the Services.

3.1.1 NERC Compliance Standards TPL-001-0, TPL-002-0, TPL-003-0, TPL-004-0

OUC shall annually perform a valid assessment of the Vero Beach interconnected transmission system. To be considered valid the assessment shall:

1. Be performed for each contingency category (A, B, C and D as defined within NERC Transmission Planning standards)
2. Be performed annually
3. Be conducted for near-term and longer-term planning horizons
4. Be supported by a current or past study and/or system simulation testing that addresses each of the following categories
 - a. Cover critical system conditions and study years
 - b. Be conducted annually unless changes to system conditions do not warrant such analysis
 - c. Be conducted beyond the five-year horizon only as needed to address identified marginal conditions that may have longer lead-time solutions
 - d. Have established normal (pre-contingency) operating procedures in place
 - e. Have all projected firm transfers modeled
 - f. Be performed for selected demand levels over the range of forecast system demands
 - g. Demonstrate that system performance meets Category criteria
 - h. Include existing and planned facilities
 - i. Include Reactive Power resources to ensure that adequate reactive resources are available to meet system performance
5. Address any planned upgrades needed to meet the performance requirements of Category criteria

3.1.2 NERC Compliance Standard FAC-010.

OUC shall assist Vero Beach with the develop and maintenance and provide the Vero Beach Compliance Administrator with a System Operating Limit (SOL) methodology document for identifying SOL's of the Vero Beach System within the planning horizon.

3.1.3 NERC Compliance Standards FAC-014-1 R3, R4.

OUC shall assist Vero Beach with establishment and maintenance of Vero Beach SOLs, including IROLs, for Vero Beach Transmission Planning Area that are consistent with Vero Beach Planning Authority's SOL Methodology.

3.1.4 NERC Compliance Standards FAC-014-1 R5.3, R5.4.

OUC shall as necessary under applicable Government Regulations provide Vero Beach's SOLs and IROLs to those entities to which Vero Beach must report under Government Regulations or NERC/FRCC rules.

3.1.5 NERC Compliance Standards MOD-011-0 R1.

OUC shall compile and provide appropriate Vero Beach equipment characteristics, system data, and existing and future [Interchange Schedules] in compliance with its respective interconnection regional steady-state modeling and simulation data requirements and reporting procedures as defined in Reliability Standard MOD-011-0_R 1. (MOD-010-0 R1) within thirty (30) days after a request from any such entity or per any pre-determined reporting schedule. This will be based on the documented Vero Beach has available for their equipment and past data submittals.

3.1.6 NERC Compliance Standard MOD-010-0 R2

OUC shall compile and provide, Vero Beach steady-state modeling and simulation data to the Regional Reliability Organization (Regional Entity), NERC, and those entities specified in Reliability Standard MOD-011-0_R 1 within thirty (30) days after a request from any such entity or per any pre-determined reporting schedule. This will be based on the documented data Vero Beach has available for their equipment and past data submittals.

3.1.7 NERC Compliance Standards MOD-012-0 R1

OUC shall compile and provide Vero Beach equipment characteristics and system data as required for Vero Beach to comply with the respective interconnection-wide regional dynamics system modeling and simulation data requirements and reporting procedures as defined in Reliability Standard MOD-013-0_R1. This will be based on the documented Vero Beach has available for their equipment and past data submittals.

3.1.8 NERC Compliance Standard MOD-012-0 R2

OUC shall compile and provide Vero Beach dynamics system modeling and simulation data to Regional Reliability Organization(s), NERC, and those entities specified within the applicable reporting procedures identified in Reliability Standard MOD-013-0_R 1 within thirty (30) days after a request from any such entity or per any pre-determined reporting schedule. This will be based on the documented Vero Beach has available for their equipment and past data submittals.

3.1.9 NERC Compliance Standard FAC-001-0

OUC shall help develop and maintain Vero Beach facility connection requirements as required in FAC-001-0.

3.1.10 NERC Compliance Standard FAC-002

OUC shall support all Vero Beach System connection assessments.

3.1.11 NERC Compliance Standard MOD-017-0 R1

OUC shall provide Vero Beach the following information relating to the Vero Beach system in support of Vero Beach providing the information annually to NERC and the FRCC.

1. Integrated hourly demands in megawatts (MW) for the prior year;
2. Monthly and annual peak hour actual demands in MW and Net Energy for Load in gigawatthours (GWh) for the prior year;
3. Monthly peak hour forecast demands in MW and Net Energy for Load in GWh for the next two years;
4. Annual Peak hour forecast demands (summer and winter) in MW and annual Net Energy for Load in GWh for at least five years and up to ten years into the future, as requested.

3.2 Operations

OUC shall as part of the Compliance Services, implement a base operations planning package required to support and implement the following operational tasks for the Vero Beach System:

3.2.1 NERC Compliance Standard TOP-002-2 R19

OUC shall maintain accurate computer models utilized for analyzing and planning Vero Beach system operations as performed and as defined within this contract.

3.2.2 NERC Compliance Standard FAC-014 R2

OUC will support Vero Beach in its identification of SOLs in the operating horizon.

3.2.3 NERC Compliance Standard Compliance-002 R11

OUC will perform seasonal, next-day, and current-day Bulk Electric System studies to assist Vero Beach in determining SOLs.

3.2.4 NERC Compliance Standard EOP-005-1 R7

OUC shall verify the Vero Beach system restoration plan either through coordination of actual testing, by simulation or through a combination of both, whichever OUC deems necessary for Vero Beach to maintain compliance with NERC reliability standards.

3.3 Compliance and Training

OUC shall perform the following compliance and training duties as part of the Compliance Services.

3.3.1 NERC Compliance Standard CIP-002-1

1. OUC shall provide Vero Beach (annually and as may be otherwise updated) a Critical Asset Identification Methodology and will assist in its application.

2. OUC shall provide Vero Beach (annually and as may be otherwise updated) a Critical Cyber Asset Identification Methodology and will assist in its application.

3.4 Short-Term Network Secondary and Point-to-Point Transmission Service

OUC will assist Vero Beach in acquiring Network Secondary and Point to Point Transmission Service, when it is available, to allow resources to flow in and out of the Vero Beach System as needed. OUC shall perform this function in accordance with the OUC/COVB Dispatch procedure agreed to and accepted by the OUC/COVB Operating committee. OUC will perform the scheduling function at no cost to Vero Beach for calendar year 2010. Thereafter, the pricing set out in Section 5.1 shall apply for such scheduling services.

3.5 Revenue Meter Testing and Maintenance Service

OUC shall, on a regular basis or at FPL's request, test, calibrate, verify and validate the metering equipment used to determine Vero Beach Network Load.

Metering equipment:

- 2 meters (primary and secondary) monitoring the FPL Emerson line at Sub 7
- 2 meters (primary and secondary) monitoring the FPL Barefoot line at Sub 7
- 2 meters (primary and secondary) monitoring the 1380820 line at Sub 20
- 2 meters (primary and secondary) monitoring the Fort Pierce Garden City line at Sub 20
- 13 primary meters at the COVB power plant
- 13 secondary meters at the COVB power plant

Testing will consist of "As-Found Load Curve Testing" and "Meter Programming Verification".

4 VERO BEACH'S RESPONSIBILITIES

4.1 Vero Beach's Representative and Staff

Vero Beach shall within thirty (30) calendar days after the Effective Date of this Agreement designate the following positions to represent and act on behalf of Vero Beach and receive communications from OUC on a twenty-four hour/calendar day basis during the term of this Agreement:

- Compliance Coordinator ("VB Compliance Coordinator")
- Planning Coordinator ("VB Planning Coordinator")
- Operating Coordinator ("VB Operating Coordinator")

— Such designations shall include the contact information of each individual, title and job descriptions.

NOTE



4.2 Support Services

Vero Beach shall do the following to support and allow OUC to carry out the Compliance Services:

1. Vero Beach shall provide its own representative at the FRCC Operating Committee and all its subcommittee, working groups and tasks forces to address those issues requiring Vero Beach to take a position on a matter under discussion or decision by Vero Beach.
2. Vero Beach shall develop all real time mitigation plans for the Vero Beach System required as a result of a current day, next day planning studies. Vero Beach shall promptly provide copies of all such documents.
3. Vero Beach shall make all decisions relating to implementation of any actions identified as necessary for compliance with applicable Governmental Regulations as a result of system performance studies performed under the TPL standards.
4. Vero Beach shall develop, and submit to the Operating Committee for approval, the operating procedure "Vero Beach Dispatch Procedure" to be used by OUC in determining the proper course of action when attempting to provide generation resources during situations involving limited network resources.
5. Vero Beach will promptly provide OUC load data for the Vero Beach System and other modeling data for the Vero Beach System as requested by OUC.
6. Vero Beach will promptly review, for approval, all material requisition requests, as submitted by OUC and identified as required to perform a specified compliance service under this agreement. Any request not approved by Vero Beach shall be considered a request by Vero Beach to cease performance of referenced compliance service, and shall remove OUC from any obligation to continue performance of said service, until such time that Vero Beach approves the request.

NOTE



4.3 Payment

Vero Beach shall make timely payments of sums due and payable to OUC pursuant to Article ~~75~~ of this Agreement.

4.4 Budget

Vero Beach agrees that the yearly capital plan and operating budget for the Vero Beach System shall include all monies reasonably necessary to carry out repairs and maintenance required in OUC's reasonable opinion to avoid a violation of Governmental Regulations. Likewise, Vero Beach shall operate and maintain the Vero Beach System in accordance with (i) applicable operation and maintenance recommendations provided by OUC, (ii) Laws, (iii) Codes and Standards and (iv) Prudent Utility Practices

4.5 Availability of information

Vero Beach shall make available to OUC such operation and maintenance manuals, as-built drawings, specifications, warranties, diagrams, test results, process manuals, procedures and all

other documents and information as requested by OUC and related to the Compliance Service functions.

4.6 Governmental Requirements

Vero Beach shall secure and maintain any and all Governmental Requirements and permitting necessary for the continuous operation of the Vero Beach System and as required to implement the Compliance Services.

4.7 Taxes

Vero Beach shall pay any duty or tax, other than duties or taxes for which OUC is responsible for its own income, as may arise out of or relate to the OUC's performance of the Compliance Services.

4.8 Permits and Licenses

Vero Beach has or will secure and maintain for the term of this Agreement all permits and licenses (other than any licenses needed by OUC to operate its business organization), to allow OUC to perform Compliance Services under this Agreement. Vero Beach shall maintain such permits and licenses during the term of this Agreement and any extension hereto.

5 PAYMENTS BY VERO BEACH

5.1 Payments

Starting on January 1st 2010, Vero Beach shall pay OUC each month for the performance of Compliance Services under this agreement. OUC shall submit a monthly invoice to Vero Beach in a written payment request ("Payment Request") and shall identify the tasks performed, the scope of worked to which the tasks belong, the hours performed, and the associated labor classification Rate (according to the table below) times a multiplier covering overhead and profit.



Scope of Work	Labor Classification	Rate
3.1.1, 3.1.5, 3.1.7, 3.1.9, 3.1.10, 3.2,3.2.1	Project Planning Engineer	\$43
3.1.2, 3.1.3, 3.1.4 ,3.1.6, 3.1.8, 3.1.11	Planning Engineer	\$35
3.2.3,3.2.4	Sr. System Operator	\$42
3.2.2, 3.4	System Operator	\$35
3.3.1.1, 3.3.1.2	Compliance Coordinator	\$48
3.5	Meter Technician	\$32

5.2 Payment Procedure

OUC shall submit an invoice each month through a written Payment Request, beginning February 1st, 2010 and on the first calendar day of each calendar month thereafter. Each Payment Request shall be due and payable within 30 calendar days after receipt thereof. Each such Payment Request shall be in an amount equal to the costs of performing compliance services for

the previous month and be a combination of labor identified according to Section 5.1 and material as approved under Section 4.2.

5.3 Interest on Late Payments.

Any amounts not timely paid to OUC in accordance with this Article 5 shall accrue interest from the fifth calendar day following the calendar day on which such amounts become due and owing to the calendar day on which such amounts and the interest thereon are paid to OUC at the Interest Rate.

6 WARRANTIES AND REPRESENTATIONS

Each Party hereby represents and warrants to the other that:

It is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and is duly qualified to do business in all jurisdictions where such qualification is required.

It has or will have prior to the Effective Date full power and authority to enter this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary municipal action and do not and will not contravene its organizational documents or conflict with, result in a breach of, or entitle any party (with due notice or lapse of time or both) to terminate, accelerate or declare a default under, any agreement or instrument to which it is a party or by which it is bound. The execution, delivery and performance by it of this Agreement will not result in any violation by it of any law, rule or regulation applicable to it. It is not a party to, nor subject to or bound by, any judgment, injunction or decree of any court or other governmental entity which may restrict or interfere with the performance of this Agreement by it or may materially and adversely affect the business, property, financial condition, results of operations or prospects of such Party. This Agreement is its valid and binding obligation, enforceable against it in accordance with its terms, except as (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) the remedy of specific performance and injunctive relief may be subject to equitable defenses and to the discretion of the court before which any proceeding ~~therefor~~therefore may be brought.

Except for those approvals listed in Exhibit "A" hereto, no consent, waiver, order, approval, authorization or order of, or registration, qualification or filing with, any court or other governmental agency or authority or other person is required for the execution, delivery and performance by such Party of this Agreement and the consummation by such Party of the transactions contemplated hereby. No consent or waiver of any party to any contract to which such Party is a party or by which it is bound is required for the execution, delivery and performance by such Party of this Agreement that has not been or will by the Effective Date have been duly obtained.

There is no action, suit, grievance, arbitration or proceeding pending or, to the knowledge of such Party, threatened against or affecting such Party at law or in equity, before any federal,

state, municipal or other governmental court, department, commission, board, arbitrator, bureau, agency or instrumentality which prohibits or impairs its ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby. Such Party has not received written notice of and otherwise is not aware of any such pending or threatened investigation, inquiry or review by any governmental entity.

7 EVENTS OF DEFAULT

7.1 Events of Default by OUC

Any one or more of the following shall constitute an “Event of Default” hereunder with respect to OUC:

7.1.1 OUC shall fail to pay any amounts to be paid by OUC hereunder to Vero Beach and such failure shall continue for more than 10 calendar days beyond the due date.

7.1.2 A default shall occur in the performance of any other material covenant or condition to be performed by OUC hereunder (other than a default for failure to timely pay as set out above) and such default shall continue unremedied for a period of 30 calendar days after notice from Vero Beach specifying the nature of such default.

7.1.3 A custodian, receiver, liquidator or trustee of OUC or of all or substantially all of the property of either, is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than 60 calendar days; or OUC makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature; or OUC is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against OUC; or all or substantially all of the material property of either is sequestered by court order and the order remains in effect for more than 60 calendar days; or a petition is filed against OUC under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within 60 calendar days after filing.

7.1.4 OUC files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of OUC or all or substantially all of the property of either.

7.2 Events of Default by Vero Beach

Any one or more of the following shall constitute an “Event of Default” hereunder with respect to Vero Beach:

7.2.1 Vero Beach shall fail to pay any amounts to be paid to OUC and such failure shall continue for a period of more than 10 calendar days beyond the due date.

7.2.2 Default shall occur in the performance of any material covenant or condition to be performed by Vero Beach hereunder (other than a default for failure to timely pay) and such default shall continue unremedied for a period of 30 calendar days after notice from OUC specifying the nature of such default.

7.2.3 A custodian, receiver, liquidator or trustee of Vero Beach or of all or substantially all of either of their property is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than 60 calendar days; or Vero Beach makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they mature; or Vero Beach is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against Vero Beach; or all or substantially all of the material property of Vero Beach is sequestered by court order and the order remains in effect for more than 60 calendar days; or a petition is filed against Vero Beach under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within 60 calendar days after filing.

7.2.4 Vero Beach files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee or liquidator of Vero Beach or all or substantially all of its property.

7.2.5 Vero Beach operates the Vero Beach System in a manner which (i) is outside of that which would comply with Prudent Utility Practices or (ii) jeopardizes OUC's ability to carry out the duty as Compliance Services without violating Governmental Requirements or Laws and such default shall continue unremedied for a period of 30 calendar days after notice from OUC specifying the nature of such default.

8 DEFAULT REMEDIES

8.1 Events of Default

The Parties shall have the following remedies available to them with respect to the occurrence of an Event of Default with respect to the other Party hereunder:

8.1.1 Upon the occurrence of an Event of Default by either Party hereunder, the non-defaulting Party shall have the right to (i) collect all amounts then due to it from the defaulting Party hereunder, and (ii) terminate this Agreement at any time during the continuation of such Event of Default upon written notice to the defaulting Party. Notwithstanding any other provision of this Agreement, after the occurrence of an Event of Default and for so long as the Event of Default is continuing and has not been cured, the non-defaulting Party shall have the right, upon written notice to the defaulting Party, to suspend all performance under this Agreement until such Event of Default has been cured.

8.1.2 If Vero Beach terminates this Agreement as a result of the occurrence of an Event of Default by OUC, then Vero Beach shall thereafter have no further obligations hereunder and shall have all rights and remedies available to it under applicable law.

8.1.3 If OUC terminates this Agreement as a result of the occurrence of an Event of Default by Vero Beach, then OUC shall thereafter (a) have no further obligations hereunder and shall have all rights and remedies available to it hereunder and under applicable law, including the right to transfer back to Vero Beach Compliance Services duties for the Vero Beach System and recover damages.

8.12.3 NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER INDEMNITY PROVISIONS OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, COST OF CAPITAL; LOSS OF USE, LOSS OF GOODWILL, REPLACEMENT POWER OR CLAIMS OF CUSTOMERS.

8.2 Limitation of Liability for Compliance Services

Vero Beach acknowledges that OUC does not assume any liability associated with Excluded Liabilities nor does OUC warrant such Compliance Services but rather, warrants that it will carry out Compliance Services in a manner compliant with Prudent Utility Practices. If OUC fails to perform its duties, responsibilities, obligations or functions hereunder in accordance with Prudent Utility Practice or applicable Law, then, following receipt of written notice of any such failure from Vero Beach, OUC shall have thirty (30) calendar days to cure such failure, or if such failure cannot reasonably be cured within such thirty (30) calendar day period then such reasonable period necessary to cure such failure using due diligence; *provided, however*, that notwithstanding the foregoing cure period, Vero Beach shall have the right to take reasonable action necessary to protect against immediate harm to facilities or personnel or violations of Law or Government Regulations . If OUC fails to cure any failure arising under the immediately preceding sentence within the applicable cure period, then Vero Beach shall have the right to correct the defective performance. OUC's maximum liability with respect to any act or omission shall be Twenty Five Thousand (\$25,000.00) Dollars, whether a claim is brought under contract, tort or any other theory of recovery. If Vero Beach can demonstrate such act or omission by OUC is the result of gross negligence or willful misconduct, OUC's limits of liability shall be One Million (\$1,000,000.00) Dollars.

9 TERM AND TERMINATION

The "Term" of this Agreement shall be deemed to be the period beginning on the Turnover Date and continuing unless sooner terminated in accordance with the provisions of this Agreement, for an initial period of one (1) year.

In the event that the Purchase and Sale Agreement terminates, either Party may terminate this Agreement upon ninety (90) Calendar Days' prior written notice.

Either Party may terminate under the terms of Section 8.1.1 and 13.10.

In the event of a termination by either Party under this Article 9, then OUC shall turn over to Vero Beach the compliance function.

10 INDEMNITIES

10.1 Indemnification by OUC

To the extent permitted by Florida Law and subject to the limits in Section 8.2, OUC shall indemnify, defend and hold harmless Vero Beach and its respective officers, directors, agents, representatives and employees from and against any and all loss, costs, expense, claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all claims relating to or arising out of:

1. Any willful misconduct or illegal acts of OUC
2. Any damages awarded against Vero Beach in a claim by a third party to the extent arising from the negligent acts or omissions of OUC or any of its agents or employees in exercising its rights or performing its obligations hereunder after the Turnover Date

10.2 Indemnification by Vero Beach

To the extent permitted by Florida law, Vero Beach shall indemnify, defend and hold harmless OUC, its officers, directors, agents, employees and affiliates from and against any and all loss, costs, expense, claims, demands, liabilities (including reasonable attorneys' fees), judgments, fines, settlements and other amounts arising from any and all claims relating to or arising out of any:

1. Excluded Liabilities
2. Willful misconduct or illegal acts of Vero Beach
3. Damages awarded against OUC in a claim by a third party to the extent arising from the negligent acts or omissions of Vero Beach or any of its agents or employees in exercising its rights or performing its obligations hereunder after the Turnover Date.

11 DISPUTE RESOLUTION

11.1 Resolution by Officers of the Parties

In the event of any dispute between the Parties as to a matter referred to herein or as to the interpretation of any part of this Agreement, including this Section 11.1 or as to the determination of any rights or obligations or entitlements arising from or related to this Agreement or as to the calculation of any amounts payable under this Agreement, the Parties shall refer the matter to their respective duly authorized representatives, for resolution. Should such representatives of the respective Parties fail to resolve the dispute within twenty (20) calendar days from such referral, the Parties agree that any such dispute shall be first referred to non-binding mediation. Should mediation be unsuccessful within the times specified in Section 11.2, the Parties may pursue any legal or equitable remedies available under Florida law.

11.2 Mediation Procedures

A Party submitting a dispute to non-binding mediation (the “Requesting Party”) shall do so by delivering to the other Party a notice demanding or requesting, as the case may be, mediation of the dispute and naming three acceptable mediators. Within thirty (30) calendar days after the receipt of the notice from the Requesting Party, the other Party shall, in writing, serve upon the Requesting Party a notice of acceptance of one of the three mediators provided or offer three alternate mediators for consideration. Within twenty (20) calendar days, the Parties shall mutually agree and appoint a mediator from the lists provided. To the extent practicable, the mediator shall have special competence and experience with respect to the subject matter under consideration. No mediator appointed shall have the power to amend or add to this Agreement. Within twenty (20) calendar days after the mediator is named, a time and date for the mediation shall be scheduled and documented in writing. The mediator thereupon shall proceed promptly to hear and determine the controversy. The mediator shall fix a time within which the matter shall be submitted to him or her by both of the Parties. If mediation is successful, any settlement achieved through mediation shall be confidential and made in writing and in duplicate, and one copy shall be delivered to each of the Parties. Each Party shall pay the costs of its own counsel and share equally the cost of the mediator services. Each Party shall accept and abide by any mediation decision approved by the Parties. Judgment upon such award may be entered by the prevailing Party in any court having jurisdiction thereof, or application may be made by such Party to any such court for judicial acceptance of such award and an order of enforcement. Either Party shall have the right to seek a temporary or preliminary injunction from a court of competent jurisdiction prior to the mediation.

11.3 Binding Award

Once accepted by the Parties, the decision of the mediator and any award made hereunder shall be binding upon each Party and the successors and assigns and any trustee or receiver of each Party.

11.4 Legal Remedies

If mediation is unsuccessful, either Party may pursue any legal rights and remedies made available under Florida Law.

12 FORCE MAJEURE

12.1 Force Majeure Standard

OUC shall be excused from performing its obligations under this Agreement and shall not be liable in damages or otherwise, if and only to the extent that it is unable to so perform or is prevented from performing by an event of Force Majeure.

12.2 Force Majeure Definition

An event of “Force Majeure” means an event or circumstance that prevents or unduly frustrates the performance by OUC of its obligations under this Agreement which is not within the reasonable control of, or the result of the negligence of, OUC and which by the exercise of due

diligence OUC is unable to overcome or avoid . Force Majeure includes, without limitation, hurricanes, tornadoes, flood, lightning, drought, earthquake, fire, explosion, terrorist attack, civil disturbance, strikes, acts of God, acts of the public enemy, orders, directives (including the state security coordinator), restraints and requirements of the government and governmental agencies, either federal, state or local, civil or military, or any other cause beyond a Party's control.

12.3 Obligation to Diligently Cure Force Majeure

If OUC shall rely on the occurrence of an event of Force Majeure as a basis for being excused from performance of its obligations under this Agreement, then OUC shall:

1. Provide written notice to Vero Beach promptly but in no event later than five calendar days after the occurrence of the event or condition giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder
2. Exercise all reasonable efforts to continue to perform its obligations hereunder
3. Expeditiously take reasonable action to correct or cure the event or condition excusing performance, provided that settlement of strikes or other labor disputes shall be completely within the sole discretion of OUC
4. Exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action shall not adversely affect its own interests

13 MISCELLANEOUS

13.1 Assignment, Successors, and Assigns

This Agreement shall inure to the benefit of and bind the respective successors and permitted assigns of the Parties, including any successor to any Party by consolidation, merger, or acquisition of all or substantially all of the assets of such Party; provided, however, that no assignment by any Party (or any successor or assignee thereof) of its rights and obligations hereunder shall be made or become effective without the prior written consent of each other Party in each case obtained.

13.2 Notices

All notices, requests and other communications hereunder (herein collectively a "notice" or "notices") shall be deemed to have been duly delivered, given or made to or upon any Party if in writing and delivered by hand against receipt, or by certified or registered mail, postage pre-paid, return receipt requested, or to a courier who guarantees next business calendar day delivery or sent by telecopy (with confirmation by return telecopy) to such Party at its address set forth below or to such other address as such Party may at any time, or from time to time, direct by notice given in accordance with this Section 13.2.

To OUC:

Vice President, Energy Delivery Business Unit
6003 Pershing Avenue
Orlando, Florida 32822
Tel:407-423-9100
Fax: 407-384-4148
Email: cbullock@ouc.com

Copy to:

Office of General Counsel
Orlando Utilities Commission
100 W. Anderson Street
Orlando, Florida 32802
Tel: 407-423-9100
Fax: 407-236-9639
Email: cbrowder@ouc.com

To Vero Beach:

Director of Electric Utilities, City of Vero Beach
P.O. Box 1389
Vero Beach Florida, 32961-1389
Tel: 772-978-4710
Fax: 772-978-4716
Email: rmccamish@covb.org

The date of delivery of any such notice, request or other communication shall be the earlier of (i) the date of actual receipt or (ii) three (3) business calendar days after such notice, request or other communication is sent by certified or registered mail, (iii) if sent by courier who guarantees next business calendar day delivery, the business calendar day next following the calendar day such notice, request or other communication is actually delivered to the courier or (iv) the calendar day actually telecopied (with confirmation by return telecopy).

13.3 Governing Law

The rights and obligations of the Parties shall be construed and interpreted in accordance with the substantive law of the State of Florida without giving effect to its principles for choice of law.

13.4 No Partnership

Nothing contained in this Agreement shall be construed to create a partnership, joint venture or other relationship that may invoke fiduciary obligations between the Parties.

13.5 Fees and Expenses

Except as otherwise provided herein, Vero Beach and OUC shall pay all fees and expenses incurred by, or on behalf of, such Party in connection with, or in anticipation of, this Agreement and the consummation of the transactions contemplated hereby.

13.6 Captions

The captions to sections throughout this Agreement are intended solely to facilitate reading and reference to all sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

13.7 Entire Agreement and Amendments

This Agreement together with all of the exhibits, appendices and any attachments referred to herein sets forth the entire agreement of the Parties with respect to the subject matter herein and takes precedence over all prior understandings. This Agreement may not be amended except by an agreement in writing signed by the Parties.

13.8 Severability

The invalidity or unenforceability of any provisions of this Agreement shall not affect the other provisions hereof. If any provision of this Agreement is held to be invalid, such provision shall not be severed from this Agreement; instead, the scope of the rights and duties created thereby shall be reduced by the smallest extent necessary to conform such provision to the applicable law, preserving to the greatest extent the intent of the Parties to create such rights and duties as set out herein. If necessary to preserve the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision for the one deemed invalid or unenforceable that is legally binding and enforceable.

13.9 Further Assurances

In connection with this Agreement and the transactions contemplated hereby, each Party shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and such transactions and the intention of the Parties.

13.10 Laws and Regulations, Changes in Law

This Agreement and the rights, obligations, and performances of the Parties under this Agreement are subject to all applicable state and federal laws, and to all duly promulgated orders and other duly authorized actions of governmental authorities having jurisdiction. Each Party hereto shall be responsible for taking all necessary actions to satisfy any Governmental Requirements that may be imposed by any federal, state, or municipal statute, rule, regulation, or ordinance that may be in effect from time to time relative to the performance of such Party hereunder.

If and to the extent that, after the Effective Date of this Agreement, any Laws or Governmental Requirements which govern any transaction or duty of a Party contemplated herein shall change so as to (a) make this Agreement unlawful or (b) increase the cost to OUC of providing Compliance Services to Vero Beach, then OUC and Vero Beach hereby agree to use reasonable efforts to agree on such modifications to this Agreement as shall be reasonably necessary for the Agreement to accommodate any such legal or regulatory changes. If such efforts fail, either Party may terminate by 90 calendar days prior written notice.

13.11 Counterparts

This Agreement may be executed simultaneously in two or more counterparts, any of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same Agreement.

13.12 Independent Relationship

Nothing in this Agreement unless specifically outlined in this agreement shall be construed or interpreted to make Vero Beach or its employees or agents, the agent, representative or employees of OUC.

13.13 No Third-Party Beneficiaries

This Agreement shall not confer any rights or remedies upon any third party not a Party hereto.

13.14 Waivers

The failure of a Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of a Party thereafter to enforce each and every such provision. A waiver under this Agreement must be in writing and state that it is a waiver. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

13.15 Duty to Mitigate

Each Party agrees that it has a duty to mitigate damages and covenants that it will use



NOTE



commercially reasonable efforts to minimize any damages it may incur as a result of any other Party's performance or non-performance of this Agreement.

ATTEST:

THE CITY OF VERO BEACH

By: _____

Name: _____

Title: _____

NOTE



APPROVED AS TO FORM:

Attorney for VERO BEACH

ATTEST:

ORLANDO UTILITIES COMMISSION

By: _____

Name: _____

Title: _____

Name: Kenneth P. Ksionek

Title: General Manager & CEO

~~APPROVED AS TO FORM:~~

APPROVED AS TO FORM:

Attorney for OUC

EXHIBIT "A"

**OUTSTANDING GOVERNMENTAL CONSENTS,
APPROVALS OR AUTHORIZATIONS**

OUC:

NONE

VERO BEACH CONSENTS:

NONE

COUNCIL AGENDA REPORT
MEETING OF FEBRUARY 2, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: January 26, 2010

SUBJECT: OIL PURCHASE AND GSAP 2 REFUND

Please find attached a memo from John Lee, dated January 25, 2010, which provides information on the above-referenced subject, along with a copy of the related contract.

It is the recommendation of the City Manager's Office that Council approve the Fuel Oil Inventory Sales Contract between the Florida Municipal Power Agency (FMPA) – All Requirements Power Supply Project and the City of Vero Beach and apply the GSAP 2 refund to the Fuel Oil Purchase Invoice, a copy of which is attached.


James M. Gabbard

:jav
Attachments

xc: John Lee

N:\AGENDA\ELECTRICUTILITY\OUC COMPLIANCE SERVICES AGREEMENT.DOC

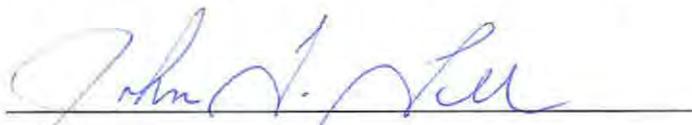
City of Vero Beach
Finance/Customer Service - Memorandum

To: James Gabbard, City Manager
From: John T. Lee, Acting Electric Director
Subject: Agenda Item – Oil Purchase and GSAP 2 Refund
Date: January 25, 2010

The attached Fuel Oil Inventory Sales Contract is between the Florida Municipal Power Agency and the City of Vero Beach. When Vero Beach joined the All Requirements Project the City sold the existing oil inventory to the FMPA. Now that the City has terminated the All Requirements contract, the City must purchase the current oil inventory from the FMPA. The staff of the FMPA and the staff at the Vero Beach Power Plant have confirmed the quantity of the oil and agreed upon the pricing. The total price for the oil inventory is \$1,244,910.92.

In addition to the Fuel Oil Contract, the attached letter from the FMPA provides the details for a GSAP 2 refund that is due the City of Vero Beach. The amount of the refund is \$933,953.36 plus interest in the amount of \$451.20, for a total refund of \$934,404.56. The FMPA has suggested that the refund amount be deducted from the Fuel Oil purchase and that the City of Vero Beach authorize payment to the FMPA in the amount of \$310,506.36.

I recommend approval of the Fuel Oil Purchase Contract and approval to apply the GSAP 2 refund to the Fuel Oil Purchase Invoice.



John T. Lee, Acting Electric Director



Florida Municipal Power Agency

RECEIVED

JAN 22 2010

CITY ATTORNEY'S OFFICE

Nicholas P. Guarriello
General Manager and CEO

January 20, 2010

John T. Lee
Acting Utility Director
City of Vero Beach
Post Office Box 1389
Vero Beach, Florida 32961-1389

Dear John:

Enclosed is a special invoice which nets the fuel oil purchase amount due and Vero Beach's share of the GSAP 2 termination payments, plus associated interest earnings.

Pursuant to the fuel oil purchase contract between FMPA and the City of Vero Beach, dated March 4, 1998, FMPA purchased from Vero Beach all of its then existing fuel oil inventory at the Vero Beach Municipal Plant. All additional purchases of fuel oil at the Vero Beach plant site, pursuant to the contract, were also to be made by FMPA. Pursuant to that contract, FMPA purchased the existing inventory of 55,879.5 barrels of fuel oil for approximately \$1.2 million paid to Vero Beach, and continued for the next 11 plus years to purchase fuel oil as needed for the site. The contract terminated on January 1, 2010, when Vero Beach's contract rate of delivery became effective.

Given the termination of the contract, and the effectiveness of Vero Beach purchasing power from OUC, it is necessary to address the fuel oil at the Vero Beach Municipal Plant which was bought and paid for and is owned by FMPA. The staffs of FMPA and Vero Beach have agreed to the quantities of the fuel oil inventory, verified by an independent consultant, and agreed on a price for that fuel oil that is equal to FMPA's book cost of the fuel oil which amounts to \$1,244,910.92. On December 23, 2009, FMPA sent to Vero Beach a new contract for Vero Beach to purchase the FMPA fuel oil in inventory at the Municipal Plant at the agreed cost and in the agreed quantities (see attached contract).

We understand that during the extreme cold weather earlier this month some of the fuel oil inventory was burned to fuel the Vero Beach plant. Given that situation, it is important that we not delay in addressing the fuel oil inventory. Pursuant to our recent conversations, we understand that the new contract, along with the enclosed corresponding FMPA invoice, will be placed on the Vero Beach City Council's agenda at its first meeting in February. FMPA does not object to the timing of that approval of the enclosed invoice and the new contract, but we would request that the executed contract be returned to us and the payment be processed as soon after the City Council meeting as possible.

John T. Lee
Page 2

Also included on the separate invoice is a credit for Vero Beach's share of the GSAP 2 (FGU's Gas Supply Acquisition Project) contract termination disbursement from FGU. As you may know, FGU entered into a natural gas prepayment transaction with UBS in 2006. This transaction's purpose was to acquire long-term natural gas at a discount-to-market price. Due to contract performance concerns during the financial meltdown in 2008, FGU began discussions with UBS on contract termination in order to protect GSAP 2 participant's financial interests in the deal. The result was a termination settlement, of which the ARP was a beneficiary (because of its participation in GSAP 2). Vero Beach's share of the total amount received by the ARP is \$933,953.36. Interest of \$451.20 has been earned on this amount and is also shown as a credit on the attached invoice. The net amount owed FMPA by Vero Beach is \$310,506.36

Sincerely,



Nicholas P. Guarriello
General Manager & CEO

NPG/su

FUEL OIL INVENTORY SALES CONTRACT

This fuel oil inventory sales contract is dated as of December 31, 2009, and is between FLORIDA MUNICIPAL POWER AGENCY (ALL-REQUIREMENTS POWER SUPPLY PROJECT), a governmental legal entity created and existing pursuant to Florida law (“FMPA”), and the CITY OF VERO BEACH, FLORIDA, a Florida municipality (the “City”).

FMPA and the City are parties to the Agreement for Purchase and Storage of Fuel Oil Inventory, dated March 4, 1998 (the “**Underlying Agreement**”) pursuant to which, among other things, FMPA purchased from the City the fuel oil inventory described therein and the City agreed to provide for the storage of that and other quantities of FMPA’s fuel oil.

In 1996 the City joined the All-Requirements Power Supply Project. Pursuant to the City’s notice dated December 9, 2004, the City has irrevocably elected to limit its receipt of capacity and energy as a participant in the All-Requirements Power Supply Project to a contract rate of delivery (“**CROD**”), effective January 1, 2010. With the effectiveness of CROD, the Capacity and Energy Sales Contract between FMPA and the City, dated October 1, 1996, as amended, (“**C&E Contract**”) terminates and the City’s electric generation resources are released from selling capacity and energy to FMPA.

Consistent with the City’s CROD election and termination of the C&E Contract, the parties desire to enter into this contract for FMPA to sell and the City to buy FMPA’s existing fuel oil inventory located at the City’s electric generating plant site to the City at FMPA’s book value.

The parties therefore agree as follows:

1. **Termination of Underlying Agreement.** Effective January 1, 2010, (the “**Termination Date**”) the parties hereby agree that the Underlying Agreement is terminated. On and after the Termination Date, neither party shall have any further obligation or liability pursuant to the Underlying Agreement.
2. **Fuel Oil Sale.** (a) As of the Termination Date, FMPA hereby agrees to sell the fuel oil inventory that it owns and is currently located at the City’s generation plant site, as described in Schedule A, which sets forth the mutually agreed quantities and prices for all of FMPA’s fuel oil inventory subject to this contract. As of the Termination Date, the City hereby agrees to purchase FMPA’s fuel oil inventory at the price that is shown in Schedule A, which is FMPA’s book value for the fuel oil inventory that is the subject of this contract.
 - (b) FMPA’s sale to the City and the City’s purchase from FMPA of FMPA’s fuel oil inventory located at the City’s electric generating plant site is made on an “AS IS WHERE IS” condition. The parties hereby expressly waive and disclaim all

warranties, whether statutory or otherwise, that may apply to the transaction memorialized by this contract.

3. **Payment Terms.** As set forth in Schedule A, the City shall pay to FMPA \$1,244,910.92, as invoiced by FMPA. Upon full payment by the City to FMPA of the amount set forth in this section 3, the parties shall deem the transaction memorialized in this contract to be closed, and neither party shall have any further liability or obligation to the other pursuant to this contract.

The parties are signing this agreement as of the date as indicated below.

FLORIDA MUNICIPAL POWER AGENCY
(ALL-REQUIREMENTS POWER SUPPLY
PROJECT)

By: Nicholas P. Guarriello
Name: Nick Guarriello
Title: General Manager and CEO
Date: January 11, 2010

CITY OF VERO BEACH, FLORIDA

By: _____
Name: John Lee
Title: Acting Utilities Director
Date: _____

CITY OF VERO BEACH	APPROVED	DATE
City Manager		1/26/10
City Attorney		1/23/10
City Clerk		
Utilities		
Public Works		
Finance		
Human Resources		
Planning		

SCHEDULE A

FMPA Fuel Oil Inventory

Tank 1

No. 2 fuel oil 8,372 barrels @ \$40.708 average unit price

Tank 2

No. 6 fuel oil 20,068 barrels @ \$45.052 average unit price

TOTAL

\$1,244,910.92



Florida Municipal Power Agency

Date: January 20, 2010

Bill To:

Vero Beach - ALLRQ
Vero Beach Municipal Power Plt
P. O. Box 1389
Vero Beach, FL 32961

INVOICE

INVOICE #	Due Date
018424	January 29, 2010

Description	Total Due
Fuel Oil/GSAP Reimburse	
VER04 - GSAP Reimbursement	(\$933,953.36)
VER04 - Interest Earnings on GSAP Through 1-19-2010	(\$451.20)
VER04 - Purchased Fuel Oil	\$1,244,910.92

Balance Due **\$310,506.36**

Remit Payment to:
Florida Municipal Power Agency | Accounts Receivable
8553 Commodity Circle | Orlando, FL 32819-9002
T. (407) 355-7767 | Toll Free (888) 774-7606
F. (407) 355-5795 | www.fmpa.com

COUNCIL AGENDA REPORT
MEETING OF FEBURARY 2, 2010

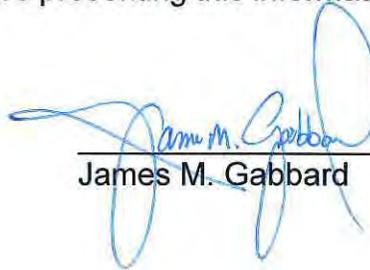
TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: January 27, 2010

SUBJECT: DECEMBER 2009 FINANCIAL UPDATE TO BE PRESENTED BY FINANCE DIRECTOR STEPHEN MAILLET

Attached is a memo from Stephen Maillet, dated January 19, 2010, regarding the above-referenced subject. Mr. Maillet will be presenting this information at the February 5, 2010 City Council Meeting.



James M. Gabbard

:jav
Attachments

xc: Stephen J. Maillet

N:\AGENDA\FINANCE\DEC 2009 FINANCIAL UPDATE.DOC

Memorandum

To: J. Gabbard, City Manager
From: S. Maillet, Finance Director 
Date: January 19, 2010
Subject: FY 10 Monthly Budget Update

Attached is the December 2009 budget summary.

I have included FY 09 as a comparison, and the available cash by fund.

After you review these with the councilmembers, please let me know if there are any changes.

City of Vero Beach
 General Fund
 December Update
 12/31/09

	FY 10		FY 09	
	Budget	Actual	Budget	Actual
Revenue	21,323,263	7,395,521	22,267,428	7,719,086
Expenditures	21,373,422	6,182,537	23,147,538	6,486,765
Difference	<u>(50,159)</u>	<u>1,212,984</u>	<u>(880,110)</u>	<u>1,232,322</u>
 Available cash:	 7,800,000			

City of Vero Beach
Electric
December Update
12/31/09

	FY 10		FY 09	
	Budget	Actual	Budget	Actual
Revenue	93,367,237	28,580,816	110,042,700	24,841,999
Proposed Borrowing	6,550,000	0	5,000,000	0
Expenditures	98,138,575	27,190,834	114,740,495	29,007,900
Difference	<u>1,778,662</u>	<u>1,389,982</u>	<u>302,205</u>	<u>(4,165,902)</u>
 Available cash:	 7,800,000			

City of Vero Beach
Water and Sewer
December Update
12/31/09

	FY 10		FY 09	
	Budget	Actual	Budget	Actual
Revenue	17,798,787	4,306,586	17,798,787	3,695,459
Proposed Borrowing	3,500,000	0	3,500,000	0
Expenditures	21,249,366	5,923,784	21,249,366	4,477,072
Difference	<u>49,421</u>	<u>(1,617,198)</u>	<u>49,421</u>	<u>(781,612)</u>
Available cash:	0			

City of Vero Beach
 Airport
 December Update
 12/31/09

	FY 10		FY 09	
	Budget	Actual	Budget	Actual
Revenue	2,598,650	644,754	2,617,295	678,196
Grants	1,200,000	70,801	362,000	126,356
Expenditures	3,774,851	685,982	2,596,159	787,631
Difference	<u>23,799</u>	<u>29,573</u>	<u>383,136</u>	<u>16,922</u>
Available cash:	2,150,000			

City of Vero Beach
Marina
December Update
12/31/09

	FY 10		FY 09	
	Budget	Actual	Budget	Actual
Revenue	1,812,830	421,663	2,394,135	410,489
Grants	330,000	207,935	0	0
Expenditures	1,748,403	630,204	2,262,261	486,476
Difference	<u>394,427</u>	<u>(606)</u>	<u>131,874</u>	<u>(75,987)</u>
Available cash:	124,000			

City of Vero Beach
 FY 10
 Solid Waste
 December Update
 12/31/09

	FY 10 Budget	Actual		
Revenue	2,685,750	613,906	2,541,250 0	597,344
Expenditures	2,416,938	621,626	2,758,725	623,098
Difference	<u>268,812</u>	<u>(7,720)</u>	<u>(217,475)</u>	<u>(25,754)</u>
Available cash:	0			

**CITY OF VERO BEACH, FLORIDA
FEBRUARY 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 Dawn Reichart of Christ by the Sea.

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. White made a motion to adopt the agenda as presented. Mayor Sawnick seconded the motion and it passed unanimously.

B. Proclamations

None

C. Public Comment

Dr. Stephen Faherty read a prepared statement (please see attached).

Mr. Glenn Heran stated that it has been said by a few City Councilmembers that under the OUC contract that the rates will be less than Florida Power & Light (FP&L). He asked who told them that and where did they get that information. He noted that on November 17, 2009, Mr. White expressed concern that there would only be a \$46 reduction in the utility bill and he thought that it would be around a \$112 reduction. Then on December 1, 2009, Mr. White showed again some concern that rates were not going to be lower. At the tea party candidate forum held for City candidates former Councilmember Fromang stated that the rates were comparable. He didn't know what comparable meant when she said that. He wanted to know why three Councilmembers

think that the City of Vero Beach's rates are going to be lower than FP&L's. He wanted to know who told them that. He asked was it Mr. Sloan, Mrs. Hersey, Mr. Gabbard or Mr. Vitunac.

Mr. Charlie Wilson wondered if their City Attorney normally makes changes to all of their contracts or just to the OUC contract. He also wondered if the City should worry about their approved contracts being changed. He said before them is the OUC contract which could be in effect for the next twenty years. He said that none of the Council are lawyers. The City has paid millions of dollars for people to look at the legalities of the contract and now they are being asked whether something is substantial or not. He said they are not qualified to determine whether something is substantial or not. The testimony that they will be hearing today is from interested parties. They are people who want to protect their jobs, contracts, reputation or their seats on the City Council. He does not see how they can go forward without some sort of outside Counsel or a ruling from their Auditors. He said the facts are that there was no contract attached to the vote that took place at the City Council meeting (April 15, 2008), the provisions of the contract were hidden for two years and there was only three months from the time that the contract was revealed and the time that it took place and proper notice was not given. He said that there are requirements in State law that if you are going to indebt the citizens that you represent, you have to have the information in a timely matter. He suggested that they may want to have some sort of outside Counsel look at this that is not on the payroll. At their last City Council meeting the City Attorney asked them to retroactively approve the changes. He was glad that they did not do that. He said that four months ago the three Councilmembers who are members of the Indian River Neighborhood Association (Mr. Abell, Mr. White and Mr. Fish) would have all approved it. It is clear that the Council and staff will not subordinate themselves to the will of the voters and as a result he has researched and found Florida Statue 166, which allows for a referendum. He said that if this Council cannot make the proper decisions then the decision will have to be taken away. He said there are two ways to do that. He said either they can vote to put a referendum item on the ballot in November (decide about the Power Plant, decide about the OUC Contract, and decide about what they are going to do) and if they don't then it takes a petition of 1,060 signatures to put the referendum on the ballot. He said this afternoon, depending on what happens at this meeting this morning, he is going to the Supervisor of Elections office, he has an organization called Operation Clean Sweep, and they will endeavor to take the signatures of 1,060 voters and place a referendum item on the ballot and let the people vote on whether or not this City is competitive in the election business.

Mr. David Gregg came to today's meeting as an interested party. He does not live in the City at this time. He lives in the Moorings. He reported that in 1972 the City Council approved a contract with FP&L for the sale of the electric power system. He is now working with four individuals who have an alternative plan that they would like Council to consider. It does not involve a paid consultant or paid attorney. He requested permission to be able to make a presentation to Council in two weeks. He asked Council to wait in making a decision for two weeks and the group he is working with will present to them a detailed proposal that he thinks is in the best interest of the public.

Mr. Heady requested permission to address the last speaker. He asked the City Clerk to put this request on the next Council agenda under his matters.

Mr. Robert Walsh thanked City Council for returning to democracy and ending their three minute time limit speaking rule. He said that citizens have a right to complain to their government as a lot of the citizens have done concerning their electric bills.

Mr. J. Rock Tonkel made a call yesterday to one of the City Councilmembers without hearing any of the presentation this morning. He suggested setting aside any ratification of the contract today. After hearing David Gregg's comments they should hold this discussion and defer action on the ratification of the contract.

Mr. Randy Pinch expressed that there are some sitting Councilmembers who want to keep the Power Plant for some reason. He has not heard why they want to keep the Power Plant. He keeps hearing what Tom White has said in the past, which is be careful when it comes to selling the Power Plant. You might get what you wished for. He wanted to hear from those people who are adamant about keeping the Power Plant to explain the pros and cons for keeping the Power Plant.

Mr. Heady mentioned that since Mayor Sawnick was selected as their Mayor he has always allowed the Council to make comments after someone has spoke under Public Comments. He feels that this is appropriate and part of their job. He said that if this has changed he wanted to know why and who the Mayor has talked to about changing these procedures. He said that he is not going to sit quietly while the Mayor silences any Councilmember.

Mr. White wanted to make it clear that he was not a member of the IRNA. He serves all of Vero Beach and not just one individual group. He brought up the OUC contract and said that there was some confidentiality to the OUC contract because of the other two bidders. He referred to a couple of speakers this morning and wondered when they received their electrical engineering degree. He expressed that the City Council depends on the expertise of the people who have the knowledge to advise them (referring to staff, Mrs. Hersey and Mr. Sloan). He feels that there has been a lot of misinformation and he hoped today that a lot of those questions will be answered.

Mr. Abell expressed that this process has been going on for about four years. He thought that there was a lot of nitpicking taking place in referring to the changes made in the contract.

D. Adoption of Consent Agenda

- 1. Regular City Council Minutes – January 19, 2010**
- 2. Special Call City Council Minutes – January 14, 2010**
- 3. Florida Boating Improvement Program Grant Agreement**
- 4. Mayor Sawnick attending APPA Legislative Rally**

Mr. White made a motion to adopt the consent agenda. Mr. Abell seconded the motion and it passed unanimously.

3. PUBLIC HEARINGS

- A) An Ordinance of the City of Vero Beach, Florida, amending Chapter 58 “Personnel and Retirement,” Article II, Division 4 of the Code of Ordinances of the City of Vero Beach to provide for Compliance with Chapter 2009-97, Laws of Florida; providing for Repeal of all Ordinances in conflict herewith; providing for severability; providing for codification and providing an effective date.**

Mayor Sawnick read the Ordinance by title only. He opened and closed the public hearing at 10:03 a.m., with no one wishing to be heard.

Mr. White made a motion to approve the Ordinance. 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.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

None

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

None

6. CITY CLERK’S MATTERS

None

7. CITY MANAGER’S MATTERS

- A) Request from Historic Preservation Commission for the City Staff to Prepare a Property Tax Exemption Ordinance for Historic Designated Properties**

Mr. Tim McGarry, Planning and Development Director, reported that the City Council enacted an Ordinance governing historic preservation in Chapter 76 of the Code. That Chapter provides that properties designated as historic under the City’s Ordinance are eligible for tax exemption for the assessed value of all improvements, which would result in restoration, renovation, or rehabilitation of the property if an Ordinance establishing such an exemption is adopted. This will allow an exemption from property taxes up to ten years. There are also provisions that could apply to non-for-profit organizations. He said that deed restrictions are placed on the property and the Council would have final

say. He needed Council's approval on this because it involves tax dollars.

Mayor Sawnick asked Mr. McGarry to explain why this was needed and will it help preserve buildings in the City.

Mr. McGarry reported that the City adopted a Historic Preservation Ordinance back in 2008 and at that time recognized that there were not a lot of incentives for property owners to have their homes become designated historic. So the Historic Preservation Commission believes that this will get property owners to want to reinvest in their properties and it will also be good for neighborhood revitalization.

Mr. White brought up County taxes and asked if the County would be helping.

Mr. McGarry explained that this was just for City taxes. He said that the County would have to adopt a similar Ordinance.

Mr. White recommended that the Mayor send a letter to the County asking them if they would go along with the City Ordinance.

Mr. Heady commented that a tax exemption is one tax transfer to another. If they exempt one property then they don't eliminate some need, or cost, or staff, but what they do is transfer the tax from a piece of property to the other homeowners in the community. He would object to that. However, he would be in favor of an exemption for ten years for any improvements made to the property.

Mr. McGarry explained that is what this Ordinance will do. He said this tax exemption would only be for improvements made to the property. He said the only case where this might not apply is if a not-for-profit organization did at least fifty percent improvements on the property they could get up to a hundred percent of the ten years.

Mr. Heady said that is fine as long as it is only for the improvements and it doesn't change the tax base or become a tax burden to someone else.

Mr. Abell felt that there should be something in the Ordinance that covers what happens if in the ten years the property is sold. They need to be able to reclaim the exempted taxes.

Mr. McGarry stated that a provision will be in the Ordinance covering that. He said basically it runs with the property.

Mayor Sawnick commented that one thing people say about Vero Beach is that they don't want to lose their historic buildings or historic "feel."

Mr. Heady thought that he was hearing two different things. He is hearing one request by a Councilmember that there be some rebate of taxes that have been sold within a period of time and then he is hearing that the tax abatement runs with the property. He felt it

was important that this credit runs with the property because that would allow someone to come in and do some renovations and if they sold the property that the tax credit would still run with the property.

Mr. McGarry explained that the Florida Statutes covers what must be in the Ordinance. He said that they could also tweak the Ordinance to have those things in it that the City would find desirable.

Mayor Sawnick asked Mr. McGarry when the Ordinance will be coming in front of them.

Mr. McGarry said that it would be within the next three months. He needs to get approval from both the Historic Preservation Commission and the Planning and Zoning Board and then he will bring it before Council.

Mr. Daige made a motion to approve the request by the Historic Preservation Commission for City staff to prepare a Property Tax Exemption Ordinance for historic designated properties. 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.

Mr. White made a motion to have the County consider a tax abatement on historical properties. Mr. Heady seconded the motion.

Mayor Sawnick clarified the motion, which was to send a letter to the County and to the School Board. Mr. White did not think that the Schools could help. The letter would just need to go to the County.

Mr. McGarry suggested that the letter be sent out after they have their Ordinance drafted.

Mr. Heady explained that this letter would be just for consideration and should be sent to the County and also the School Board. He thought that the School Board could go along with it as long as they didn't reduce the tax base. The exemption is only being given for improvements. He encouraged Council to send these letters out now and let them (County and School Board) know what they are considering and they may be able to give some suggestions on improving the Ordinance as it is being drafted.

The motion passed unanimously.

B) Orlando Utilities Commission and the City of Vero Beach Compliance Services Agreement

Mr. John Lee, Acting Electric Director, explained that when the City was a member of the FMPA all requirements project there were certain rules that they had to follow and FMPA handled those duties for them and then billed them. However, now since they have exited from the FMPA contract they need someone to perform these services. What is before them is a one year contract for OUC to do this. The contract is based on time and materials because standards change daily.

Mayor Sawnick asked how is this different from their previous agreement with FMPA.

Mr. Randall McCamish, Transmission and Distribution Director, explained that FMPA did not bill these services separately. The fees came out of the fees that they paid for electricity.

Mr. Heady wanted to make sure that they just don't end up with a large bill and that they are aware of what they are being billed for.

Mr. McCamish explained that they would be receiving an itemized bill and would be working with OUC staff on a day to day basis.

Mr. Lee added that OUC will provide them with an itemized bill every month. They will go through the bill and will be aware of what activities are being done by OUC staff. This way they will be able to determine if there are some things that City staff can do. He said at this point they need to have the expertise of OUC to handle these duties.

Mr. Abell pointed out that there is a rate schedule on page 12 of their backup material that is pretty clear.

Mr. Daige requested that staff come back once a month and give Council a report on how this is going. He would like to see a copy of the bill and time sheets that will be used every month. He made this in form of a motion.

Mr. White cautioned them on encroaching on the day to day operations of the City. This is Mr. Lee's responsibility and if he feels that Council needs to know something then he can bring it before them. He agreed with receiving a copy of the invoice every month. He didn't agree with adding another layer of government and having time sheets done.

Mr. Daige felt that as they were beginning with this new process that they needed to know what was going on.

Mr. Heady did not want to burden their employees. He said that when Council receives the monthly report and they have questions then they can bring them up at a Council meeting.

Mr. Lee stated that he will bring the first bill to Council at one of their Council meetings with a detailed summary and then after that he will provide them with a monthly general summary.

Mayor Sawnick made a motion to approve the agreement with Orlando Utilities Commission and the City of Vero Beach for Compliance Services and also that Mr. Lee would provide them with a monthly summary update on the costs. Mr. White seconded the motion.

Mr. Heady asked the City Attorney if this contract in any way has any tie at all to the OUC contract.

Mr. Vitunac answered yes. He said that if the OUC contract goes away then so does this contract.

Mr. Heady then asked the City Attorney if they could have this agreement in place without having the OUC contract in place.

Mr. Lee felt that this agreement and the OUC contract are two separate contracts. He said that they have a 90 day option to get out of this agreement and OUC has agreed to provide him separate invoices.

Mr. Heady wanted it made clear that their vote on this agreement has “zero” to do with the OUC contract.

The motion passed 5-0.

C) Oil Purchase and GSAP 2 Refund

Mr. Lee explained that when the City joined the all requirements project they had some oil in their storage tanks that FMPA purchased from them. When they exited the all requirements project they were required to buy that oil back. They have taken inventory of the oil and have agreed on a price, which the City has received a bill for. He suggested that the Mayor or City Manager sign this agreement or that Council give him authorization to sign it. Mr. Lee said that in addition to this the FMPA received a refund and we (the City) are entitled to part of that refund and what FMPA is suggesting is that they take the price of the oil, subtract out the refund and send them the difference. He will work this out with the Finance Director.

Mr. Heady asked Mr. Lee if there was money coming back to the City of Vero Beach. Mr. Lee answered yes. Mr. Heady asked if this money was paid in prior months to the OUC contract. Mr. Lee answered yes. Mr. Heady mentioned that these costs were included in the bills that the ratepayers paid. He then asked why they could not take this money and give it back to the ratepayers.

Mr. Lee thought that was an excellent idea. He has talked to the Finance Director about the best way to do this. He will bring it back to Council when they decide the easiest way to do this and the appropriate time to do it.

Mr. Heady made a motion to approve the oil purchase and GSAP 2 refund with the caveat that this money be returned to the ratepayers. Mr. White seconded the motion and it passed unanimously.

D) December 2009 Financial Update to be Presented by Finance Director Stephen Maillet

Mr. Steve Maillet, Finance Director, presented Council with a financial update and showed all of his information on the doc cam (information on file with the original minutes). He appreciated any feedback from Council as he goes through this process.

At this time, Council took a five minute break and reconvened at 10:57 a.m.

8. CITY ATTORNEY'S MATTERS

A) OUC Contract

Mayor Sawnick explained that Mr. Vitunac will be going through a document that shows what changes were made to the OUC contract (on file in the City Clerk's office). He said that the contract was approved two years ago and he was not on the Council and neither was Mr. Heady.

Mr. Vitunac gave some background of why this contract came about. He said that the contract was signed in the 40th month of a 60 month notice period that the City gave. The City was unhappy that it was being charged by FMPA and consequently had to charge to its customers. The City has been losing money every year for fifteen years since they signed the FMPA contract. They were losing enough money that it was worth a chance at arbitration. The City spent a lot of money going through arbitration and unfortunately lost with a vote 2-1. This left no other recourse but to exit the FMPA arrangement. The City of Vero Beach was the first and only City to do this and they were told that they would never be successful and it would never happen. But the City Council was courageous enough to go through with doing this. The City kept its rates low (last rate increase was 1992), but the rates kept going up because of the cost of fuel from FMPA. To try to buffer this cost increase, the City kept using its reserves. It should be clear to everyone that the rates charged to the County customers and the City customers have always been the same bottom line rate. Although, recently they did have to have a rate increase and they structured their rates to be the same as FP&L's. There is no out of City surcharge any more. At the moment their rates are higher than FP&L's, but the rates will be substantially lower than the current FMPA rates. Their rates are now competitive with other utilities. He expressed that the rate that FP&L charges its customers has never been offered to Vero Beach customers. He then put on the doc cam a calendar showing the crucial two weeks that changes were made to the OUC contract.

Mr. Heady asked if it would be appropriate for anyone testifying at today's meeting to be sworn in.

The Clerk swore in everyone testifying at today's meeting enmasse.

Mr. Vitunac continued going over the calendar. He said that April 15th was the date that Council met and approved OUC as their power provider. The Council had indicated that they wanted the Utilities Commission to review the contract and give their recommendations. Staff arranged on Monday April 7th for the City Council to have one

on one interviews with Sue Hersey, their consultant, R.B. Sloan, former Utilities Director, and staff to go over the redacted contract line by line to see if they had any questions. Mr. Vitunac then showed a copy of the City Manager's calendar for that day, which shows the times that all City Councilmembers attended these meetings (April 7, 2008). The contract that they reviewed was eventually signed by the Mayor. He said that Mrs. Hersey is at today's meeting to give a quick rundown on what she told Council at the April 7th one on one meeting. He said when the Utilities Commission met they all agreed that the OUC contract is a great one and they said a good job was done in protecting the City and County utilities customers.

Mayor Sawnick wanted to make it clear that what they were discussing today was the changes made to the contract and whether anything further should be done.

Mrs. Sue Hersey, Consultant, stated that she traveled to Vero Beach on Sunday, April 6th and met early in the morning in Mr. Gabbard's office on April 7th. They met with each Councilperson separately and what was presented to them was the working draft of the contract, which she has with her today and will show it to anyone who wants to see it. She said that it was unredacted and had all of the pricing information in it. She said at that time that information was confidential and they had to treat it as such according to the laws. On April 7th, Mrs. Hersey said that she brought with her all of her working files and all of the bids from the three top bidders. She went over a Power Point presentation with each Councilmember, which was the same Power Point presentation that she presented the next day to the Utilities Commission. She said that the meetings went on throughout the afternoon. At the request of Mr. Daige, she also met with the Finance Director and went through the models that had been used. She said all the information was available at that time. At the meeting held with the Council on April 7th, she explained to each Councilmember that they would be putting a redacted version together by that evening and that they would be delivering it to the Utility Commission members and Councilmembers so that they could have it by April 8th when the Utility Commission was scheduled to have their meeting. Everyone was told not to reveal the name of the utility company chosen until it was made public. The copies of the contract were made in the evening and they went to a copy center to make the copies. Then a Vero Beach Police Officer hand delivered each one of the packages to the Utility Commission members. She reiterated that the presentation that was given to the Councilmembers was then given to the Utility Commission and they unanimously voted to approve the recommendation. Then a week later on April 15th the Council approved the agreement and on April 16th Mayor White signed the contract and it was sent to OUC. The person that had to sign it at OUC was not there on Friday, April 18th so he signed the contract on April 21, 2008. She said that absolutely no changes were made between the 16th and the 21st. The changes that were made to the version given to the Utility Commission and the final version were typographical/grammar errors, etc.

Mr. Vitunac asked Mrs. Hersey if what she was saying was that all the changes were made before April 15th when Council made their motion to approve the contract.

Mrs. Hersey answered yes.

Mr. Heady asked Mrs. Hershey if what she gave the City Council on April 7th was an unredacted and redacted version of the contract and both versions were identical except for redaction sections.

Mrs. Hersey explained that in the room they did not have the redacted version, but they had an unredacted version. They told each Councilmember that by that evening they would be putting together a redacted version.

Mr. Heady then said that the redacted version was a product of the version they saw that day.

Mrs. Hersey explained that nothing was redacted. She said that evening they had a version that was redacted and a corresponding unredacted version at that time.

Mr. Heady asked her if there were two different documents.

Mrs. Hersey said that it was a document at a different point in time. There may have been a couple typos that had been caught and corrected by the evening. There was nothing of substance different.

Mr. Heady asked Mrs. Hersey if she did the redactions.

Mrs. Hersey answered no. She said that the redactions were done by OUC.

Mr. Heady thought that what he heard Mrs. Hersey say was that after she met with the City Councilmembers then the redactions were made.

Mrs. Hersey said yes that the redactions were done that evening. They were done by OUC. She asked them what information that they wanted to redact and they made the redactions from the version that the City Councilmembers reviewed. She said that OUC redacted the information because she wanted them to tell her what information they wanted to keep private.

Mr. Heady brought up the 400 pages of emails that went back and forth after the meeting and those 400 pages resulted in the changes that they see in the contract.

Mrs. Hersey stated that they are going to go through all of the changes and each one of the changes were made before the City Council made their decision on April 15th with the exception of the one that Mr. Daige asked for at the meeting.

At this time, a portion of the City Council meeting from April 15, 2008 having to do with the OUC contract was shown to the public.

Mr. Vitunac then went through page by page all the changes that were made in the contract. He made it clear that the changes (with the exception of the one that Mr. Daige

made) were all done before Council voted on the contract on April 15, 2008. During his presentation Council was encouraged to ask questions if they had any. He thanked staff who helped make this document possible.

Mr. Heady asked when the 50 million dollar penalty was put in the contract.

Mr. Sloan did not know. He said that the penalty clause was in the contract when Council approved it. He then briefly explained what CROD meant referring to the FMPA contract.

Mr. White realized that Mr. Vitunac was going through this contract for the public's benefit. He said that these changes were made before Council approved the contract. He said that the contract has been signed, delivered, and sealed. He heard the word ratifying and asked if they are going to ratify the contract.

Mr. Vitunac stated that staff is not asking that they do anything. He said that the twenty year contract is in effect at this time.

Mayor Sawnick added that Council has had a couple of weeks to look over the document outlining the changes that they received from Mr. Vitunac. He said that the contract was executed on April 21, 2008 and hopefully this presentation today has clarified things.

Council took a five minute break at 12:50 p.m.

Mr. White hoped that the public understood that the changes made to the contract were not material to the contract. He asked if previous Councils' sign a contract what makes it legal for new Councilmembers or Candidates to question that contract. He then asked if it was legal for them to even be doing this.

Mr. Vitunac explained that they could always bring contracts up to make sure they are legal. If they do something else (like changing the contract) then they would be violating the contract.

Mr. Abell felt that this whole exercise was a waste of time. He hopes that the public understands that some of the comments being made were bogus. He said lets proceed.

Mayor Sawnick commented that this presentation was for the public to see what the changes were. He hopes that whatever they do in the future that they do it in the right way. He thanked Mr. Vitunac and staff for putting this together. He had no problems with allowing the public to speak as long as what they were speaking about were the changes made to the contract.

Mr. Heady felt that some of the Councilmembers were annoyed in respect to having to do this entire exercise. He said that the misinformation is the cause for this meeting. He mentioned that there was conversation at the last meeting about the changes and the dates

that the contract was signed. It was an assumption that Mr. White signed it on April 21st and that changes were made prior to Council looking at the contract.

Mr. Vitunac reiterated that the changes to the contract were made after the Council looked at the contract on April 8th. There were no changes made after the contract left the City to be signed by OUC. The changes made were the ones that he just went over.

Mr. Heady stated that the City Council looked at the document and the changes that he went over happened after the City Council looked and discussed the document with the City Manager, City Attorney, Mr. Sloan and Mrs. Hersey and then Mr. Maillet. But, at the Council meeting the City Council was not informed that there had been these changes were made.

Mrs. Hersey reiterated that OUC made redactions on anything they wanted to remain confidential.

Mr. Heady said then Mrs. Hersey and Mr. Sloan went to staples to make copies of the redacted contract and those copies went to the Utilities Commission and the City Council. He asked Mrs. Hersey how OUC transmitted the redacted copy to her on that day.

Mrs. Hersey stated that the contract was emailed to Mr. Sloan on April 7th (please see attached verification of the email).

Mayor Sawnick noted that they will have public comments and then table the remaining items on the agenda to be heard at their next meeting. He said that they will adjourn immediately following public comments.

Mr. Charlie Wilson said that was a fine presentation. He said part of the concerns are if these changes were made before Council voted on the contract on April 15th. He said that at one time he asked for a copy of that meeting and he asked for a copy of the backup. There was no contract in the backup material. He understands that on the date that Council adopted that contract that there was "no" contract. What they did was they adopted the Power Point presentation. He agreed that on April 7th that all City Councilmembers were briefed and some say that they saw an unredacted contract. Some of the Councilmembers say that they did not see an unredacted contract. Mrs. Hersey was very clear in saying that Council was presented with a contract. She didn't say that Council read a contract or even received a copy of the contract. According to former Councilmember Debra Fromang, she said that there wasn't a contract, it was on a computer. Mrs. Hersey has testified that there was a working draft of the contract. So the Council was shown some sort of document on April 7th. He said between April 7th and April 15th a number of changes were made. According to the City Attorney, all these changes were made between April 7th and April 15th. Then on April 15th the Council voted with no contract in their backup. He said not only did Council not see a correct contract, but there was not one presented to them. He said the fact is that this Council did not adopt a contract. He said that is the key issue here. He said that the Mayor of the City of Vero Beach, according to the Charter, has no more authority than any other

Councilmember. Mr. Wilson continued by saying that the City Attorney and City Manager testified to the State Attorney's office that there were no changes. He said now they do see there were changes. At the last City Council meeting, the City Attorney gave Council some options, such as ratifying the changes retroactively, going back to the original contract without the changes and to renegotiate the contract. He went over some of the changes. He asked Council if they knew what the material difference in the contract was by changing the effective dates. The effective date has been changed several times. He stated for the record that he was not an attorney, which is why he was asking them to hire outside Counsel. In the contract they went from turnover date to effective date, which means it eliminates the possibility of litigation. He said that this is a material change. He pointed out that a contract, such as this one, can be challenged for five years. He went over number five, offering a memorandum versus an RFP, they changed the word wholesale capacity, they changed the bonds, they said when you capitalize a word it means nothing. He said that it is not true that changes the definition of a word. They changed a lot of words by adding an "s" which there is considerable difference. They changed the word electric to Plant. He wondered why this could only happen in the City of Vero Beach. He said that they do not have a valid contract and Mr. White did not have the authority to sign that contract. Mr. Daige said during the campaign that he thought they were going to bring the contract back. Mr. Wilson said that his guess would be that this will be challenged within the next five years. There is good reason that there are major concerns regarding this contract. He said that once he gets this on the agenda for a referendum for the November ballot they will be able to debate it. He will have it on the ballot while candidates are running for office and he will let them try to defend themselves.

Mr. David Gregg stated that this has been a very stimulating meeting. He was not going to argue about the legality of the contract. He just has a couple of questions. He has heard criticism of the public of being misinformed and he wanted to know how the public has been misinformed.

Mayor Sawnick explained to Mr. Gregg that things said can be interpreted in different ways.

Mr. Gregg then asked the members of the Council who approved the contract if they were ever made aware that FP&L would charge the City 3.4 million dollars a year to transmit the energy across their lines into the Vero Beach system.

Mr. Daige told Mr. Gregg that he was here just to listen to the public's comments.

Mr. White answered not until recently.

Mayor Sawnick asked Mr. Gregg not to address each Councilmember individually.

Mr. Gregg stated that he has been in this City a long time and this is the worst example of government by the people, for the people, that he has ever seen.

Mr. J. Rock Tonkel stated that he was challenged earlier in his statement from the last meeting that there would be a vote taken on the contract. He remembers at that meeting that Mr. Heady said that he was not going to act or vote on a contract if he only has ten minutes to read it. He thought that this contract would be brought back for a vote.

Mayor Sawnick commented that Mr. Vitunac did bring up at the last meeting about approving the contract retroactively, but he was just going over options that the Council could do. He said that this meeting was to just go over the changes in the contract.

At this time, there was no one else wishing to be heard under the Public Comments portion of the meeting.

Mr. White made a motion to table Councilmember's matters until the next Council meeting.

Mr. Heady asked the City Clerk if she would read the motion from the April 15th meeting. The Clerk told him that she did not have those minutes in front of her, but would have someone bring them to her and she would then read the motion. The one question he had on the contract is the difference between what the Councilmembers were told and the redacted copy and in his request to find that information, one of the things that he asked for was a copy of the document that was shown to the City Councilmembers on April 7th. In fact, Debra Fromang came in and the two of them spent a couple of hours trying to find the contract. They went through Mr. Sloan's old desk because Mrs. Fromang knew where the contract was and the only contract that they found in the desk was the April 21st contract. They were never shown a copy of the unredacted copy that was given to Councilmembers for their consideration. After a lengthy conversation with Mr. Sloan and staff from the City Manager's office they went down to the City Attorney's office and requested the same document from him and it was determined that the document did not exist. He said that this is the biggest contract in the City of Vero Beach's history and there is not one maintained for the public records. He checked with the City Clerk to see what was in her files and that document is clearly missing. In conversations with Mrs. Fromang and Mr. Vitunac it was determined that the City never did maintain a copy of that contract and that contract went back with Mrs. Hersey to Massachusetts. He still has not seen a copy of that document. He was told by Mr. Vitunac that Mrs. Hersey would bring a copy with her and a copy would go to the City Clerk for her records. The real problem that is evident here is that there is no record that was maintained by the City on what the numbers were that was in that contract. He feels that poses a problem because you cannot compare documents, whether or not the numbers stayed the same. Now what they have to do is rely on a document that comes back a couple of years ago from Massachusetts. He said to him it is clear that there is a violation of the open records law. He said that there could never be any assurance that the numbers that they are looking at today are the same numbers that were in the original contract. He said that one of the things that he did was to take the redacted copy and the unredacted copy and he printed the redacted copy on a transparency. If you take a redacted copy and an unredacted copy and print it on a transparency what you have is an identical overlay. He also did this with the penalty clause page and the interesting thing

with this if you look at the redacted section and then the unredacted section the redacted section is not long enough to cover the 50 million dollar figure put in the contract.

Mayor Sawnick asked Mr. Heady if there was a decision by the Council that he wanted them to make or anything that he wants them to do.

Mr. Heady wanted to be able to finish his comments. He continued by showing the unredacted copy and the redacted page and said that it was pretty clear that there was a lot added on that page. The problem that he sees is the words on the redacted copy don't fit in the space that is redacted. He said because there is no record and no one in City Hall thought that it was important to maintain an original copy, the public will never have any degree of confidence in this contract.

Mrs. Hersey stated that all the files were emailed to the City. She did not know what to say to Mr. Heady because he has asked her for the chronology from April 8th to April 21st and she has answered his request. She has given him every document he requested. She recalled that Mrs. Fromang talked a lot about the contract and what a good contract that it was. How could she say that if she hasn't read the contract? Mrs. Hersey said that she takes issue with what Mr. Heady is saying because what he is saying is that this team changed the documents materially and they did not. They have the emails to prove that they did not. She provided him with all the information that he has requested. She understands that Mr. Heady was not at the meeting on April 8th, but there were a lot of people that were there.

Mr. White mentioned that in regards to the confidentially agreement, they were shown the unredacted contract, but were not allowed to keep a copy of it. They were allowed to look at it, but were not allowed to take the original contract.

Mrs. Hersey said that nothing changed between the unredacted and the redacted version. She has that available if anyone wants to look at it.

Mr. Abell expressed that he spent several hours looking at these contracts and is confident there has been no material changes.

Mr. Heady commented that Mr. Abell points out how ridiculous this exercise is. The City Council at the time was given one hour to review a document that was very costly for our consultant to put together. He said part of what they (Councilmembers) were given was a Power Point presentation and then Mr. White stated that he read the document. Mr. Heady said that he wants to know anyone who could read through and understand this document in less than one hour. Mr. White also said that he remembers the numbers in the document and that they haven't been changed. Mrs. Hersey points out that she has complied with everything that I have asked her for. Mr. Heady said that he still does not have, as of today, the original document that was presented to the City Councilmembers on April 7, 2008. Mrs. Hersey testified that Mrs. Fromang gave rave reviews in her comments concerning the contract at the Council meeting when it was approved. He

knew that Mrs. Fromang is a lawyer, but did not think that she could have read and understood this document in the little time that was allotted to the Councilmembers.

Mr. White replied to Mr. Heady's comments. He said that he was fortunate to be the Mayor that year, so he was involved more so with the contract than the other Councilmembers. He had a little bit more knowledge of the contract and what was in it. However, he said that he did not read the whole contract in an hour. He felt that the procedures taken with the contract were done right and everyone worked hard on making sure that they were done right.

Mayor Sawnick made a motion to delay discussion of Individual Councilmembers' matters until their next meeting (February 16, 2009). Mr. Daige seconded the motion and it passed 4-1 with Mr. Heady voting no.

At the request of Mr. Heady the Clerk read the motion from the April 15, 2008 meeting when the OUC contract was approved.

9. CITY COUNCIL MATTERS

A. Old Business

B. New Business

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Kevin Sawnick's Matters

1. Correspondence

2. Committee Reports

3. Comments

A) Civic Education

B) Citywide Green Initiatives

B. Vice Mayor Sabin Abell's Matters

1. Correspondence

2. Committee Reports

3. Comments

C. Councilmember Tom White's Matters

1. Correspondence

2. Committee Reports

3. Comments

- D. Councilmember Brian Heady's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**

 - 3. Comments**
 - A) Trip report/request**
 - B) Internet connection for meetings**
 - C) OUC Contract**
 - D) Tallahassee/League of Cities**
 - E) Brainstorming Session Report**

- E. Councilmember Ken Daige's Matters**
 - 1. Correspondence**
 - 2. Committee Reports**

 - 3. Comments**

11. ADJOURNMENT

Mr. White made a motion to adjourn today's meeting at 1:53 p.m. Mr. Abell seconded the motion and it passed unanimously.

/tv