

**CITY OF VERO BEACH, FLORIDA  
MAY 4, 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 Greg Sempsrott/First Church of God
- C. Pledge of Allegiance

**2. PRELIMINARY MATTERS**

- A. Agenda Additions, Deletions, and Adoption
- B. Proclamations
  - 1. National Police Officers Week – May 9-15, 2010
  - 2. National Safe Boating Week – May 22-28, 2010
  - 3. Treasure Coast Women’s 30 Year Anniversary
  - 4. Recreation Director to report on The Annual Junior Staff Volunteer Dinner
  - 5. Mr. Al Rubin to present the City with an Environmental Hall of Fame Award
- C. Public Comment
  - 1. Mr. David Gregg – Discuss his proposal
- D. Adoption of Consent Agenda
  - 1. Regular City Council Minutes – April 20, 2010
  - 2. Treasure Coast Regional League of Cities Interlocal Agreement
  - 3. 18<sup>th</sup> Street Paving, Drainage and Sidewalk Improvements – Community Development Block Grant (CDBG) Project – Recommendation of Final Acceptance, and Approval of the Final Change Order and Final Payment
  - 4. Police Department Exercise Equipment Purchase
  - 5. Settlement Agreement – Linda Tyner

(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, renumbering and amending Chapter 30, Alcoholic Beverages, of the Land Development Regulations of the City of Vero Beach; providing for restrictions as to Location of Establishments dealing with or in Alcoholic Beverages; providing for exceptions; providing for consistency with Section 562.45(2) of Florida Statutes; providing for Method of Measurement of Separation Distances from Schools and Places of Worship; providing for Conflict and Severability; and providing for an effective date.
  
- B) An Ordinance of the City of Vero Beach, Florida, amending Chapter 73, Article II, Drainage and Article III, Stormwater Management of the City of Vero Beach Code; deleting existing Article II, Drainage and replacing it with new Article II, Stormwater Management; deleting existing Article III, Stormwater Management and replacing it with New Article III, Construction Site Erosion and Sediment Control; creating New Article IV, Municipal Separate Storm Sewer System; providing for requirements, standards and review procedures for Stormwater Management Plans for Single Family/Duplex, Nonresidential, Multiple Family, and New Subdivision Development; providing for Requirements, Standards, and Review Procedures for Erosion and Sediment Control Plans for Construction Activity; providing for Florida Department of Environmental Protection Generic Permits for certain land disturbing activities; providing for Regulations for Discharges to the Municipal Separate Storm Sewer System; providing for conflict and severability; and providing for an effective date.

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

- A) A Resolution of the City of Vero Beach, Florida, repealing and replacing Resolution 2008-30, and amending the Veterans Memorial Island Sanctuary Authorized Uses and Memorials to add additional area immediately East of the Veterans Memorial Island Sanctuary to existing Committee Rules regarding Memorials and Plaques; providing for an effective date.
  
- B) A Resolution of the City of Vero Beach, Florida, adopting the Military Leave Policy as an Amendment to the City of Vero Beach Personnel Rules; providing for an effective date.
  
- C) A Resolution of the City of Vero Beach, Florida, adopting the Supplementation of Military Pay Authorized by Chapter 115, Florida Statutes for Public Officials and Employees of the City of Vero Beach who perform active Military Service as Servicemembers in the National Guard or a Reserve Component of the Armed

Forces of the United States; repealing and replacing Resolution No. 2004-44; providing for an effective date.

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

**6. CITY CLERK'S MATTERS**

- A) Reappointments to the Finance Commission

**7. CITY MANAGER'S MATTERS**

- A) Director of Electric Utilities – Update on Utility Issues
- B) Police Department Pension Review
- C) City-owned Golf Course Property (Review of Draft Request for Proposals)
- D) County Commission Letter Requesting Joint Meeting
- E) Consultants Competitive Negotiation Act Committee Report (Rob Bolton)

**8. CITY ATTORNEY'S MATTERS**

**9. CITY COUNCIL MATTERS**

- A. Old Business
  - 1. Date for presentation by Dr. Faherty and Glenn Heran – Requested by Councilmember Brian Heady
  - 2. Discussion on changes to City Council meetings – Requested by Councilmember Brian Heady
  - 3. Still waiting for written answers from City Manager – Requested by Councilmember Brian Heady
  - 4. OUC Contract – Requested by Councilmember Brian Heady
  - 5. 50MM penalty – Requested by Councilmember Brian Heady
  - 6. November Elections – Requested by Councilmember Brian Heady
  - 7. Debate on Sale of Electric – Requested by Councilmember Brian Heady
  - 8. 8/12/08 – Requested by Councilmember Brian Heady

9. Direction City Manager selection process – Requested by Councilmember Brian Heady
- B. New Business
  1. Expend Funds from the Tree and Beautification Commission – Requested by Chairman Karl Zimmermann
  2. A Federal Case – Requested by Councilmember Brian Heady
  3. Golf Course – Requested by Councilmember Brian Heady
  4. Discussions on tax reductions – Requested by Councilmember Brian Heady
  5. Honest Services Fraud – Requested by Councilmember Brian Heady

**10. INDIVIDUAL COUNCILMEMBERS' MATTERS**

- A. Mayor Kevin Sawnick's Matters
    1. Correspondence
    2. Committee Reports
    3. Comments
  - B. Vice Mayor Sabin Abell's Matters
    1. Correspondence
    2. Committee Reports
    3. Comments
  - C. Councilmember Tom White's Matters
    1. Correspondence
    2. Committee Reports
    3. Comments
  - D. Councilmember Brian Heady's Matters
    1. Correspondence
    2. Committee Reports
    3. Comments
- A. Mayors continued abuse of power
  - B. Liars, Cheats and Thieves
  - C. Bad info=bad decisions
  - D. Other Mayors in county
  - E. Correspondence

- 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.

QB-1  
2D-2

Vock, Tammy

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From: Bonnie Cruz [BonnieC@cityofpsl.com]  
Sent: Tuesday, April 27, 2010 12:19 PM  
To: Vock, Tammy  
Subject: Treasure Coast Regional League of Cities  
Attachments: TCRLC Interlocal Amended.doc

The Treasure Coast Regional League of Cities unanimously approved the Amended and Restated Interlocal Agreement at the March 17 meeting. Please place on your next available meeting the attached agreement that requires your city's Council adoption and return the executed agreement to my attention.

Thank you.

Bonnie R. Cruz  
Administrative Secretary, City Council  
121 SW Port St. Lucie Blvd.  
PSL, FL 34984-5099  
772-871-5159  
fax: 772-871-7382  
email: [BonnieC@cityofpsl.com](mailto:BonnieC@cityofpsl.com)

**AMENDED AND RESTATED  
INTERLOCAL AGREEMENT  
CREATING THE  
TREASURE COAST REGIONAL LEAGUE OF CITIES**

Whereas, there are thirteen municipalities in the Treasure Coast Counties of Indian River, St. Lucie, Martin, and Okeechobee which interact on a continuing basis with county government and the State of Florida regarding local government matters; and

Whereas, many of the matters are of common concern to all of the municipalities which makes it more efficient to reach solutions as a group, rather than by having each city negotiate on its own with the State or its respective county; and

Whereas, it is probable that better solutions to the common problems will be arrived at by having all cities and their combined resources working jointly; and

Whereas, this type of governmental cooperation would benefit the constituents of not only the municipalities but also of the unincorporated areas and the State; and

Whereas, Florida law and, in particular, Section 163.02 Florida Statutes, allows local governments to create councils of local public officials by adopting an interlocal agreement for a purpose consistent with the authority of each government's powers; and

Whereas, various municipal officials from the Treasure Coast have determined that the creation of such a council of local public officials would be in the public interest;

Now Therefore, Be It Resolved by the undersigned municipalities situated in Indian River County, St. Lucie County, Martin County, and Okeechobee County that:

**Section 1 Creation of the Treasure Coast Regional League of Cities**

There is hereby created a council of local public officials under the authority of and pursuant to Section 163.02 Florida Statutes, to be composed of the undersigned municipalities situated in the counties of Indian River, St. Lucie, Martin, and Okeechobee (hereinafter the "Treasure Coast"), which council shall be called "The Treasure Coast Regional League of Cities." The League shall be a corporation not for profit.

**Section 2 Purposes and Powers**

The purpose of this League shall be to serve as a forum for jointly studying and resolving issues of local government which concern the Treasure Coast municipalities, for the exchange of

ideas and information, for providing aid to member municipalities in the solution of common problems, and for promoting communication among the member municipalities.

To that end, the League shall have the power to:

- a) Study such area governmental problems, as it deems appropriate, including but not limited to matters affecting health, safety, welfare, education, economic conditions, and area development;
- b) Promote cooperative arrangements and coordinate action among its members:  
and
- c) Make recommendations for review and action to the members and other public agencies that perform local functions and services within the area.

### **Section 3 Types of Membership**

#### **A. Active Membership**

All municipalities with the Treasure Coast are eligible to be members of the League and may become active members upon execution of a copy of this interlocal agreement and upon payment of whatever annual membership dues have been imposed. Members in good standing shall have voice, vote and office holding rights within the association. The representative for each municipality shall be the elected chief executive or other member of the governing body. Each municipality may also appoint an alternate who shall serve when the primary representative is unable to serve. Each member city shall have one vote. Each municipality shall determine the term of its representatives.

#### **B. Honorary Membership**

Honorary membership may be bestowed upon individuals only who shall be selected by vote of the League. All Past Presidents shall be honorary members once they are no longer in elected or appointed office. Honorary members may not vote or hold office.

#### **C. Associate Membership**

Associate members are non-voting members selected from the private, public or non-profit sectors, including, but not limited to, the school boards or county governments. All shall be approved by the League. Associate members shall not vote or hold office but may enter into discussion.

### **Section 4 Bylaws**

At the organizational meeting of the League the members shall elect a President, a Vice-President, and a Treasurer for terms of one year with a term limit of two years. There shall also be a Secretary, who shall be provided by the city represented by the President. Five members of

the League shall constitute a quorum and no matter shall be considered passed by the League without at least five votes for the motion. The President shall run the meeting and rule on procedural matters subject to being overruled by a vote of the League. Only a simple majority of those present and voting is required to overrule the President. The President shall not have the right to move or second matters. The Vice-President shall serve when the President is unable to. The Secretary shall keep the official minutes of the meetings in a journal and shall be responsible for noticing meetings. The Treasurer shall be responsible for opening a bank account at a convenient institution and for writing checks on that account for expenses approved by the League. The officers shall be elected at the general meeting of the League held in January. The initial officers of the League, who shall serve until the League has its first meeting after ratification of this agreement by five members, shall be: Chair, Thomas P., White Mayor of the City of Vero Beach, Vice-Chair, Sal Neglia, Councilmember of the City of Sebastian, Treasurer, Dowling Watford, Councilmember of the City of Okeechobee, and Secretary, Tammy Vock, Clerk to the City of Vero Beach.

### **Section 5 Meeting Times and Places**

The League shall have the power to set convenient times and places for meetings, which shall be held, at a minimum, twice a year, one meeting within the Treasure Coast Counties (the "general" meeting), and once a year at the Florida League of Cities Annual Conference. The meetings shall be advertised by at least one week's notice published in the newspaper in each county or by posting notices of such meetings in each of the members' City Halls. The meetings shall be open to the public and minutes shall be taken and kept in a journal. It shall be proper for the meeting to be hosted by each municipality in turn or by such other method as the League determines. Special meetings may be called by the President or by any three members writing the League Secretary requesting such a meeting.

### **Section 6 Financial Matters**

The League may employ a staff, consult and retain experts, and purchase or lease or otherwise provide for such supplies, food, materials, equipment and facilities, as it deems desirable and necessary. The member governments may appropriate funds to meet the necessary expenses of the League. Services of personnel, use of equipment and office space, and other necessary services may be accepted from members as part of their financial support. The League may accept funds, grants, gifts, and services from the state, from any other governmental unit, whether participating in the council or not, from the Government of the United States, and from private and civic sources.

### **Section 7 Annual Report**

The League shall make an annual public report of its activities to each of the member local governments, and shall have its account audited annually.

### **Section 8 Exiting League, Dissolution**

Any member may withdraw from the League upon 60 days' notice subsequent to formal action by its governing body. The League itself can be dissolved by a simple vote. Upon dissolution of the League any remaining funds shall be donated to the Florida League of Cities.

### **Section 9 Effective Date**

This League shall become effective on April 1, 2007, or on such later date as the fifth municipality has executed this interlocal agreement. If there are not at least five member cities by June 1, 2007, then this agreement shall be null and void. Any municipality may indicate its acceptance of this interlocal agreement by executing a copy of this document and such execution shall be as valid as if the original had been signed. The Mayor of the City of Vero Beach shall collect the executed copies of this agreement and determine when to call the organizational meeting of the League.

The following municipalities, as witnessed by the attached original of the executed signature page, have executed this Interlocal Agreement on the date written underneath the signature of the authorized signer.

**ATTEST:**

**CITY OF VERO BEACH:**

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

Sign: \_\_\_\_\_  
Print: Kevin Sawnick  
Title: Mayor

**STATE OF FLORIDA**  
**COUNTY OF INDIAN RIVER**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by Kevin Sawnick, as Mayor, and attested by Tammy K. Vock, as City Clerk of the City of Sebastian, Florida. They are **personally known to me and did not** take an oath.

**NOTARY PUBLIC**

[NOTARY SEAL]

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

**COUNCIL AGENDA REPORT**  
**MEETING OF MAY 4, 2009**

**TO:** The Honorable Mayor and Members of the City Council

**FROM:** James M. Gabbard, City Manager

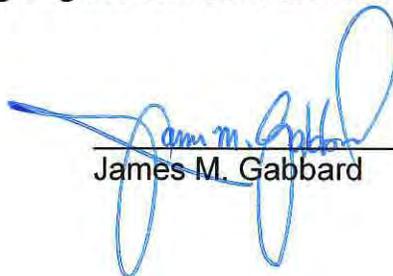
**DATE:** April 22, 2010

**SUBJECT:** 18<sup>TH</sup> STREET PAVING, DRAINAGE AND SIDEWALK IMPROVEMENTS – COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROJECT – RECOMMENDATION OF FINAL ACCEPTANCE, AND APPROVAL OF THE FINAL CHANGE ORDER AND FINAL PAYMENT

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Attached is a memorandum from Bill Messersmith, dated April 19, 2010, providing background information and a recommendation for the above-referenced project.

**It is the recommendation of the City Manager's Office that Council accept the above-referenced project and approve Change Order No. 6 and Final, for an increase of \$22,039.69, and Pay Estimate No. 8 and Final, in the amount of \$70,071.29, to SPS Contracting, Inc. Funding for the 18<sup>th</sup> Street sidewalk (\$32,254.40) will be from Account No. 304.9900.541.609024, with the remainder of the costs being eligible for reimbursement by the grant.**

  
\_\_\_\_\_  
James M. Gabbard

:jav  
Attachments

xc: Monte Falls  
Bill Messersmith  
Stephen Maillet



DEPARTMENTAL CORRESPONDENCE

TO: James M. Gabbard, City Manager
DEPT: City Manager

VIA: Monte K. Falls, PE, Director
DEPT: Public Works MK FALLS 4/20

FROM: William B. Messersmith, PE, Assistant City Engineer WS 4/20/10
DEPT: Public Works

DATE: April 19, 2010

RE: 18th Street Paving, Drainage and Sidewalk Improvements
Community Development Block Grant (CDBG) Project
Recommendation of Final Acceptance and Payment
City of Vero Beach Project No. 2004-11
Contract No. 220-09/JV

Recommendation:

- Place this item on the City Council Agenda for May 4, 2010;
Accept the project as follows:

Accept the Final Change Order, which reconciles as-built quantities, resulting in a final contract amount of \$601,249.73; and

Approve Pay Estimate No. 8 and Final for \$70,071.29.

Funding:

Funding for this project will be from account number 304.9900.541.609024, however all the work with the exception of the 18th Street sidewalk (\$32,254.40) is eligible for reimbursement by the grant. The final breakdown of costs for the project is:

Table with 2 columns: Description and Amount. Rows include 18th Street Paving and Drainage Improvements (\$378,527.60), 18th Street Sidewalk (\$32,254.40), 18th Street Water and Sewer Line Adjustments (\$150,365.40), 25th Avenue Sidewalk (\$7,414.99), 19th Street Sidewalk (\$32,687.34), and TOTAL PROJECT COSTS (\$601,249.73).

Total Grant Eligible Costs:	\$568,995.33
Non-Grant Eligible Costs (18 <sup>th</sup> Street Sidewalk)	\$32,254.40
<b>TOTAL PROJECT COSTS</b>	<b>\$601,249.73</b>

Background:

The City Council, at their meeting of June 16, 2009, awarded the contract for the referenced project to SPS Contracting, Inc. of Vero Beach, Florida in the amount of \$411,057.25. Since that time a number of Change Orders have been executed for the project to address various changed conditions including water line relocations, and additional sidewalk authorized by the CDBG. Those Change Orders and their justifications have been addressed by previous correspondence to Council and/or the City Manager.

The project was begun on July 13, 2009 and substantially completed on March 19, 2010. To the best of our knowledge and belief this project was constructed in accordance with the contract requirements.

We have reviewed the as-built quantities and confirm that \$601,249.73 represents the total amount of work completed. This represents an increase of \$22,039.69 over the previously approved contract amount of \$579,210.04, and will be funded from the grant. Therefore, we recommend final payment of \$70,071.29.

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

We would like to thank SPS Contracting, Inc. for their expeditious completion of this work with a minimum of disruption to surrounding residences and activities.

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

Attachments

cc: Steve Maillet, Finance Director, w/attachments  
John O'Brien, Purchasing Manager  
Jim Widmann, Contracts Administrator, SPS Contracting, Inc.

WBM/ntn

**FINAL PAYMENT**

**REQUEST BY CONTRACTOR**

STATE OF FLORIDA

COUNTY OF Indian River

Personally before the undersigned officer, authorized by the laws of said state to administer oaths, comes Jim Widman, who on oath says;

That he is the Contractor with whom the City of Vero Beach, Florida, a municipal corporation of said state, did on the 2nd day of July, 2009, enter into a Contract for the performance of certain work, more particularly described as follows:

Affiant further says that said construction has been completed and the Contract therefore fully performed and final payment is now due and that all lienors contracting directly with or directly employed by such Contractor have been paid in full EXCEPT:

<u>NAME:</u>	<u>DESCRIPTION:</u>	<u>AMOUNT:</u>
<u>None</u>		

who have not been paid and who are due the amount set forth.

I do hereby certify that I have no claims against the Owner of said property, except those specifically set forth in the Final Payment Request. Upon receipt of the final payment, all of the claims set forth in this final request shall be satisfied.

SPS Contracting Inc.  
Company Name

Signed: [Signature]

Title: Jim Widman, Contract Administrator

Date: 3/26/10

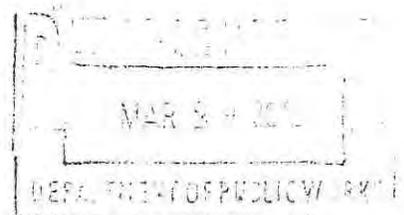
Subscribed and sworn to before me this 26<sup>th</sup> day of March, 2010.

Beverly Kenny Fell  
Notary Public State of Florida  
at Large

NOTARY PUBLIC - STATE OF FLORIDA  
Beverly Kenny Fell  
Commission # DD629777  
Expires: JAN. 16, 2011  
BONDED THRU ATLANTIC BONDING CO., INC.

Notary Seal

My Commissions Expires: 01/16/2011



PROJECT NAME 18th Street Paving, Drainage & Sidewalk Improvements (CDBG Project)						SHEET NO. 1 of 2			
PERIODIC ESTIMATE FOR PARTIAL PAYMENT						CONTRACT DATE: 07/02/2009			
Prepared By: CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS						NOTICE TO PROCEED: 07/13/2009			
ACCOUNT NUMBER: 304.9900.541.809024						TOTAL CONTRACT TIME: 134 DAYS			
PROJECT NUMBER: 2004-11						ELAPSED CONTRACT TIME: 219 DAYS			
EXCEL FILE NAME:						% OF CONTRACT TIME: 163.43%			
Name and Address of Contractor: SPS Contracting, Inc. 9015 Americana Rd., Suite 1, Vero Beach, FL 32966									
PERIODIC ESTIMATE NO. 8 - FINAL						FOR PERIOD February 1 through March 19, 2010			
PART 1. COST OF COMPLETED WORK TO DATE UNDER ORIGINAL CONTRACT ONLY:									
Entries must be limited to work and costs under the original contract only.						Column (6) is provided by the Consultant or Engineer in agreement with the Contractor.			
(Work and cost data under change orders is to be shown in Part 2 of this form.)						Columns (7) thru (9) are calculated from Column (3) thru (6)			
Columns (1) through (5) - Data shown is the proposal of the original executed contract.									
ITEM NO. (1)	DESCRIPTION OF ITEM (2)	CONTRACT				COMPLETED TO DATE			
		Quantity (3)	Units	Cost Per Unit (4)	Total Cost Unit (5)	Quantity (6)	Total Cost (7)	Uncompleted Work (8)	% Comp. (9)
1	Clearing & Grubbing	1	LS	\$22,000.00	\$22,000.00	1	\$22,000.00	\$0.00	100%
2	Unclassified Excavation (Including, but not limited to removal of existing drainage pipe, water main pipe, concrete, asphalt, etc.)	1	LS	\$3,500.00	\$3,500.00	1	\$3,500.00	\$0.00	100%
3	Earthwork (includes cut & fill)	1	LS	\$9,950.00	\$9,950.00	1	\$9,950.00	\$0.00	100%
4	Sawcutting	500	LF	\$1.00	\$500.00	500	\$500.00	\$0.00	100%
5	Drainage Structures:								
	a. Catch Basin, Type A-4	24	EA	\$2,115.00	\$50,760.00	24	\$50,760.00	\$0.00	100%
	b. Manhole P-7T	6	EA	\$1,725.00	\$10,350.00	6	\$10,350.00	\$0.00	100%
	c. Manhole P-7T Sanitary Drop Inlet	1	EA	\$3,085.00	\$3,085.00	1	\$3,085.00	\$0.00	100%
	d. Miami Curb Inlet "G-2"	1	EA	\$2,200.00	\$2,200.00	2	\$4,400.00	\$2,200.00	200%
6	Drainage Pipe:								
	a. 12" CAP	35	LF	\$23.10	\$808.50	66	\$1,524.60	\$716.10	189%
	b. 15" CAP	350	LF	\$29.00	\$10,150.00	338	\$9,802.00	(\$348.00)	97%
	c. 18" CAP	35	LF	\$29.00	\$1,015.00	20	\$580.00	(\$435.00)	57%
	d. 30" CAP	20	LF	\$83.00	\$1,260.00	20	\$1,260.00	\$0.00	100%
	e. 24" RCP	1140	LF	\$40.00	\$45,600.00	1195	\$47,800.00	\$2,200.00	105%
	f. 30" RCP	400	LF	\$59.00	\$23,600.00	400	\$23,600.00	\$0.00	100%
	g. 20" x 28" RCP	40	LF	\$57.00	\$2,280.00	40	\$2,280.00	\$0.00	100%
7	Adjust Sanitary Manhole Tops	6	EA	\$375.00	\$2,250.00	6	\$2,250.00	\$0.00	100%
8	Roadway:								
	a. Limerock Base (8")	5900	SY	\$10.20	\$60,180.00	5900	\$60,180.00	\$0.00	100%
	b. Subgrade Preparation	6200	SY	\$1.75	\$10,850.00	6200	\$10,850.00	\$0.00	100%
	c. Asphalt Pavement (1" FDOT Type S-III)	5600	SY	\$6.65	\$37,240.00	5600	\$37,240.00	\$0.00	100%
	d. Resurfacing (1" FDOT Type S-II)	625	SY	\$7.50	\$4,687.50	625	\$4,687.50	\$0.00	100%
9	Driveway Restoration:								
	a. Concrete	230	SY	\$30.00	\$6,900.00	331	\$9,930.00	\$3,030.00	144%
	b. Asphalt	575	SY	\$12.50	\$7,187.50	399	\$4,987.50	(\$2,200.00)	69%
	c. Rock	100	SY	\$10.75	\$1,075.00	100	\$1,075.00	\$0.00	100%
10	Swale Grading	5,100	SY	\$1.00	\$5,100.00	5100	\$5,100.00	\$0.00	100%
11	Concrete Sidewalk:								
	a. 4" Thick	1150	SY	\$20.90	\$24,035.00	777	\$16,239.30	(\$7,795.70)	68%
	b. 6" Thick	165	SY	\$24.95	\$4,116.75	538	\$13,423.10	\$9,306.35	326%
12	Sodding:								
	a. Argentine Bahia	5300	SY	\$1.18	\$6,254.00	5300	\$6,254.00	\$0.00	100%
	b. St. Augustine Floratam	100	SY	\$1.98	\$198.00	100	\$198.00	\$0.00	100%
13	Extra Concrete	10	CY	\$150.00	\$1,500.00	7	\$1,050.00	(\$450.00)	70%
14	Flowable Fill	15	CY	\$175.00	\$2,625.00	15	\$2,625.00	\$0.00	100%
15	Miami Curb	400	LF	\$8.50	\$3,400.00	404	\$3,434.00	\$34.00	101%
16	Type "D" Curb & Gutter	240	LF	\$7.50	\$1,800.00	90	\$675.00	(\$1,125.00)	38%
17	Borrow (Additional Fill, Swale Windows)	260	CY	\$8.50	\$2,210.00	260	\$2,210.00	\$0.00	100%
18	Traffic Control	1	LS	\$4,650.00	\$4,650.00	1	\$4,650.00	\$0.00	100%
19	Alternate - Exfiltration Trench:								
	a. 4' Wide with slotted 24" RCP (Main Line)	70	LF	\$82.00	\$5,740.00	70	\$5,740.00	\$0.00	100%
	b. 4' Wide with Slotted 24" RCP	400	LF	\$80.00	\$32,000.00	300	\$24,000.00	(\$8,000.00)	75%
TOTAL COST OF COLUMNS					\$411,057.25	\$408,190.00	(\$2,867.25)		

PROJECT NAME 18th Street Paving, Drainage & Sidewalk Improvements (CDBG Project) List every approved change order issued to date of this request even if no work has been done under one or more such orders.			ADDITIONS TO ORIGINAL CONTRACT PRICE		Page 2 of 2 PROJECT NO. 2004-11
No. (1)	Date (2)	DESCRIPTION OF CHANGE ORDER (3)	TOTAL COST ITEMS ADDED BY CHANGE ORDER (4)	COST OF CHANGE ORDER ITEMS COMPLETED TO DATE (5)	DEDUCTIONS FROM CONTRACT PRICE AS SHOWN ON CHANGE ORDERS (6)
1	07/28/2009	Replace existing water main	\$104,096.50	\$104,096.50	
2	09/11/2009	Remove existing abandoned 8" Force Main	\$13,650.00	\$13,650.00	
3	10/06/2009	Replace existing sanitary sewer main	\$8,696.00	\$8,696.00	
4	01/22/2010	25th Avenue Concrete Sidewalk	\$7,166.75	\$7,166.75	
5	03/04/2010	19th St Concrete Sidewalk, Add items from 18th St & 25th St Concrete Sidewalks	\$34,543.54	\$34,543.54	
6	04/20/2010	Reconciling Quantities - Original Contract Items	\$17,486.45		\$20,353.70
		Reconciling As-Built Quantities - Change Order Items	\$38,599.94	\$24,906.94	\$13,693.00
TOTALS			\$224,239.18	\$193,059.73	\$34,046.70

**PART 3. ANALYSIS OF CONTRACT AMOUNT TO DATE:**

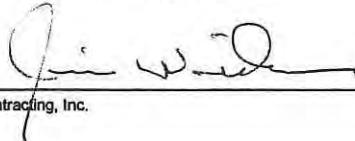
(a). Original contract amount (column 5 from page 1 and 2 of this form).....	\$411,057.25
(b). Plus: Additions scheduled in column 4 above.....	\$224,239.18
(c). Less: Deductions scheduled in column 6 above.....	-\$34,046.70
(d). Adjusted contract amount to date.....	\$601,249.73

**PART 4. ANALYSIS OF WORK PERFORMED:**

(a). Cost of original contract work performed to date (column 7 from page 1 and 2 of this form).....	\$408,190.00	
(b). Extra work performed to date (column 5 above).....	\$193,059.73	
(c). Total cost of work performed to date.....	\$601,249.73	
(d). Less: Amount retained in accordance with contract terms (show both percent and dollar amount).....	\$0.00	0.00%
(e). Net amount earned on contract work to date.....	\$601,249.73	
(f). Add: Materials stored at close of this period (attach detailed schedule and paid invoices).....	\$0.00	
(g). Subtotal of (e) and (f).....	\$601,249.73	
(h). Less: amount of previous payments.....	\$531,178.44	
(i). BALANCE DUE THIS PAYMENT.....	\$70,071.29	

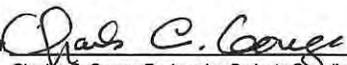
**PART 5. CERTIFICATION OF CONTRACTOR:**

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

By:  4/8/10  
 SPS Contracting, Inc. Date  
 Name: \_\_\_\_\_ Title: \_\_\_\_\_

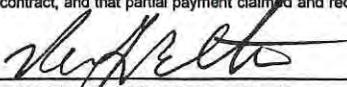
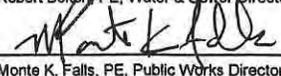
**PART 6. PRE-PAYMENT CERTIFICATION BY PROJECT MANAGER:**

I have checked this estimate, and it is my opinion that the statement of work performed and / or material supplied is accurate and the contractor is observing the requirements of the Contract

Signed:  4/9/10  
 Charles C. Gouge, Engineering Projects Coordinator Date

**PART 7. CERTIFICATION OF DIRECTOR(S):**

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

Signed:  4/12/10  
 Robert Bolton, PE, Water & Sewer Director Date  
 Signed:  4/15/10  
 Monte K. Falls, PE, Public Works Director Date

18th Street Paving, Drainage & Sidewalk Improvements (CDBG) CONTRACT CHANGE ORDER NO. 6 AND FINAL Prepared by: City of Vero Beach Public Works Department ACCOUNT NUMBER: 304.9900.541.609024		Contract Date: 07/02/09 Notice to Proceed: 7/13/09 Project No. 2004-11	Sheet 1 of 3
Name and Address of Contractor: SPS Contracting, Inc. 9015 Americana Rd, Suite 1, Vero Beach, FL 32966			

YOU ARE HEREBY REQUESTED TO COMPLY WITH THE FOLLOWING CHANGES FROM THE CONTRACT PLANS AND SPECIFICATIONS:

ITEM NO. (1)	DESCRIPTION OF CHANGES - quantities, units, unit prices, changes in completion schedule, etc. (2)			INCREASE IN CONTRACT PRICE (3)	DECREASE IN CONTRACT PRICE (4)		
ITEM NUMBER	DESCRIPTION	CONTRACT QUANTITY	UNITS	UNITS PRICE	CHANGE ORDER QUANTITY		
<b>TO RECONCILE AS BUILT QUANTITIES FOR ORIGINAL CONTRACT BID ITEMS</b>							
5.d.	Miami Curb Inlet "G-2"	1	EA	\$2,200.00	2	\$2,200.00	
6.a.	12" CAP	35	LF	\$23.10	66	\$716.10	
6.b.	15" CAP	350	LF	\$29.00	338		\$348.00
6.c.	18" CAP	35	LF	\$29.00	20		\$435.00
6.d.	24" RCP	1140	LF	\$40.00	1195	\$2,200.00	
9a.	Concrete Driveway Restoration	230	SY	\$30.00	331	\$3,030.00	
9.b.	Asphalt Driveway Restoraton	575	SY	\$12.50	399		\$2,200.00
11.a.	4" Thick Concrete Sidewalk - 18th Street	1150	SY	\$20.90	777		\$7,795.70
11.b.	6" Thick Concrete Sidewalk - 18th Street	165	SY	\$24.95	538	\$9,306.35	
13.	Extra Concrete	10	CY	\$150.00	7		\$450.00
15.	Miami Curb	400	LF	\$8.50	404	\$34.00	
17.	Type "D" Curb & Gutter	240	LF	\$7.50	90		\$1,125.00
19.b.	Exfiltration Trench - 4' Wide with Slotted 24" RCP	400	LF	\$80.00	300		\$8,000.00
<b>SUBTOTAL ORIGINAL CONTRACT ITEMS</b>						<b>\$17,486.45</b>	<b>\$20,353.70</b>

18th Street Paving, Drainage & Sidewalk Improvements (CDBG)		Sheet 2 of 3
CONTRACT CHANGE ORDER NO. 6 AND FINAL		Contract Date: 07/02/09
Prepared by: City of Vero Beach Public Works Department		Notice to Proceed: 7/13/09
ACCOUNT NUMBER: 304.9900.541.604010		Project No. 2004-11
Name and Address of Contractor: SPS Contracting, Inc. 9015 Americana Rd, Suite 1, Vero Beach FL 32966		

**YOU ARE HEREBY REQUESTED TO COMPLY WITH THE FOLLOWING CHANGES FROM THE CONTRACT PLANS AND SPECIFICATIONS:**

ITEM NO. (1)	DESCRIPTION OF CHANGES - quantities, units, unit prices, changes in completion schedule, etc. (2)					INCREASE IN CONTRACT PRICE (3)	DECREASE IN CONTRACT PRICE (4)
ITEM NUMBER	DESCRIPTION	CHANGE ORDER QUANTITY	UNITS	UNIT PRICE	AS-BUILT QUANTITY		
<b>TO RECONCILE AS-BUILT CHANGE ORDER ITEMS</b>							
<b>CHANGE ORDER NO. 1</b>							
CO1-1.b.	6" PVC DR-18 Water Main	2260	LF	\$9.80	2338	\$764.40	
CO1-2.	Ductile Iron Fittings (C-153 compact fittings, cement lined interior)	0.25	TN	\$6,000.00	1.34	\$6,540.00	
CO1-3	6-inch Megalug Restraint (Series 2000 pv or equal)	30	EA	\$100.00	23		\$700.00
CO1-4	Branch Connections	17	EA	\$597.50	16		\$597.50
CO1-8	6" Line Stop	1	EA	\$2,850.00	4	\$8,550.00	
CO1-10 b.	1" Single Long Water Service (Constructed in conjunction with water main)	7	EA	\$525.00	9	\$1,050.00	
CO1-10 c.	2" Double Short Water Service (Constructed in conjunction with water main)	1	EA	\$1,675.00	7	\$10,050.00	
CO1-13	Bacteriological Sample Point (constructed on water main)	3	EA	\$275.00	4	\$275.00	
CO1-14	Dewatering	2000	LF	\$3.00	0		\$6,000.00
CO1-15 b.	Remove Pressure Pipe (6")	2260	LF	\$6.50	2147		\$734.50
CO1-17	6" Horizontal Directional Boring (HDPE-DR11)	100	LF	\$55.00	267	\$9,185.00	
<b>Subtotal - Change Order No. 1</b>						<b>\$36,414.40</b>	<b>\$8,032.00</b>
<b>CHANGE ORDER NO. 2</b>							
	Remove existing abandoned 8" ACP Force Main	2100	LF	\$6.50	1707	\$0.00	\$2,554.50
<b>CHANGE ORDER NO. 3</b>							
S-4	Remove 8-inch Sanitary Sewer Main	90	LF	\$8.00	80		\$80.00
S-6	Open Cut Existing Road and Restore 6" Base Rock	30	SY	\$25.00	0		\$750.00
S-7	Furnish & Install Dewatering (Force & Gravity Sewer Mains, 6' - 8')	43	LF	\$25.00	0		\$1,075.00
<b>Subtotal - Change Order No. 3</b>						<b>\$0.00</b>	<b>\$1,905.00</b>
<b>CHANGE ORDER NO. 4</b>							
1.	4" Concrete Sidewalk - 25th Avenue	325	SY	\$20.90	289		\$752.40
2.	6" Concrete Sidewalk - 25th Avenue	15	SY	\$24.95	23	\$199.60	
<b>Subtotal - Change Order No. 4</b>						<b>\$199.60</b>	<b>\$752.40</b>
<b>CHANGE ORDER NO. 5</b>							
1.	6" Thick Concrete Sidewalk - 19th Street	1090	SY	24.95	1072		\$449.10
2.	Sodding - Argentine Bahia - 19th Street	250	SY	1.18	1933	\$1,985.94	
<b>Subtotal - Change Order No. 5</b>						<b>\$1,985.94</b>	<b>\$449.10</b>
<b>SUBTOTAL CHANGE ORDER ITEMS</b>						<b>\$38,599.94</b>	<b>\$13,693.00</b>
<b>SUBTOTAL ORIGINAL CONTRACT ITEMS FROM PG 1</b>						<b>\$17,486.45</b>	<b>\$20,353.70</b>
<b>GRAND TOTAL ORIGINAL CONTRACT ITEMS &amp; CHANGE ORDER ITEMS</b>						<b>\$56,086.39</b>	<b>\$34,046.70</b>

18th Street Paving, Drainage & Sidewalk Improvements (CDBG) CONTRACT CHANGE ORDER NO. 6 AND FINAL Prepared by: City of Vero Beach Public Works Department ACCOUNT NUMBER: 304.9900.541.604010	Contract Date: 07/02/09 Notice to Proceed: 7/13/09 Project No. 2004-11	Sheet 3 of 3
Name and Address of Contractor: SPS Contracting, Inc. 9015 Americana Rd, Suite 1, Vero Beach FL 32966		

1. Necessity for changes:
1. TO RECONCILE THE ASBUILT QUANTITIES FOR ALL THE ORIGINAL CONTRACT ITEMS AND PREVIOUS CHANGE ORDER ITEMS REQUIRED TO COMPLETE PROJECT.
  2. To add 90 days contract time to the contract to cover the additional change order work.
  3. Increase the Retention of Records requirements int the CDBG Supplemental Conditions of the contract (Paragraph 3) from 5 years to 6 years from the date of grant closeout.
2. Is proposed change an alternate bid?  Yes  No
3. Will proposed change alter the physical size of the project?  Yes  No  
If "Yes", explain.
4. Effect of this change on the prime contractors: NONE
5. Has consent of surety been obtained?  Yes  
 Not Necessary
6. Will this change affect expiration or extent of insurance coverage?  Yes  No  
If "Yes", will the policies be extended?  Yes  No
7. Effect on operation and maintenance costs: NONE

Recommended by: <sup>WSK 4/15/10</sup> Monte K Falls Date: 4/15/10  
Monte K. Falls, PE, Director  
Public Works Department

Recommended by: Robert Bolton Date: 4/12/10  
Robert Bolton, PE, Director  
Water & Sewer Department

Accepted by: Jim Widmann Date: 4/9/10  
Jim Widmann, Contracts Administrator  
SPS Contracting, Inc.

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
Kevin Sawnick, Mayor

**COUNCIL AGENDA REPORT**  
**MEETING OF MAY 4, 2010**

**TO:** The Honorable Mayor and Members of the City Council

**FROM:** James M. Gabbard, City Manager

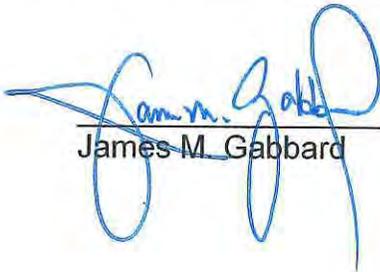
**DATE:** April 28, 2010

**SUBJECT: POLICE DEPARTMENT EXERCISE EQUIPMENT PURCHASE**

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Attached is a memorandum from Don Dappen, dated April 21, 2010, requesting permission to purchase a new commercial treadmill.

**It is the recommendation of the City Manager's Office that Council approve the purchase of a new commercial treadmill from Commercial Health & Exercise Equipment, at a cost of \$4,250.00, including a three year warranty. Funding will be from the Police Department's Asset Forfeiture Account.**

  
James M. Gabbard

:jav  
Attachment

xc: Chief Dappen  
Stephen Maillet

N:\AGENDA\2010\ASSET FORFEITURE FUND - TREADMILL.DOC

## Departmental Correspondence

To: James M. Gabbard, City Manager

From: Donald A. Dappen, Chief of Police



Subject: Police Department Treadmill

Date: April 21, 2010

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In 1994 we purchased two commercial treadmills for the police department gym. In 2007 one of the treadmills was replaced. Now, after sixteen years of use, the second treadmill is in need of replacement.

The treadmills are very popular and used by employees from various city departments. The life of one treadmill getting constant use is considerably less, compared to having two treadmills in service. The cost to repair the second treadmill is close to half of the cost to purchase a new one.

A new commercial treadmill with a three year warranty will cost \$4250.00. This is the same purchase price as in 2007. I request to make this purchase from the forfeiture account.

**Commercial Health & Exercise Equipment**

1270 N. Wickham Rd. #16-714  
 Melbourne, FL 32935  
 321-253-4644  
 321-777-2358 fax.

**Estimate**

Date	Estimate #
4/14/2010	5946

Name / Address
Vero Beach Police Dept. 1055 20th St. Vero Beach, FL 32960 772-978-4621 Attn: Deputy Chief Currie

Description	Qty	Cost	Total
Vision T9800 S Commercial Treadmill	1	4,000.00	4,000.00
Set up/Delivery/Freight	1	250.00	250.00
Warranty: 3/3			
Pricing good for 30 days.			
<b>Sales Tax (0.0%)</b>			\$0.00
<b>Total</b>			<b>\$4,250.00</b>

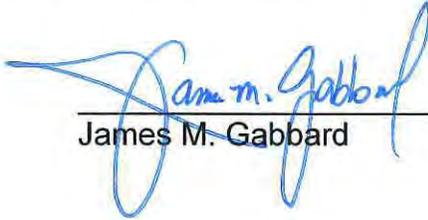
**COUNCIL AGENDA REPORT**  
**MEETING OF MAY 4, 2010**

**TO:** The Honorable Mayor and Members of the City Council  
**FROM:** James M. Gabbard, City Manager  
**DATE:** April 27, 2010  
**SUBJECT: SETTLEMENT AGREEMENT – LINDA TYNER**

---

Attached is a copy of a memorandum from Barbara Morey, dated April 26, 2010, which provides background information, along with a copy of the Pre-Suit Mediation Settlement Agreement with Linda Tyner.

**It is the recommendation of the City Manager's Office that Council approve the Settlement Agreement with Linda Tyner, in the amount of \$40,000.00.**

  
\_\_\_\_\_  
James M. Gabbard

:jav  
Attachment

xc: Charles Vitunac  
Robert Anderson

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## CORRESPONDENCE

TO: Jim Gabbard, City Manager  
FROM: Barbara J. Morey, Risk Manager   
SUBJECT: Settlement Recommendation – Linda Tyner  
DATE: April 26, 2010

On September 14, 2007 Linda Tyner was driving on Oslo Road when her vehicle was struck from behind by a City vehicle driven by a City employee. Ms. Tyner's vehicle was totaled and she sustained injuries requiring physical therapy and eventual surgery.

Ms. Tyner was reimbursed for the value of her damaged vehicle. Her medical expenses, to date, amounted to approximately \$60,000.00. The initial claim made against the City for Ms. Tyner's personal injuries was for the \$100,000.00 statutory cap.

We attempted to settle this claim informally, but were unable to reach agreement. On April 24, 2010 we participated in pre-suit mediation in an attempt to resolve this claim. The City was represented by Wayne Coment, Assistant City Attorney. Ms. Tyner was represented by attorney Steve Hoskins. After several hours we reached tentative agreement for full settlement of Ms. Tyner's personal injury claim for \$40,000. This agreement was predicated on the condition that we would need City Manager and City Council approval.

By handling this claim in-house, we believe we have ultimately saved the City several thousands of dollars that might have been spent on outside counsel, fees and other costs of litigation, as well as the City's potential exposure for an unknown amount ultimately decided by a jury if the case was to go to trial on the amount of damages to be awarded.

I recommend that this Agreement be approved.

Bjm

Cc: Robert Anderson  
Wayne Coment  
Catherine McKenzie

**LINDA TYNER (Plaintiff) V. CITY OF VERO BEACH (Defendant) PRE-SUIT  
MEDIATION SETTLEMENT AGREEMENT**

The parties hereto have reached the following agreements in full and complete resolution of the above styled pre-suit claim, which arises out of a September 14, 2007 motor vehicle accident which occurred on Oslo Road in Indian River County, Florida:

1. The City of Vero Beach (hereafter the City) agrees to pay to Linda Tyner (hereafter Tyner) the total sum of \$40,000.00 in order to resolve all claims which Tyner has against the City arising out of the referenced motor vehicle accident.

2. Tyner agrees not to file any lawsuit or make any further claim against the City arising out of the accident which is the subject of this claim.

3. Tyner shall execute a full and complete release of the City, and all other persons, firms, corporations or other entities in privity with the City at the same time as receiving the payment set forth in Paragraph 1 above.

4. Tyner agrees to protect and hold harmless the City from any claims and/or liens and to satisfy out of the settlement proceeds any said claims or liens of any nature that may attach to the settlement proceeds before the balance of the settlement proceeds are disbursed.

5. All parties to this agreement further agree to bear their own costs and fees.

6. This agreement is final and binding as of the date and time it is signed by or on behalf of the parties.

7. Other agreements: All parties understand and agree that this settlement is fully contingent upon approval by the Vero Beach City Council. The City will place this matter on the next available Council agenda for consideration. If approved by the Council, this settlement will be paid within 20 days of approval. If the Council fails to



approve this settlement, then this agreement is void and of no effect.

Done and agreed to on this 23rd day of April, 2010 in Vero Beach, Florida.

  
\_\_\_\_\_

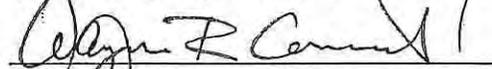
Linda Tyler, Plaintiff

  
\_\_\_\_\_

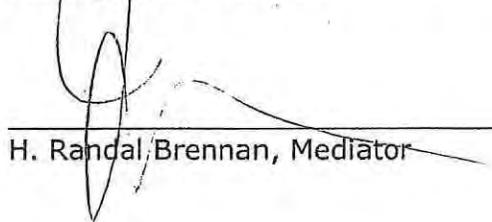
Attorney for Plaintiff

  
\_\_\_\_\_

Defendant/Representative

  
\_\_\_\_\_

Attorney for Defendant

  
\_\_\_\_\_

H. Randal Brennan, Mediator

April 27, 2010  
GAI Project # A091410.00

Joint Negotiating Committee  
C/o Sherri Philo (COVB) and  
C/o Purchasing Manager  
Indian River County  
1800 27<sup>th</sup> St., Bldg B  
Vero Beach, FL 32960

Via Email & US Mail

**Re: RFQ #2010020**  
**Revised Phase 1A and Phase 1B Scope of Services, Schedule, Costs**  
**For Negotiating Committee Consideration**

Gentlemen:

Attached please find per the request of the committee, a revised Phase 1 Scope of Services, Schedule and Costs for the three party joint investigation of the options for future utility management within Indian River County, City of Vero Beach and the Town of Indian River Shores.

The Phase 1 scope and fee is now divided into two parts, Phase 1A, Data Collection/Interviews, and Phase 1B, Initial Analysis.

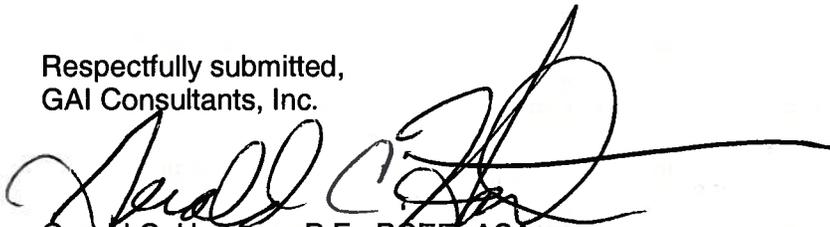
GAI understands that the committee will first proceed with Phase 1A and will subsequently consider proceeding on Phase 1B upon review of the results/conclusions of Phase 1A.

We look forward to providing the technical, management consulting, financial and legal expertise which is jointly desired from our professional team.

We have assumed that the working group has an agreement as to which the parties agree and to which the attachments would be exhibits.

If you have any questions or comments concerning the attached, please do not hesitate to call us.

Respectfully submitted,  
GAI Consultants, Inc.



Gerald C. Hartman, P.E., BCEE, ASA  
Vice President

Attachments

To be distributed by Sherri Philo as agreed.

cc: Tara Hollis, CPA, GAI, John Hermann, PE, GAI, File

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## **EXHIBIT "A"**

### **Proposal for Study for Optimization of Water and Wastewater Utility Services for Indian River County, the City of Vero Beach and the Town of Indian River Shores**

#### **Scope of Services**

##### **I. PROJECT OVERVIEW**

Indian River County (IRC), the City of Vero Beach (COVB), and the Town of Indian River Shores (IRS) would be considering optimization of their water and wastewater utility services.

IRC and COVB each operate independent water and sewer utility systems. The Town of Indian River Shores (IRS) is served by a franchise agreement with the COVB. The COVB also serves a portion of IRC through a franchise agreement. IRC serves approximately 42,000 water customers and 25,000 sewer customers. The COVB serves 12,000 water customers and 9,000 sewer customers (including the two franchise areas).

The purpose of this study is to:

- Provide recommendations addressing the two franchise agreements
- Determine the most efficient scenario that will allow economies of scale to either lower or stabilize long-term rates.
- Define the steps/actions needed including financial and capital improvement requirements needed to meet the objectives of the selected scenario

To complete this study, GAI recommends a multi-phased work plan consisting of:

- Phase 1 – Initial Investigation
- Phase 2 – Detailed Assessment of Preferred Scenario
- Phase 3 – Implementation

Additionally, the Phase 1 scope is divided into two segments:

- Phase 1A – Data Collection/Interviews
- Phase 1B – Initial Analysis

GAI understands that the group desires to proceed on Phase 1A at this time. Phase 1B will commence pending discussion of the results/conclusions of Phase 1A and upon future signed approval and authorization of the group.

The Phase 1A and 1B scope, schedule and compensation is delineated herein.

## II. SCOPE OF SERVICES

The following specific tasks are included in the scope:

### **Phase 1 – Initial Investigation**

#### **Phase 1A – Data Collection/Interviews**

##### **1. Data Collection**

###### **1.1. Technical Data**

GAI will gather technical data from Indian River County, the Town of Indian River Shores and the City of Vero Beach in relation to the water and wastewater utilities including:

- Facility information (size/capacity, type, age, system schematics)
- Inspection/technical reports
- Disinfectant residual and requirements for water blending
- Master plans, comprehensive plans, capital improvement elements
- Level of service
- Permits and regulatory reports
- Capital Improvement Plans (CIP)

###### **1.2. Major Agreements**

GAI will gather major agreements in relation to the water and wastewater utilities from including:

- Indian River County
  - Major service agreements
  - Franchise Agreement
    - South Island/ Moorings
  - Other large agreements
    - Interconnection
    - Wholesale
    - Other
- Vero Beach
  - Major service agreements
  - Franchise Agreements
    - Indian River Shores
    - South Island/ Moorings
  - Other large agreements
    - Interconnection
    - Wholesale
    - Other
- Indian River Shores
  - Franchise agreement
  - Major service agreements
  - Other large agreements

### 1.3. Financial

GAI will gather financial information in relation to the water and wastewater utilities from including:

- Water/wastewater ordinances and resolutions
- Audits
- Revenue Statements
- Comprehensive Annual Financial Reports
- Bond issues
- Asset documents
- Rate studies and financial plans
- Comprehensive plans capital improvement elements

### 1.4. Interviews with Stakeholders

GAI will perform one-on-one interviews with elected officials and senior staff from Indian River County, the Town of Indian River Shores and the City of Vero Beach.

The GAI team will conduct these interviews in the City of Vero Beach City Hall, Indian River County Complex, and at the Town Hall of Indian River Shores. GAI has assumed that these interviews will be conducted over five (5) consecutive days and completed within the week. These interviews will be conducted by Mr. Gerald C. Hartman, PE, BCEE, ASA and Mr. Thomas Cloud, Esquire.

The GAI team will prepare two (2) standard questionnaires regarding the objectives and desires of the entities (one each for the decision makers and utility staff) and will explore issues that are pertinent and meaningful for each of the entities. GAI has assumed that the persons to be interviewed will consist of elected officials (commissioners and mayor) (approximately 20 persons) and staff members representing technical, management, financial and legal areas (9 persons as designated).

The GAI team will prepare a summary memorandum regarding the interviews. Based on the interviews, GAI will develop an analysis of the desired objectives for the study with consensus and non-consensus positions on the issues. GAI will make recommendations regarding subsequent steps.

## **Phase 1B – Initial Analysis**

### **1. Overview Analysis**

The GAI team will provide a short description memorandum of the utilities and an overview analysis of the each of the utilities for IRC, COVB and IRS.

The review will include the following elements:

#### **1.1. Facilities**

- Existing facilities including:
  - Capacities and ability to expand
  - Needs versus location of infrastructure
  - Redundancies
  - Interconnects
- Permits and permit obligations
- Opportunities
- Synergies of Capital Improvement Plans (CIPs)

#### **1.2. Legal Overview**

- Agreements
- Applicable regulations

#### **1.3. Financial/Rate Review**

- Summary of rates and charges
- Financial obligations
- Financial strengths of utilities

#### **1.4. Administrative Structure/Organization**

- Administration
- Support
- Maintenance
- Operations

### **2. Evaluation/Analysis of Town of Indian River Shores and County Franchises with City of Vero Beach**

The GAI team will review the two (2) franchise agreements. GAI will summarize the terms of the agreements. For each of the two (2) franchise agreements, GAI will identify up to three (3) alternative options to the agreements including:

- Continuation/ extension of the current agreement
- Assumption of ownership and maintenance of the franchised areas by the franchising entity with inter-local agreements
- Transfer operations to a consolidated entity
- Transfer ownership and operations to a consolidated entity

The GAI team will identify the advantages, disadvantages, comparative level costs/rates associated with each option.

The GAI team will summarize the results of the review in a memorandum.

Based on the evaluation, the GAI team will recommend action items.

### **3. Identification of Major Scenarios for Further Investigation**

The GAI team will identify major scenarios for future considerations. Scenarios to be considered include:

- Status Quo/ Continue As-is
- Interlocal agreements with modification of existing and potential additional agreements
- Consolidation for operations or for ownership and operations
- Partial Consolidation with interlocal agreements

The GAI team will prepare a memorandum that identifies each scenario, the major features and elements as they would apply to IRC, COVB and IRS. GAI will identify the advantages and disadvantages of each of the structures and present comparative rates and CIPs previously identified primarily by each entity.

Phase 2 will expand on the detailed activities necessary for the comparatively most favorable option and refine the option to a level that franchise decisions and/or other related approach decisions can be considered by the appropriate entity.

### **4. Sustainability**

The GAI team will review sustainability issues that may impact the long term needs and cost that may affect the utilities. Sustainability issues to be identified (listed) will include those that affect the ability of the utilities to:

- Provide long term water supply
- Dispose of residuals and effluent from wastewater treatment
- Fund long term capital improvements
- Maintain a stable rate structure
- Optimization opportunities

The GAI team will identify these issues in a memorandum including current and future needs. Future needs will be as defined by sources such as Regional Water Supply Plans, Facility Plans and other information presented by the various entities. The memorandum will identify the specific issues individually for IRC, COVB and IRS and as combined for all three (3) entities.

## **5. Report**

### **5.1. Draft Report**

The five (5) memoranda will be integrated into a draft report with 6 copies plus 3 CDs provided (two copies plus one CD for each entity), which will include the following:

- Five (5) memoranda (incorporates both Phase 1A and Phase 1B memoranda)
- Recommendation
- Action items to pursue
- Executive Summary

### **5.2. Draft Report Meeting**

The GAI team will review the draft report with the committee, receive comments and answer questions.

### **5.3. Final Report**

The GAI team will incorporate the comments received, prepare and deliver ten (10) final reports (total of 30) to each entity plus an electronic copy on a CD.

### **5.4. Joint Workshop Final Presentation**

The Committee will advertise and organize a joint workshop for the three (3) entities where the GAI team will present and discuss the final report. Following this meeting, if there is a consensus or other situation based upon the discussion, then the GAI team will prepare the responsive Phase 2 or other assignment scope/schedule/costs for respective entity consideration.

### **III. ADDITIONAL SERVICES**

GAI, at the option of the entities, can also perform the following additional tasks:

- Detailed analysis of alternative operating structures
- Review of management/organization structure
- Appraisal of utilities, hearing, purchase and sale agreements, documentation and closing services
- Development of a detailed capital improvement plan (CIP) to meet the objectives of the selected operating scenario
- Hydraulic modeling in support of developing the CIP
- Master facility planning
- Permitting
- Detailed optimization activities as prioritized
- Grant/loan activities
- Funding/financial reports
- Other associated services

#### **IV. DELIVERABLES**

##### **Phase 1A - Data Collection/Interviews**

- Request for information
- Interview questions
- 5 consecutive days for local interviews
- Summary of entity interviews memorandum

##### **Phase 1B - Initial Analysis**

- Overview analysis memorandum
- Major Scenario identification memorandum
- Franchise memorandum
- Sustainability memorandum
- Draft report and review meeting
- Final report distribution
- Presentation of results and interlocal workshop (one meeting)

The memorandums from Phase 1A and Phase 1B will be consolidated into a report with an executive summary as a final product of Phase 1B.

All final reports/studies/plans/documents will be provided on a CD in an applicable format to include .pdf, .doc, .dwg and .jpg formats.

#### **V. PROJECT SCHEDULE**

The project schedule for this Phase is shown on Exhibit "B."

#### **VI. FEE**

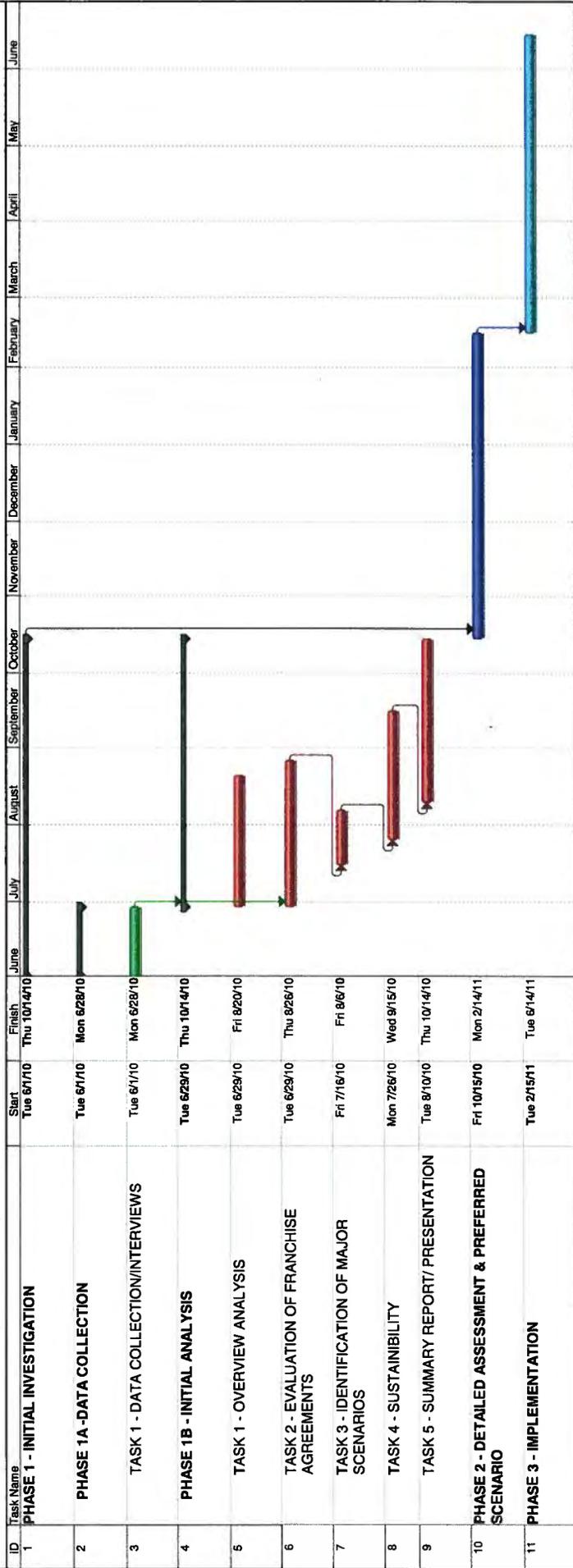
The fee for Phase 1A and Phase 1B is shown on Exhibit "C."

GAI understands that the group wishes to commence first with Phase 1A and will subsequently consider proceeding with Phase 1B upon completion and review of the Phase 1A results/conclusions.

#### **VII. AGREEMENT**

To be provided by negotiating committee.

**EXHIBIT C - Proposal for Study for Optimization of Water and Wastewater Utility Services for Indian River County, the City of Vero Beach and the Town of Indian River Shores**



Task    
  Milestone    
  External Task  
 Split    
  Summary    
  External Milestone  
 Progress    
  Project Summary    
  Deadline

**DEPARTMENTAL CORRESPONDENCE**

TO: Mayor Kevin Sawnick and  
City Councilmembers

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

DATE: April 26, 2010

SUBJECT: **Public Hearing on Ordinance to Renumber and Amend Chapter 30,  
Alcoholic Beverages, as Section 60.16 of the Land Development Regulations**

**First Reading Before City Council**

At the First Reading on the proposed ordinance, City Council voiced concerns about the proposed change that would allow restaurants to serve alcoholic beverages for consumption on site with no separation requirements from schools. The staff was requested to review the Florida Statutes to determine what latitude the City had in limiting the hours for serving alcoholic beverages.

In carefully reviewing the Florida Statutes, the City Attorney has determined that the Florida Statutes don't entirely preempt the City from adopting its own regulations controlling both the time and location of such sales as long as it doesn't conflict with State law. In case of restaurants, which derive at least 51 percent of their gross sales from the sale of food and nonalcoholic beverages, the Florida Statutes allow the City to exempt such establishments from the 500 foot separation requirement in Section 562.45(2)(a) without the necessity of going through a process that would involve two public hearings and adoption of an ordinance approving the location as "promoting the public health, safety, and general welfare of the community." [Attached is an illustration of 500 feet separation radius using as an example Cafe 1901 located at the northwest corner of 14<sup>th</sup> Avenue and 19<sup>th</sup> Street.]

**Staff Concerns and Riomar Request**

As this new information was not made known to the Planning and Zoning Board when the draft ordinance was considered by that body, it is the staff's recommendation that the ordinance should be remanded back to the Planning and Zoning Board for further consideration. The Planning and Zoning Board will then have the opportunity to determine appropriate changes, if any should be made to the draft ordinance.

However, last week the staff was contacted by a representative of the Riomar Country Club requesting that the City Council adopt the draft ordinance or adopt the ordinance with amended language that restricts the sale and consumption of alcohol during regular school hours. In the attached letter to the Council, Mr. Donald Davidson points out that the Riomar Country Club will not be able to move forward with improvements to its facilities this summer if it is unable

obtain a liquor license in the next month or so. Due to its location next to St. Edward's School (within 200 feet of school property), the country club needs the regulations governing separation requirements from schools to be amended to obtain a liquor license.

## Options

Based on the Riomar Country Club's request and the staff concerns, the staff has identified the following four basic options for consideration by the City Council regarding adoption of the ordinance:

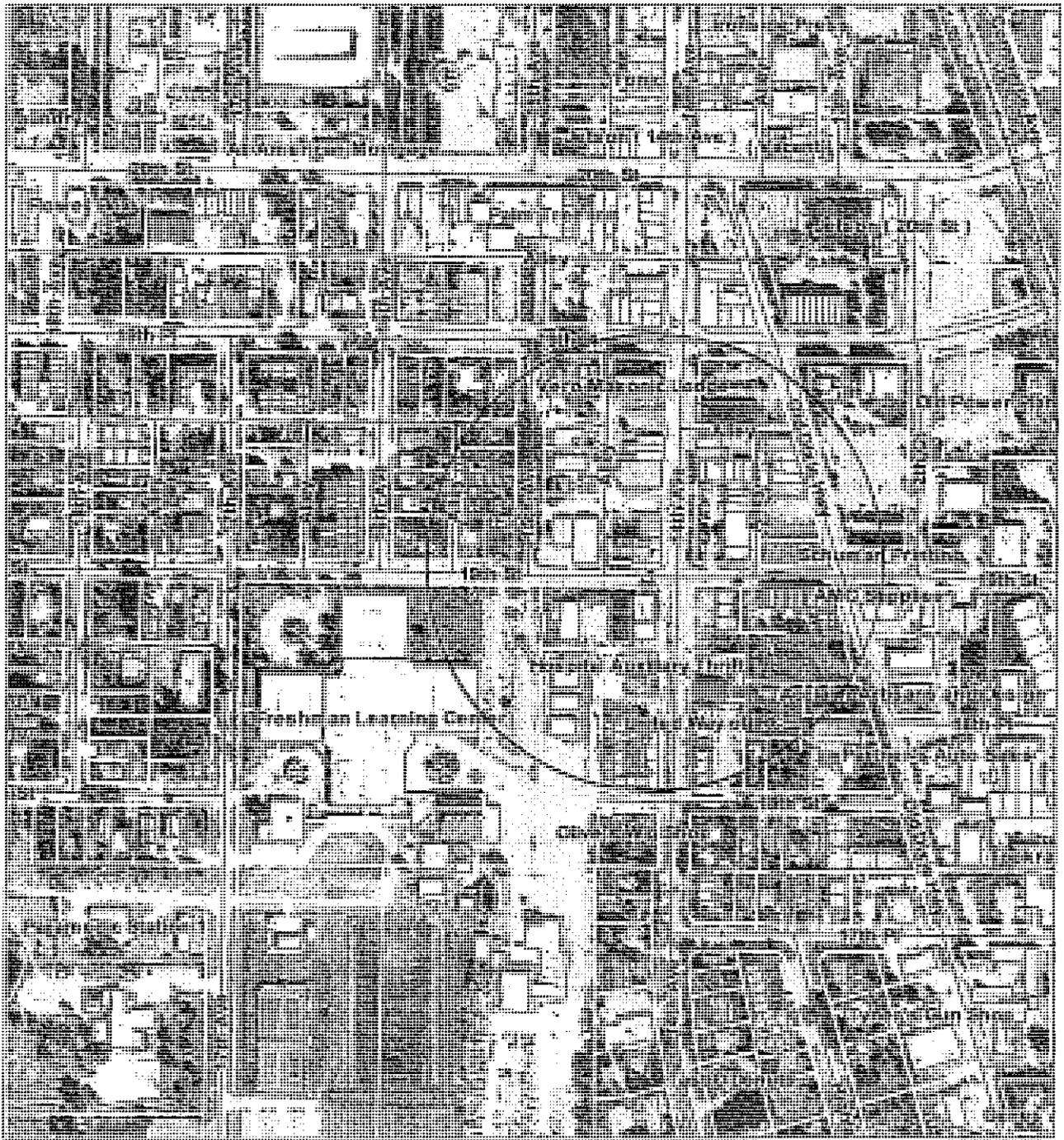
1. Remand the draft ordinance back to the Planning and Zoning Board with guidance on any changes that should be considered by that advisory body;
2. Adopt the draft ordinance as presented or with amendments.
3. Adopt the draft ordinance, as suggested by the Riomar Country Club, with the following amended language (underlined) to Section 60.16(b)(2):  

“(2) Restaurants, which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages, subject to the condition that the sale and consumption of alcoholic beverages shall not take place between 7:00 a.m. and 4:00 p.m. on school days, if the restaurant is located within 500 feet of a school.”
4. Adopt the amended ordinance as suggested by Riomar Country Club, but remand the ordinance as amended back to Planning and Zoning Board with guidance on any further changes that should be considered by that advisory body.

## Recommendation

Unless the City Council has no problems with the draft ordinance as proposed or with amendments (Options 2 and 3), the staff recommends that the City Council either pursue Option 1 (remand the draft ordinance back to the Planning and Zoning Board with guidance on further changes) or Option 4 (adopt the ordinance with the amended language in Option 3 and remand the amended ordinance back to Planning and Zoning Board with guidance on further changes).

TJM/tf  
Attachments



**500' RADIUS FROM 1901 14<sup>TH</sup> AVENUE RESTAURANT**



## **Riomar Country Club**

2106 Club Drive, Vero Beach, Florida 32963-2154

(772) 231-6426 Fax: (772) 234-4231

April 26, 2010

Vero Beach City Council:  
1053 20<sup>th</sup> Place P.O. Box 1389  
Vero Beach, FL 32961

### **BACKGROUND**

St Edward's School has announced that it intends to move the lower school to the property now housing the upper school. It intends to make this move after the school classes are over in May but at the latest in January.

The City of Vero Beach has an ordinance that precludes the issuance of a restaurant liquor license if it is within 500 feet of a school.

Riomar Country Club is within 500 feet of St Edward's lower school and would like to be able to apply for a restaurant liquor license as soon as St Edward's moves.

The Planning and Zoning Department of the City of Vero Beach recommended to the Planning and Zoning Board that the 500 foot restriction be eliminated for obtaining a restaurant liquor license. The rationale for the recommendation was that to obtain a liquor license the restaurant must have more than 51 per cent of its sales in food and 200 seats and therefore more restrictive than for bars.

On 3/18 the Planning and Zoning Board of Vero Beach voted 6-0 to eliminate the 500 foot restriction for obtaining a restaurant liquor license.

Riomar Country Club has hired an architect and made plans to have a grill room, which could serve liquor, at its clubhouse based on the expected City Council approval of the Planning and Zoning Board recommendation.

Riomar would spend approximately \$300,000 using a Vero Beach architect and Vero Beach area construction people if the renovation were to take place this summer.

The Riomar Board of Directors is reluctant to proceed without assurances that a liquor license can be obtained.

If the City Council sends the ordinance back to the Planning and Zoning Board the City Council could not act on it before June or July which would be too late for the construction to take place this summer.

## REQUEST

Riomar requests that the City Council do one of two things:

- Adopt the draft ordinance as written.

- Adopt an amended ordinance which would allow "restaurants, which derive at least 51 per cent of their gross revenues from the sale of food and nonalcoholic beverages within 500 feet of a school, be authorized to sell alcoholic beverages for on-site consumption with the condition that such sales and on-site consumption shall only be authorized when the school was not in regular session."

The Planning and Zoning Board could still be asked to review and recommend further changes to the ordinance to the City Council for consideration at a later date.

Respectfully yours,

Donald B. Davidson  
President

**Riomar Country Club**

2106 Club Drive, Vero Beach, Florida 32963-2154  
(772) 231-6426 Fax: (772) 234-4231

April 26, 2010

Vero Beach City Council:  
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Respectfully yours,

Donald B. Davidson  
President

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

**AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, RENUMBERING AND AMENDING CHAPTER 30, ALCOHOLIC BEVERAGES, OF THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF VERO BEACH; PROVIDING FOR RESTRICTIONS AS TO LOCATION OF ESTABLISHMENTS DEALING WITH OR IN ALCOHOLIC BEVERAGES; PROVIDING FOR EXCEPTIONS; PROVIDING FOR CONSISTENCY WITH SECTION 562.45(2) OF FLORIDA STATUTES; PROVIDING FOR METHOD OF MEASUREMENT OF SEPARATION DISTANCES FROM SCHOOLS AND PLACES OF WORSHIP; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 166, Florida Statutes, the “Municipal Home Rule Powers Act,” authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and

**WHEREAS**, within the above-referenced grant of powers, the City of Vero Beach (the “City”) has the authority to and does regulate the location of establishments dealing with or in alcoholic beverages and provide separation distances from certain protected uses, such as schools and places of worship, for the protection of the public health, safety, and welfare; and

**WHEREAS**, Chapter 30, Alcoholic Beverages, of the Land Development Regulations of the City, which regulates the separation of establishments dealing with or in alcoholic beverages licensed under the Florida Beverage Law from schools and places of worship, requires amendment for consistency with the exemption and measurement of the separation distance for schools provided by Section 562.45(2) of Florida Statutes; and

**WHEREAS**, it is appropriate at the same time to renumber and move the aforementioned Chapter 30, Alcoholic Beverages, to the more appropriate general zoning provisions of the Zoning Ordinance of the City,

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

Section 1 – Renumbering and Amendment of Chapter 30, “Alcoholic Beverages.”

Chapter 30, “Alcoholic Beverages,” in Title III, “Police Power Ordinances,” of Part III, “Land Development Regulations,” is hereby re-numbered as Section 60.16 in Chapter 60, “General Provisions” of Title VI, the Zoning Ordinance of the City of Vero Beach, and is amended to read as follows:

**~~CHAPTER 30. ALCOHOLIC BEVERAGES~~**

**~~Sec. 30.05. Restriction on location of licensed premises.~~**

~~In addition to the general zoning requirements, no licensed premises shall be authorized within 500 feet of any school or church; provided, however, that these additional restrictions shall not apply to licensed premises that are limited to the sale of malt beverages and wine for consumption off the premises only and to temporary permits issued to nonprofit civic organizations under “The Beverage Law” of the state. The 500-foot restriction shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the proposed licensed premises to the main entrance of the church, and in the case of a school, to the nearest point of the school grounds in use as part of the school facilities.~~

**Sec. 60.16. Restriction on location of establishments dealing with or in alcoholic beverages.**

(a) Definitions. Relevant definitions in section 6-2 of the Code of Ordinances and the Florida Beverage Law shall apply and are incorporated herein as the context permits.

(b) Separation of licensed premises from schools and places of worship. No licensed premises shall be authorized by the planning director within 500 feet of any established place of worship, or public or private elementary, middle, or secondary school, with the following exceptions:

- (1) Premises licensed on or before July 1, 1999;
- (2) Restaurants, which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages;
- (3) Establishments licensed for the sale of beer or wine for consumption off the premises only; or
- (4) Not-for-profit organizations operating under a temporary permit issued by the Division of Alcoholic Beverages and Tobacco of the Florida

Department of Business and Professional Regulation under the Florida Beverage Law.

(c) Measurement of separation from schools and places of worship. The separation distance of 500 feet shall be measured in a straight line from the main entrance of the building containing the licensed premises to the nearest point of the real property containing a place of worship or school facilities.

Section 2. Conflict and Severability.

In the event any provision of this ordinance conflicts with any other provision of this Code or any other ordinance or resolution of the City of Vero Beach on the subject matter of this ordinance, the more strict provision shall apply and supersede. If any provision of this ordinance is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this ordinance, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

Section 3 - Effective Date.

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

\*\*\*\*\*

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

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

**Mayor Kevin Sawnick**

Yes       No

**Vice Mayor Sabin C. Abell**

Yes       No

**Councilmember Thomas P. White**

Yes       No

**Councilmember Brian Heady**

Yes       No

**Councilmember Kenneth J. Daige**

Yes       No

**ATTEST:**

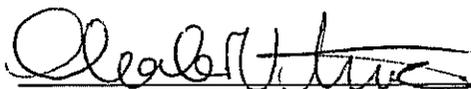
**CITY OF VERO BEACH, FLORIDA**

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

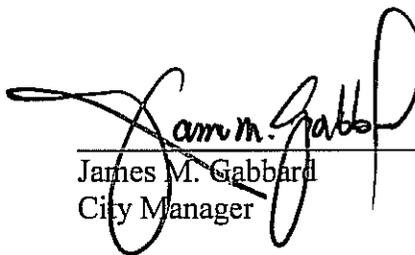
\_\_\_\_\_  
Kevin Sawnick  
Mayor

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

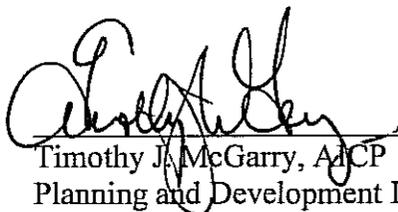


\_\_\_\_\_  
Charles P. Vitunac  
City Attorney



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

Approved as to technical requirements:



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

3-B)

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

**AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING CHAPTER 73, ARTICLE II, DRAINAGE AND ARTICLE III, STORMWATER MANAGEMENT OF THE CITY OF VERO BEACH CODE; DELETING EXISTING ARTICLE II, DRAINAGE AND REPLACING IT WITH NEW ARTICLE II, STORMWATER MANAGEMENT; DELETING EXISTING ARTICLE III, STORMWATER MANAGEMENT AND REPLACING IT WITH NEW ARTICLE III, CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL; CREATING NEW ARTICLE IV, MUNICIPAL SEPARATE STORM SEWER SYSTEM; PROVIDING FOR REQUIREMENTS, STANDARDS AND REVIEW PROCEDURES FOR STORMWATER MANAGEMENT PLANS FOR SINGLE FAMILY/DUPLEX, NONRESIDENTIAL, MULTIPLE FAMILY, AND NEW SUBDIVISION DEVELOPMENT; PROVIDING FOR REQUIREMENTS, STANDARDS, AND REVIEW PROCEDURES FOR EROSION AND SEDIMENT CONTROL PLANS FOR CONSTRUCTION ACTIVITY; PROVIDING FOR FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION GENERIC PERMITS FOR CERTAIN LAND DISTURBING ACTIVITIES; PROVIDING FOR REGULATIONS FOR DISCHARGES TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, recent Evaluation Appraisal Report-based amendments to the City’s Comprehensive Plan require that the City’s regulations governing stormwater be substantially revised to address water quality, including expanding the applicability of stormwater management requirements to single-family development; and

**WHEREAS**, the Planning and Development and Public Works staffs have identified other issues in the existing regulations, including the need to delete obsolete provisions and to incorporate the requirements of the City’s National Pollution Discharge

Elimination System (“NPDES”) Phase II, Municipal Separate Storm Sewer System (“MS4”) permit;

**WHEREAS**, the Planning and Development and Public Works staffs have prepared this draft Ordinance to address the aforementioned needs and issues; and

**WHEREAS**, the City Council finds that the adoption of this Ordinance amending Chapter 73 is consistent with the goals, objectives, and policies of the City’s Comprehensive Plan and the criteria for approving text amendments to the City’s Land Development Regulations pursuant to Section 65.22(i) of the City Code;

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

Section 1. Amendment of Chapter 73, Article II, Drainage.

Chapter 73, Article II, Drainage, is hereby amended as follows:

#### **~~ARTICLE II. DRAINAGE~~**

##### **~~Sec. 73.20. Master drainage plan.~~**

~~The master plan for the installation of drainage facilities providing for the proper drainage of waters within the city, as prepared by Reynolds, Smith & Hills, engineering firm, as may be amended by adoption of any modifications resulting from a study by the Indian River Farms Drainage District or by any other future official studies approved by the city, is adopted as the plan which shall be adhered to in connection with the installation of drains, ditches, and storm sewers within the city. The master plan which is on file with the city clerk of the city shall be by reference made a part of this chapter, and whenever a master drainage plan is referred to, such reference shall be construed to refer to the master plan adopted by this section.~~

##### **~~Sec. 73.21. Permit required for work.~~**

~~No person shall interfere with any ditch, drain, sewer, or any drainage facilities or construct any such facilities other than those provided for in the master plan, nor shall any person cause any ditch or drain to enter into any of the ditches, drains, or storm sewers constructed or maintained by the city unless such person shall first have obtained~~

~~a permit therefor from the city manager, which permit shall be issued only after application and the need and necessity therefor shown to the city manager.~~

~~Secs. 73.22–73.30. Reserved.~~

## ARTICLE II. STORMWATER MANAGEMENT

### Section 73.21. Purpose.

The purpose of this article is to protect the public's health, safety, and welfare through control of stormwater runoff, minimizing impact on existing city, county, and/or state drainage facilities, assuring no illicit discharges to the city's Municipal Separate Storm Sewer System (MS4) and protecting and enhancing surface water, groundwater, and other natural resources of the City of Vero Beach in accordance with the city's comprehensive plan and mandates established by the State of Florida.

### Section 73.22. Stormwater management requirements.

(a) *Applicability.* Except as authorized by a certificate to dig, pursuant to chapter 76, historic preservation, any land disturbing activity that involves excavation, placement of fill, grading, altering of runoff patterns, or an increase in the amount of impervious cover shall be subject to the requirements of this article. The provisions of this article shall not apply to activities typically associated with landscaping, except where such landscaping may redirect or increase off-site runoff to adjacent properties or adversely impact a city-approved stormwater system.

(b) *Prohibition of land disturbing activity on vacant lands.* Excavation, placement of fill, grading, or the altering of runoff patterns on vacant lands is prohibited, except as allowed with a valid permit issued for the establishment of a use or structure.

(c) *Stormwater management plan requirement.* No excavation, placement of fill, foundation construction, grading, or altering of runoff patterns shall take place prior to approval of a stormwater management plan pursuant to this article.

(d) *Development requiring site plan approval.* No site plan shall be approved or building permit issued for development that includes any land disturbing activities set forth in (a) above without an approved stormwater management plan.

(e) *Consistency with local, state, and federal permitting requirements.* No stormwater management plan for any development site subject to the jurisdictional authority of the Florida Department of Environmental Protection, St. John's River Water Management District, or any other agency having jurisdiction over stormwater management systems shall be approved or an approved site plan released unless it meets the stormwater management criteria and permitting requirements of that agency and this article.

**Sec. 73.23. Stormwater management plan application requirements.**

Stormwater management plans required by this article shall be submitted to the planning and development department in conjunction with the application for site plan approval pursuant to part III, chapter 64 of this Code. The format and specific information required for stormwater management plans shall be prescribed by the city engineer. The city engineer shall have authority to waive any prescribed plan information requirement for a specific project where he has determined, in his professional opinion and based on good engineering practices, the waiver does not inhibit proper stormwater management and compliance with the requirements of this article.

**Sec. 73.24. General stormwater management design criteria.**

All stormwater management plans submitted pursuant to this article, except as provided for herein, shall comply with the following design criteria:

- (1) No surface runoff shall be directed to adjacent properties.
- (2) Surface runoff overflow shall be directed to a city-approved stormwater management facility where available or to public right-of-way where such facilities are unavailable, subject to approval by the city engineer.
- (3) Discharges to the Indian River Lagoon or any surface water that connects with that body of water or discharges to wetlands shall be conveyed through indirect means by use of vegetated overflow and spreader swales or other similar measures approved by the city engineer.
- (4) Within special flood hazard areas, grading and site alteration shall not result in any adverse impacts on flood protection or storage capacity. Flood storage capacity shall be created in an amount equal to at least that volume of the 100-year base flood displaced by fill, except in areas within the Category I storm surge zone as established by the most current run of a Sea, Lake, and Overland Surges for Hurricanes (SLOSH) computerized model by the State of Florida.
- (5) All earthen slopes shall be of no steeper ratio than 4-foot horizontal to 1-foot vertical.
- (6) Specific measures shall be in place during construction to ensure effective control of erosion and sedimentation pursuant to article III of this chapter. Control measures shall be installed and stabilized between the areas to be altered, graded, cleared and prepared for development and any potential receiving waters and adjacent properties.

**Sec. 73.25. Single-family and duplex stormwater management plan design criteria.**

(a) *New Single-family and duplex residences.* All new single-family and duplex residences shall require a stormwater management plan approved by the city engineer that complies with the following minimum design criteria, as applicable:

- (1) Where a city-approved stormwater management system with sufficient capacity exists, stormwater shall be directed to the city right-of-way or a drainage facility approved by the city engineer. Any development that proposes to place impervious area over more than 3,000 square feet shall be required to retain or detain the first 1.0 inch of rainfall for the impervious surface area exceeding 3,000 square feet.
- (2) Where no public or city-approved stormwater system exists or the existing system does not have sufficient capacity, as determined by the city engineer, a minimum of the first 1.0 inch of rainfall over the impervious area on site shall be required to be retained or detained on site prior to discharge to the city right-of-way or a drainage facility approved by the city engineer.

(b) *Existing single-family and duplex residences.* All existing single-family and duplex residences shall require a stormwater management plan approved by the city engineer that complies with the following minimum design criteria, as applicable.

- (1) Any non-substantial improvement to existing single-family and duplex residences or other land disturbing activities set forth in 73.22(a) that will result in an increase of less than 500 square feet of impervious surface area shall be subject to the general stormwater management design criteria in section 73.24.
- (2) Any substantial improvements to existing single-family or duplex residences or any site improvements that will result in an increase of 500 square feet or more of impervious surface area shall require a stormwater management plan that complies with the design criteria in (a)(1) or (a)(2) above, as applicable.

**Sec.73.26. Non-residential, multiple family, and new subdivision development stormwater management plan criteria.**

(a) *New non-residential, multiple family and subdivision development.* All new non-residential, multiple family, and major subdivisions involving the creation of additional lots as defined in chapter 70, subdivisions, of this Code, shall require a stormwater management plan, prepared by a Florida licensed professional engineer and approved by the city engineer, that complies with the minimum design criteria of (c) below.

(b) Existing non-residential and multiple family development. Any modifications to existing non-residential and multiple family principal buildings and accessory structures that will increase the amount of impervious surface area or any other land disturbing activities set forth in section 73.22(a) shall be subject to the following minimum design criteria:

- (1) Substantial improvements to existing principal buildings shall require compliance with the specific design requirements of (c) below to the maximum extent practical as determined in the professional opinion of the city engineer, taking into account site constraints, the construction costs of the proposed improvements compared to the construction costs of the needed stormwater management system improvements, and other factors that he may determine to be relevant.
- (2) Any land disturbing activities as set forth in section 73.22(a) that will result in an increase of more than 1,500 square feet of impervious surface area shall require compliance with the specific design requirements of (c) below to address that portion of stormwater runoff that will result from the additional impervious surface area.
- (3) Non-substantial improvements to existing principal buildings and improvements to accessory structures or any other land disturbing activities as set forth in section 73.22(a) that will result in an increase in the amount of impervious surface area of 1,500 square feet or less shall be subject to the general stormwater management design criteria in section 73.24.

(c) On-site stormwater management plan and facilities. Stormwater management plans and stormwater facilities shall comply with the following minimum design criteria:

- (1) Overall Minimum Stormwater Management Facilities Design Criteria.
  - a. The stormwater management facilities shall comply with the minimum design requirements of the St. Johns Water Management District, pursuant to Chapter 40C-42, F.A.C., incorporated herein by reference, in addition to the minimum requirements of this section.
  - b. Should the stormwater management facilities design requirements of the federal or state agencies having jurisdiction over stormwater management systems be more stringent than the minimum requirements of this section, then the requirements of such agencies shall prevail.

(2) Stormwater Quantity.

- a. Design storm event: A minimum of 25-year and mean annual reoccurring storm event of 24 hour duration
- b. Design rainfall distribution: SJRWMD Type II FL Modified or other distribution approved by the city engineer.
- c. Inflow hydrograph method: Rational, SCS, Santa Barbara, or other method approved by the city engineer, as selected by the Florida licensed professional engineer preparing the stormwater management plan.
- d. Total volume: Site must detain or retain the stormwater runoff volume required to meet water quality and maximum discharge allowance criteria.
- e. Maximum discharge rate: Post-development peak discharge rate and stormwater runoff volume shall not exceed the predevelopment peak discharge rate and stormwater runoff volume.
- f. Percolation test: A percolation test is required using a method approved by the city engineer.

(3) Stormwater Quality. All development sites pursuant to this section shall be designed to retain or detain the first 1.5 inches of rainfall on-site before discharge into a city-approved outfall to the Indian River Lagoon or any surface waters connecting with that aforementioned water body.

(4) Discharge structures. Skimming devices or weirs, or a combination thereof, shall be required where deemed necessary by the city engineer, in his professional opinion and based on good engineering practices. The design of such discharge structures shall be approved by the city engineer.

(5) Stormwater management facilities design criteria.

- a. Slope vegetation: Side slopes shall be covered completely with sod.
- b. Industrial Uses: Connections from industrial uses to public stormwater facilities shall only be allowed after approval by the city engineer. The city engineer's decision shall be based upon an evaluation of the projected quantity and quality of discharge from

the industrial site and any other relevant factors to determine the compatibility of the proposed discharge with the city's MS4 and impacts on the water quality and beneficial uses of receiving surface waters. In approving the connection to the city's MS4, the city engineer may place reasonable conditions and requirements on the approved stormwater management plan to ensure compatibility with the city's stormwater system and minimize potential impacts on water quality and beneficial uses of receiving surface waters.

- c. Stormwater management facilities completion requirements: No changes to the approved stormwater management plan shall be allowed except in accordance with the standards and procedures for amending site plans. After completion of the stormwater management facilities and prior to issuance of a certificate of occupancy or a final completion inspection, the design engineer of the stormwater management plan shall submit to the public works department a sealed certification attesting that the stormwater management facilities have been constructed in accordance with the approved stormwater management plan. No certificate of occupancy shall be issued or final inspection completed without receipt of this sealed certification by the public works department.
- d. Easements: No stormwater management facilities shall be placed in existing or proposed easements other than drainage easements approved by the city engineer.

**Sec. 73.27. Conditional approval.**

Based on his professional opinion and in accordance with good engineering practices, the city engineer may place reasonable conditions upon his approval of a stormwater management plan to ensure compliance with this article and article IV of this chapter, including but not limited to stormwater monitoring or sampling requirements.

**Sec. 73.28. Proper installation and maintenance required.**

All stormwater management structures and stormwater mitigation measures shall be operated and maintained by the owner and occupant of the site in accordance with the approved stormwater management plan and this Code and the permit conditions of all federal or state agencies having regulatory jurisdiction over stormwater management facilities. Any failure to do so shall constitute a violation of this Code.

**Secs. 73.29-72.30. Reserved.**

Section 2. Amendment of Chapter 73, Article III, Stormwater Management.

Chapter 73, Article III, Stormwater Management, is hereby amended as follows:

**ARTICLE III. STORMWATER MANAGEMENT**

**Sec. 73.31. Purpose.**

~~The purpose of this article is to protect the health, safety, and welfare of the citizens of Vero Beach; to implement those policies and objectives found in the drainage element of the city's comprehensive plan; to control stormwater runoff and minimize impact on existing city, county, and/or Florida Department of Transportation drainage facilities; and to protect ground and surface waters to ensure a current and future usable water supply.~~

**Sec. 73.32. Review criteria for development projects.**

~~(a) — All development projects shall be subject to the requirements of this article with the exception of single family development. Stormwater management for new single family residences and all renovations, remodels, additions or other modifications (pools, driveways, etc.) shall include the site being filled and graded to direct all surface water runoff to the right of way drainage system or other approved drainage facilities. No surface water runoff may be directed to adjacent properties. Where no approved drainage system exists, the site shall be designed to contain the runoff from the first one inch of rainfall.~~

~~Prior to the issuance of a building permit, a filling and grading (drainage) plan must be approved by the city engineer. This plan must contain the flood zone, actual elevations, proposed site elevations and lowest floor elevations.~~

~~If a site is to be filled in advance of the issuance of a building permit, the filling and grading (drainage) plan must be approved by the city engineer. Further, if construction does not commence within 90 days of the date of filling, then the site must be vegetated to prevent erosion.~~

~~(b) — The review of stormwater management plans for all development projects shall be based upon the net increase in impervious surface resulting from the development.~~

~~(c) — Thresholds for the various limits of developments are as follows:~~

<i>Net Increase in Impervious Area</i>	<i>Design Criteria</i>	<i>Required Designer of Stormwater Management Plan</i>
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**CATEGORY I**

Less than 500 square feet	Direct site runoff to public	N/A
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drainage facilities

CATEGORY II

500 square feet but less than 2,500 square feet     Retain and dispose of first 1 inch of runoff on site; direct overflow to public drainage facilities     Licensed Florida Professional Engineer or Architect

CATEGORY III

2,500 square feet or greater     As specified in section 73.34.     Licensed Florida Professional Engineer

**Sec. 73.33. ~~On-site stormwater management plan requirements.~~**

~~(a) All Category III development projects shall provide a stormwater management plan which includes all of the information and calculation requirements as specified in this section and section 73.34 of the Code prior to receiving site plan or minor change approval by the City of Vero Beach Planning and Zoning Board. The applicant/owner shall submit such a plan with the site plan/minor change application.~~

~~(b) All stormwater management plans shall include the following information;~~

~~(1) A soil boring log prepared by an approved geotechnical firm indicating representative soil types and the groundwater table.~~

~~(2) Percolation tests pursuant to procedures established by the City of Vero Beach Department of Engineering.~~

~~(3) The size, grade, and elevation of all existing or proposed on-site and/or public drainage facilities located within 200 feet of the proposed development. Elevations shall be based upon National Geodetic Vertical Datum (N.G.V.D.) of 1929.~~

~~(4) Description of the existing predevelopment drainage characteristics of the land, including those areas contributing stormwater which passes through the site.~~

~~(5) Right of way elevations of any street contiguous to the site. The locations of these elevations shall include, but not limited to, the centerline of roadway, edge of roadway (curb if applicable), swales, and sidewalk at intervals not to exceed 50 feet.~~

~~(6) Proposed finished elevation of each building site and the first floor level. A proposed grading plan shall also be included.~~

- ~~(7) Transitional property line grades (elevations) shall be indicated on the grading plan so that stormwater impact upon adjacent sites may be precluded.~~
- ~~(8) Proposed system for the orderly retention and disposal of surface water runoff with the system capabilities of having a minimum ability to accommodate the amounts specified by section 73.34 below.~~
- ~~(9) All swales, retention areas, and all other drainage facilities proposed shall be indicated on the grading plan with elevations and guidelines shown as applicable.~~
- ~~(10) Location and method of connection with off-site drainage facilities to accommodate the site's excess surface water overflow, including documents indicating legal access across private property, if applicable.~~
- ~~(11) Proposed method(s) of erosion protection, where applicable.~~
- ~~(12) The City of Vero Beach Department of Engineering may waive any of the requirements set forth above if it is determined by the department that the waiver does not inhibit proper stormwater management.~~

**Sec. 73.34. On-site stormwater management design requirements.**

All Category III site developments shall include a stormwater management plan prepared by a registered professional engineer licensed to practice in the State of Florida. This plan shall meet the following criteria:

**QUANTITY**

- ~~Design Storm: ten-year/24 hour storm or three/24hour if economic hardship is clearly demonstrated.~~
- ~~Design Rainfall Distribution: F.D.O.T. Zone 7 Rainfall Curve~~
- ~~Inflow Hydrograph Method: Rational, SCS, Santa Barbara, etc., as chosen by plan designer (Florida Registered Professional Engineer)~~
- ~~Total Volume: Site must retain at least the volume from a ten-year/24 hour storm. Lesser volumes may be considered if economic hardship is clearly demonstrated.~~
- ~~Maximum Discharge Rate: Post-development shall not exceed predevelopment.~~

~~Percolation Test:~~ Required, with method approved by City of Vero Beach Department of Engineering.

## QUALITY

~~Detention/Retention:~~ Post-development shall not exceed predevelopment.

~~Wet/Dry:~~ Either wet or dry retention/detention is acceptable dependent upon site conditions and location.

~~Time:~~ Full capacity recovery within 36 hours.

~~Volume:~~ ten-year/24-hour design storm.

~~Percolation:~~ Disposal on site via surface or underground exfiltration system(s) or combination thereof.

## DISCHARGE STRUCTURES

~~Types:~~ Skimming devices and/or weirs required where applicable and practical with the design subject to review by the City of Vero Beach Department of Engineering.

## DRAINAGE AREA DESIGN STANDARDS

~~Side Slopes:~~ 4:1 or less required; however, upon demonstrated need and adequate justification, the City of Vero Beach Department of Engineering may consider and approve the use of 3:1 maximum side slopes.

~~Vegetation:~~ Solid sod

~~Maximum depth:~~ Eighteen inches; any depth greater than 18 inches is subject to review by the City of Vero Beach Department of Engineering with side slopes and site constraints being critical criteria.

~~Industrial Contingency Design:~~ No connections to public stormwater facilities shall be allowed.

~~Maintenance Plan and Completion Requirements:~~ No changes to approved plan allowed except as modified by site plan review process; all site stormwater management facilities shall be maintained per approved plan. After completion of the stormwater management

~~facilities and prior to issuance of a certificate of occupancy, the designer of the plan shall submit a certification attesting the facilities have been constructed in accordance with the approved stormwater management plan.~~

**Easements:**

~~Release or dedication of easements as may be required; no stormwater management facilities are to be placed in existing or proposed easements other than approved drainage easements. Any use of such stormwater easements is subject to approval by the City of Vero Beach Department of Engineering.~~

**OTHER PERMITTING AGENCIES**

~~The proposed stormwater management plan shall meet all St. Johns River Water Management District, Indian River Farms Water Control District, and Florida Department of Transportation stormwater criteria and permit requirements as applicable.~~

**ARTICLE III. CONSTRUCTION SITE EROSION AND  
SEDIMENT CONTROL**

**Sec. 73.31. Purpose.**

The purpose of this article is to protect the public's health, safety, and general welfare through regulation of land disturbing activities during the construction of buildings, structures, or other site improvements and to reduce pollutants in stormwater runoff into the Municipal Separate Storm Sewer System (MS4). These regulations recognize that during construction, disturbed soil is highly vulnerable to erosion by wind and water, which may result in adverse consequences and impacts, including but not limited to:

- (1) Endangerment of aquatic flora and fauna by reducing water quality through the discharge of pollutants and the siltation of habitat.
- (2) Impediments to flow of stormwater drainage systems, ditches, canals, and swales that necessitate their maintenance and the dredging of water bodies.
- (3) Conveyance of disturbed soil and pollutants from the construction site to adjacent properties.

### **Sec. 73.32. Definitions.**

For the purpose of this article, the following terms shall have the definitions indicated:

*Best Management Practices (BMPs):* Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater receiving waters or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

*Construction activity:* Any land disturbing activity that involves excavation, placement of fill, clearing or grubbing, demolition, grading, or the altering of runoff patterns.

*Erosion and sediment control plan:* A set of plans indicating the specific measures and sequencing to be used to control sediment and erosion on a site during and after construction.

*FDEP:* Florida Department of Environmental Protection.

*FDEP Generic Permit for Stormwater Discharge:* A FDEP Generic Permit for Stormwater Discharge from Regulated Construction Activities issued by that agency pursuant to authority delegated to the State of Florida under 33 USC § 1342(b) that authorizes the discharge of pollutants to the waters of the United States.

*Stormwater pollution prevention plan (SWPPP):* A document which describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

### **Sec. 73.33. Erosion and sediment control plan.**

(a) *Applicability.* All construction activity shall be subject to the requirements of this article, except as exempted herein. The provisions of this article shall not apply to activities associated with landscaping, except where such landscaping may redirect or increase off-site runoff to adjacent properties or adversely impact a city-approved stormwater system.

(b) *Construction activity.* No person may engage in any construction activity without an erosion and sediment control plan approved by the city engineer.

(c) Building permits, site plans, and preliminary plats. No building permit shall be issued or an approved site plan or preliminary plat released for any construction activity without an erosion and sediment control plan approved by the city engineer.

(d) Erosion and sediment control plan application. Erosion and sediment control plans required by this article shall be submitted to the planning and development department in conjunction with an application for site plan approval pursuant to part III, chapter 64 of this Code. Any construction activity described above that will result in the disturbance of one acre or more shall require an FDEP generic permit for stormwater discharge pursuant to section 73.34.

(e) Erosion and sediment control plan format and content. The format and specific content of erosion and sediment control plans required by this article shall be as prescribed by the city engineer. An approved erosion and sediment control plan must address all applicable BMPs necessary to properly control erosion and sediment resulting from construction activity and comply with the general standards in paragraph (f) below.

(f) General standards. The following general standards shall apply to all erosion and sediment control plans and their implementation:

- (1) Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and stabilized. Clearing techniques that retain natural vegetation and drainage patterns shall be implemented.
- (2) Grading, erosion control practices, sediment control practices, and waterway crossings shall be adequate to prevent transportation of sediment from the site and be maintained to project completion.
- (3) The angle for graded slopes and fills shall not be greater than the angle which can be retained by vegetative cover or other adequate erosion-control devices or structures (generally 4:1 or less). Slopes left exposed shall, within 10 working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to prevent erosion.
- (4) Groundcover sufficient to restrain erosion shall be planted or otherwise provided within 10 working days on portions of cleared land upon which further construction activity is not being undertaken within 30 days of clearing.
- (5) Vegetative cover or other erosion control devices or structures used to meet these requirements shall be properly maintained.

- (6) Temporary seeding or sodding, adequate covering, or chemical application on exposed soils, including stockpiles of topsoil, sand, or other construction fill, shall be used where delays in construction of more than 7 days are anticipated.
- (7) Waste generated on-site, including but not limited to discarded building materials, concrete truck wash-out, chemicals, litter, and sanitary waste must be stored, secured, or otherwise controlled to the maximum extent practicable to prevent adverse impacts to water quality.

**Sec. 73.34. FDEP generic permit for stormwater discharge permits required.**

A FDEP generic permit for stormwater discharge shall be required for construction projects resulting in land disturbance of one acre or more. A copy of the FDEP Notice of Intent for a generic permit for stormwater discharge and the stormwater pollution prevention plan (SWPPP) required for said permit shall be submitted to the planning and development department along with the site plan application. The SWPPP shall be deemed as meeting the erosion and sediment control plan requirements of this article after review and approval by the city engineer. A copy of the FDEP permit shall be maintained onsite by the permit holder for review by any city or other authorized state official upon request.

**Sec. 73.35. Proper installation and maintenance required.**

Failure to properly implement, install, operate, and maintain all erosion, pollutant and sediment controls required by an approved erosion and sediment control plan and any applicable state or federal permit shall constitute a violation of this Code.

**Sec. 73.36. Conditional approval.**

In approving an erosion and sediment control plan pursuant to this article, the city engineer may place reasonable conditions upon the approval to ensure compliance with this article and article IV of this chapter, including but not limited to stormwater monitoring or sampling requirements.

**Sec. 73.37. Exemptions.**

Any emergency activity necessary for the protection of life, property, or natural resources and maintenance and repair work to the city's MS4, is exempt from the requirements for obtaining approval of an erosion and sediment control plan pursuant to this article provided such activity does not contribute to any on-site generated erosion or degradation of lands or waters beyond the boundaries of the property or construction area.

**Secs. 73.38-73.40. Reserved.**

Section 3. Creation of Chapter 73, Article IV, Municipal Separate Storm Sewer System.

Chapter 73, Article IV is hereby created that reads as follows:

**ARTICLE IV. MUNICIPAL SEPARATE STORM SEWER SYSTEM**

**Sec. 73.41. Purpose.**

The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the City of Vero Beach and to protect and enhance the quality of watercourses through the regulation of all discharges to the city's separate storm sewer system to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the Municipal Separate Storm Sewer System (MS4) in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES). In addition to the foregoing, the objectives of this article include but are not limited to:

- (1) Effectively prohibiting illicit discharges and connections to the MS4.
- (2) Establishing legal authority for the city to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this article and state and federal law.

**Sec. 73.42. Applicability.**

This article shall apply to all areas within the city limits and all watercourses in said area entering the MS4 through a "point source" as defined in section 73.43, unless exempt under rule 62.624.200(2), F.A.C.

**Sec. 73.43. Definitions.**

For the purpose of this article, the following shall mean:

*Hazardous materials:* Any material, including any substance, waste, or combination thereof, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or significantly contribute to a substantial present or potential hazard to human health, safety, or property, or the environment when improperly treated, stored, transported, disposed of, or otherwise improperly managed.

*Illicit discharge:* Any direct or indirect non-stormwater discharge to the MS4 except as exempted in section 73.50.

*Illicit connections:* Any of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4 including but not limited to any conveyances that allow any non-stormwater discharge including sewage and processed wastewater to enter the MS4;
2. Any connections to the MS4 from indoor drains and sinks, regardless of whether or not said drain or connection had been previously allowed, permitted, or approved by a regulatory agency; or
3. Any drain or conveyance connected from a commercial or industrial land use to the MS4 that has not been documented in plans, maps, or equivalent records and approved by a regulatory agency.

Industrial activity: Activities subject to NPDES industrial permits as defined in 40 CFR Section 122.26(b)(14).

MS4 or municipal separate storm sewer system: Publicly-owned facilities operated by the city by which stormwater is collected, conveyed, and discharged to regulated waters, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by the EPA (or by a state under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-stormwater discharge: Any discharge to the MS4 that is not composed entirely of stormwater.

PPM: Parts per million.

Point source: Any discernible, confined, and discrete conveyance, such as any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, or landfill leachate collection system from which pollutants are or may be discharged.

Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: sediment; paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coli form and pathogens; dissolved and particulate

metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Regulated waters: Waters of the United States as defined in 40 CFR § 122, as amended, and Waters of the State as defined in Ch. 403, F.S., that lie within the City of Vero Beach.

Stormwater: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation.

Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a wastewater facility.

Watercourse: Any body of water including, but not limited to lakes, ponds, rivers, streams, swales, ditches, and canals.

#### **Sec. 73.44. Responsibility for administration and enforcement.**

The city engineer shall have the duty and authority to administer and ensure enforcement of the provisions of this article in conjunction with other city departments.

#### **Sec. 73.45. Discharge prohibitions.**

Other than stormwater, no person shall discharge or cause to be discharged into the MS4 or watercourses any materials, including but not limited to pollutants or waters containing any pollutants, that cause or contribute to a violation of applicable water quality standards. The commencement, conduct or continuation of any such discharge to the MS4 is prohibited with the following exceptions:

- (1) Water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, de-chlorinated swimming pools (less than one PPM chlorine), fire fighting activities, and any other water source not containing pollutants.
- (2) Discharges specified in writing by a federal or state regulatory agency and approved by the city engineer as being necessary to protect public health and safety.
- (3) Any non-stormwater discharge permitted under an NPDES permit, waiver, or wastewater discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency.

provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted by the city engineer for any discharge to the MS4.

**Sec. 73.46. Accidental discharges.**

Notwithstanding other requirements of law as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the MS4 or regulated waters, said person shall take all necessary steps to ensure the discovery, containment, and clean-up of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services (911). In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city engineer within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained by the owner or operator for at least three years from the date of the discharge of any prohibited materials and shall be made available for review by the city engineer upon request during normal business hours.

**Sec. 73.47. Prohibition of illicit connections.**

The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of the connection.

**Sec. 73.48. Monitoring.**

The following monitoring and sampling of discharges to the city's MS4 may be required by the city engineer upon determination of a probable violation of this article:

- (1) The installation and maintenance of such devices as are necessary to conduct sampling or monitoring of discharges to the city's MS4 and the collection of any samples deemed necessary.
- (2) The undertaking of reasonable monitoring and sampling of discharge to the city's MS4 and the submittal of periodic monitoring reports to the city

engineer by the person or owner of any property, building, or structure engaging in the activity of discharging to the city's MS4.

- (3) All such monitoring and sampling expense shall be borne by the subject person or owner.

**Sec. 73.49. Suspension of MS4 access.**

(a) *Suspension due to illicit discharges in emergency situations.* The city engineer is authorized, without prior notice, to issue a stop order pursuant to chapter 2, article VII, of this Code suspending MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, to the public health, safety or welfare, or to the MS4 or regulated waters.

(b) *Suspension due to the detection of illicit discharge.* Any person or owner found discharging to the MS4 in violation of this article may have its MS4 access terminated if such termination would abate or reduce an illicit discharge. The city engineer shall notify in writing a violator of the proposed termination of its MS4 access. No person shall reinstate MS4 access to premises terminated pursuant to this section without the prior written approval of the city engineer.

**Sec. 73.50. Industrial, commercial or construction activity discharges.**

(a) Stormwater from areas of any industrial, commercial or construction activity shall be controlled, treated and managed on-site using best management practices and approved by the city engineer in accordance with articles II and III of this chapter so as not to cause an illicit discharge to the city's MS4 or regulated waters.

(b) Authorized discharges to the city's MS4 shall be controlled so they do not impair the operation or contribute to the failure of the MS4 to meet any applicable local, state, or federal law or regulation.

(c) Authorized discharges to regulated waters shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters or result in violation of any applicable local, state, or federal law or regulation.

**Sec. 73.51. Watercourse protection.**

Every person owning or in possession of property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse or cause flooding to other properties. In addition, privately owned structures within or adjacent to a

watercourse shall be maintained so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

**Sec. 73.52. Interconnected MS4s.**

Interconnected MS4s, including MS4s not owned by the city, shall be controlled and maintained so they do not impair the operation of or contribute to the failure of the receiving MS4 to meet any applicable local, state, or federal law or regulation. An owner of any section of an interconnected MS4 shall be responsible for the water quality within its respective portion of the system and shall coordinate with the owners of the downstream sections.

**Sec. 73.53. Minimum standards.**

The standards set forth herein and promulgated pursuant to this article are minimum applicable standards; therefore, this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants to the city's MS4 or regulated waters.

**Secs. 73.54 -73.60. Reserved.**

Section 4. Conflict and Severability.

In the event any provision of this ordinance conflicts with any other provision of this Code or any other ordinance or resolution of the City of Vero Beach on the subject matter of this ordinance, the more strict provision shall apply and supersede. If any provision of this ordinance is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this ordinance, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

Section 5. Effective Date.

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

\*\*\*\*\*

This Ordinance was read for the first time on the \_\_\_\_ day of \_\_\_\_\_, 2010, and was advertised in the Indian River Press Journal on the \_\_\_ day of \_\_\_\_\_, 2010, as being scheduled for a public hearing to be held on the \_\_\_\_ day of \_\_\_\_\_, 2010, at the conclusion of which hearing it was moved for adoption by Councilmember

\_\_\_\_\_, seconded by Councilmember \_\_\_\_\_,

and adopted by the following vote:

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

**ATTEST:**

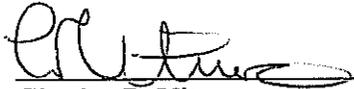
**CITY OF VERO BEACH,  
FLORIDA**

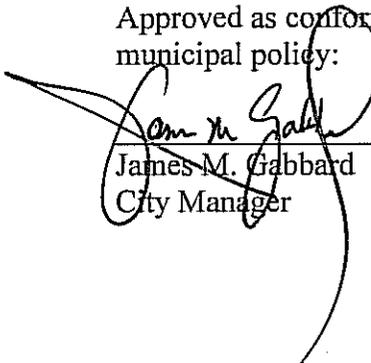
\_\_\_\_\_  
Tammy K. Vock  
City Clerk

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

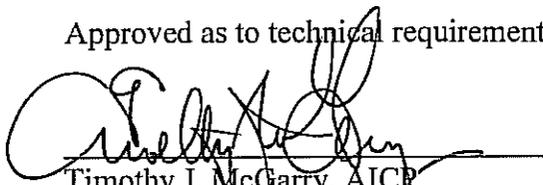
Approved as to form and legal sufficiency:

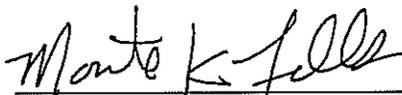
Approved as conforming to  
municipal policy:

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

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

Approved as to technical requirements:

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

  
\_\_\_\_\_  
Monte K. Falls, PE  
Public Works Director



4-A)  
OFFICE OF THE CITY ATTORNEY

## MEMORANDUM

---

**To:** Mayor Sawnick and Members of the City Council  
**From:** Peggy Lyon, Assistant City Attorney PL  
**Subject:** Veterans Memorial Island Sanctuary Resolution  
**Date:** April 26, 2010

---

At its April 7, 2010 meeting, the Veterans Memorial Island Sanctuary Advisory Committee voted to recommend the attached Resolution to the City Council for its review. The Resolution adds additional area lying immediately east of the Veterans Memorial Island Sanctuary to the oversight of the Committee only as it applies to memorials and plaques. The Committee recommends approval.

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

**A RESOLUTION OF THE CITY OF VERO BEACH, FLORIDA, REPEALING AND REPLACING RESOLUTION 2008-30, AND AMENDING THE VETERANS MEMORIAL ISLAND SANCTUARY AUTHORIZED USES AND MEMORIALS TO ADD ADDITIONAL AREA IMMEDIATELY EAST OF THE VETERANS MEMORIAL ISLAND SANCTUARY TO EXISTING COMMITTEE RULES REGARDING MEMORIALS AND PLAQUES; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Resolution No. 2008-30 provides for rules and regulations pertaining to Veterans Memorial Island Sanctuary with the goal of creating a quiet haven for reflection on the sacrifices made by the men and women in the Armed Forces of our Country, and as a memorial to Indian River County's military heroes, and

**WHEREAS**, at its March 3, 2010 Committee meeting, the Veterans Memorial Island Sanctuary Committee voted to recommend adding the area immediately east of the Veterans Memorial Island Sanctuary to the existing Committee's rules and policies regarding memorials and plaques. This area includes the bridge leading to the Sanctuary and the entry area immediately east of the bridge, including the traffic circle and its contents, excluding the roadway; and

**WHEREAS**, the City Council of the City of Vero Beach finds that adding Committee oversight over the additional areas as depicted in the map attached to Attachment A to this Resolution will serve to further preserve and ensure the Sanctuary as a quiet haven for reflection on the sacrifices made by the men and women in the Armed Forces of our Country,

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

Section 1. Veterans Memorial Island Sanctuary Authorized Uses and Memorials.

In accordance with Section 54-31(e) of the City of Vero Beach Code of Ordinances, the amended rules and procedures pertaining to the Veterans Memorial Island Sanctuary, as shown in Attachment "A" attached hereto and incorporated by this reference, are hereby adopted:

**SEE ATTACHED ATTACHMENT "A"**

**Veterans Memorial Island Sanctuary Authorized Uses and Memorials**

Section 2. Repeal and Replacement.

Resolution No. 2008-30 is hereby repealed and replaced by this Resolution No. 2010-

\_\_\_\_\_.

Section 3. Effective date.

This Resolution shall become effective upon adoption.

\*\*\*\*\*

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

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

ATTEST:

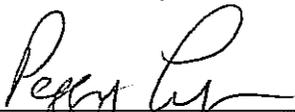
CITY OF VERO BEACH, FLORIDA

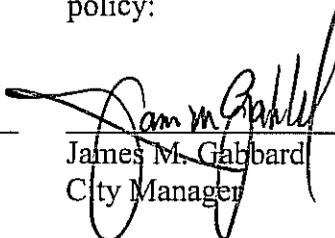
\_\_\_\_\_  
Tammy K. Vock  
City Clerk

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

Approved as to form and  
legal sufficiency:

Approved as conforming to municipal  
policy:

*for*  
  
\_\_\_\_\_  
Charles B. Vitunac  
City Attorney

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

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

## ATTACHMENT "A"

### VETERANS MEMORIAL ISLAND SANCTUARY AUTHORIZED USES AND MEMORIALS

The new Veterans Memorial Island Sanctuary Advisory Committee has had several meetings to review previous policies and to record suggested changes.

The following is a summary of discussions and general agreement on the following items:

\*The following asterisked rules and policies adopted by the Veterans Memorial Island Sanctuary Advisory Committee and the City Council of the City of Vero Beach regarding "Memorials," "Individual Memorials," "Memorials to Branches of Service," and "Plaques and Memorials" shall be in full force and effect on the Veterans Memorial Island Sanctuary, on the bridge leading to the Sanctuary, and on the entry area immediately east of the bridge, including the traffic circle and its contents, excluding the roadway. The rules and policies adopted by the Veterans Memorial Island Sanctuary Advisory Committee and the City Council of the City of Vero Beach regarding "Uses" are expressly limited to the Veterans Memorial Island Sanctuary. See attached map.

#### \*MEMORIALS

Veterans Memorial Island was created as a quiet haven for reflection on the sacrifices made by the men and women in the Armed Forces of our Country.

It shall contain memorials to the men and women of Indian River County who died in combat while defending our Country.

All memorials shall be consistent with the Master Plan of Memorial Island and no development shall occur that is not consistent with that plan.

All work shall be implemented by the Public Works and Engineering Department of the City of Vero Beach after approval of the Vero Beach City Council with recommendations from the Veterans Memorial Island Sanctuary Advisory Committee and the Veterans Council of Indian River County.

The Master Plan shall allow for the erection of monuments commemorating the branches of the United States Armed Services, i.e. the Army, the Navy, the Air Force, the Marines, and the Coast Guard. Any veteran who died in a combat operation and who was a resident of Indian River County at the time of his or her initial entry into one of the services shall be eligible for recognition. Documentation for these memorials shall have been submitted to the City from the Veterans Council of Indian River County and the Veterans Memorial Island Sanctuary Committee.

#### \*INDIVIDUAL MEMORIALS

Memorial plaques for deceased Veterans shall be consistent in size and design of the existing plaques and shall contain only name, rank, branch of service, date of birth and date of death.

Documentation of such memorial plaques shall be approved by the City Council with recommendation from the Veterans Council and the Veterans Memorial Island Sanctuary Advisory Committee.

No other individual memorials shall be allowed.

## **\*MEMORIALS TO “BRANCHES OF SERVICE”**

Such memorials shall be allowed if they are consistent with the existing “branch of service” memorials and after verification of the Veterans Council, recommendation from the Veterans Memorial Island Sanctuary Advisory Committee, and approved by the Vero Beach City Council.

## **\*PLAQUES AND MEMORIALS**

No plaques shall be allowed on any memorial designating sponsorship of individuals or organizations except those pertaining to the Veterans Organization. Recognition of contributions may be included either written or verbally at the dedication ceremony.

## **USES**

Since the Sanctuary was created for quiet contemplation, all uses must be in keeping with the purpose and intent of a Veterans Sanctuary.

The Vero Beach City Manager permits all uses that are appropriate for the Island per City Ordinance.

General recreational activities are not permitted. The primary use is for and by veteran’s organizations, memorial services, meditation by the public and other civil services that the City Manager approves.

Private memorial services held on Veterans Memorial Island Sanctuary shall be limited to services for United States veterans for whom a DD214 form, or equivalent, has been provided to the City of Vero Beach Recreation Department and verified by Indian River County Veterans’ Service Office. Scattering of cremains of such veterans is permitted in the waters surrounding the Island, however cremains shall not be scattered on the Island.

It is suggested by the Veterans Memorial Island Sanctuary Advisory Committee that the following uses are not permitted on Veterans Memorial Island Sanctuary:

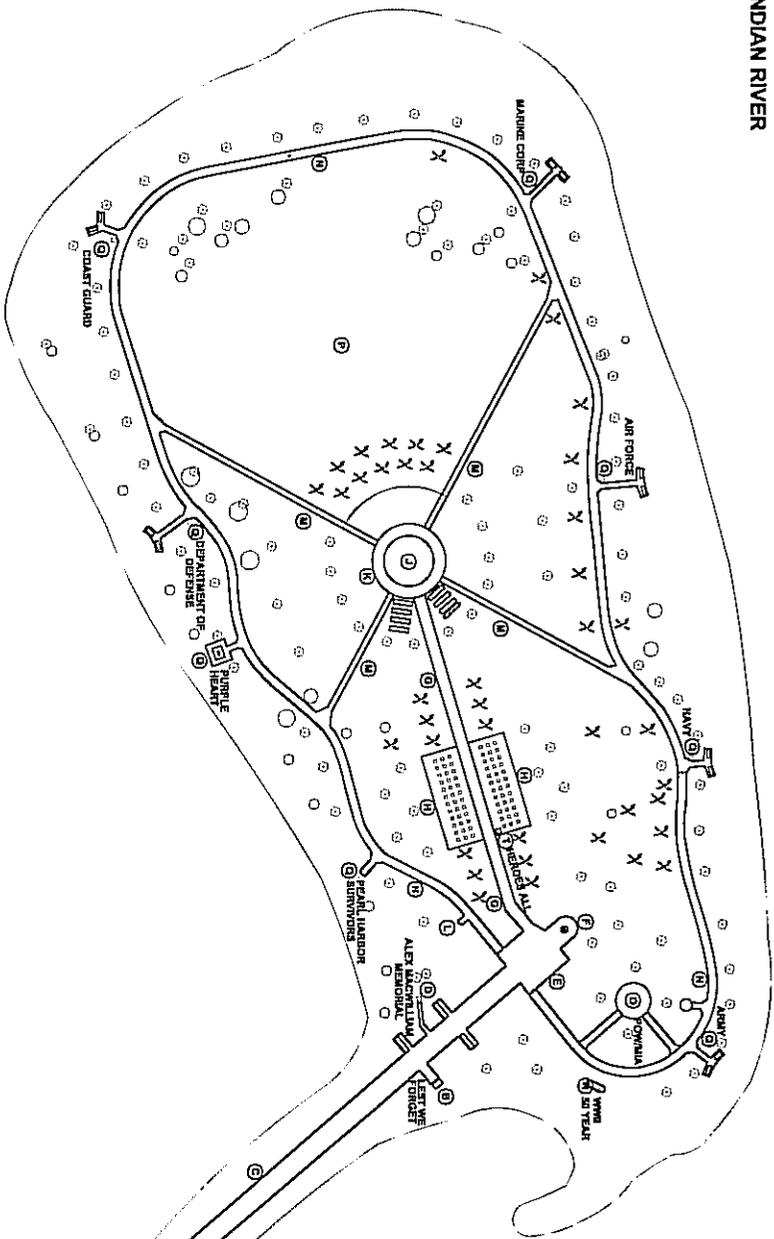
1. Weddings
2. Demonstrations, Rallies or Political motivated gatherings
3. Sports events
4. Band Concerts: except those used for military celebrations or recognized holidays of special National or local significance in which patriotic music shall predominate
5. Overnight Camping
6. Alcohol Beverages
7. Skateboards, Motor Scooters, Bikes, Skates
8. Boats
9. Dogs, except those used for handicapped assistance
10. Charge for Admission to the Island
11. Kite flying
12. Fishing
13. Fundraising events

Helen Glenn, Chairman

hg/sp

# VETERANS MEMORIAL ISLAND SANCTUARY

INDIAN RIVER



AREA OF SPECIAL RESTRICTIONS FOR MEMORIALS AND PLAQUES.

SCALE 1" = 40'



NOTES: ALL OF THE FORMER SPOIL ISLAND #21 DEEDED TO THE CITY ON MAY 5, 1941 AS RECORDED IN DEED BOOK 48, PAGE 97 OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY IS CONSIDERED TO BE VETERAN'S MEMORIAL ISLAND SANCTUARY

THE OUTLINED PORTION OF RIVERSIDE PARK ON THIS DRAWING, WHICH INCLUDES THE BRIDGE TO VETERAN'S MEMORIAL ISLAND SANCTUARY AND THE TRAFFIC CIRCLE, EXCLUDING THE ROADWAY, AT THE WEST END OF DAHLIA LANE, IS CONSIDERED TO BE AREA OF SPECIAL RESTRICTIONS. ALL FUTURE PLAQUES, MEMORIALS AND DEDICATIONS IN THIS AREA WILL REQUIRE APPROVAL FROM THE VETERAN'S MEMORIAL ISLAND SANCTUARY ADVISORY COMMITTEE.

NO.	DESCRIPTION	NUMBER	DATE
1	VETERAN'S MEMORIAL ISLAND SANCTUARY		
AREAS OF SPECIAL CONCERN			
CITY OF VERO BEACH			
DEPARTMENT OF PUBLIC WORKS			
SURVEY DIVISION			
CITY PROJECT NO. 2007-23			
SHEET 1 OF 1			

4-B)



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OFFICE OF THE CITY ATTORNEY

MEMORANDUM

---

**To:** Mayor Sawnick and City Councilmembers  
**Via:** Charles Vitunac, City Attorney *el*  
**From:** Peggy Lyon, Assistant City Attorney *PL*  
**Subject:** Updated Military Leave Policy  
**Date:** April 13, 2010

---

Attached for your consideration is a proposed Resolution prepared at the request of the Human Resources Department. The proposed resolution provides for the adoption of a revised Military Leave Policy that reflects changes in statutory and federal law relevant to military leave, and the incorporates by reference the federal Uniformed Services Employment and Reemployment Rights Act (USERRA). The policy works in tandem with the proposed Resolution supplementing the military pay of public officials and employees by providing updated guidelines for military leave. It differentiates between the varying requirements for federal active or inactive duty training, Florida National Guard active state duty, and active military service in the National Guard or a reserve component of the Armed Forces of the United States.

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

**A RESOLUTION OF THE CITY OF VERO BEACH,  
FLORIDA, ADOPTING THE MILITARY LEAVE POLICY AS  
AN AMENDMENT TO THE CITY OF VERO BEACH  
PERSONNEL RULES; PROVIDING FOR AN EFFECTIVE  
DATE.**

**WHEREAS**, the City Council of the City of Vero Beach recognizes and supports the contributions of its public officers and employees serving in the military and seeks to aid in ensuring the state and national security at all times through a strong armed force of qualified and mobilization-ready personnel; and

**WHEREAS**, military leave and reemployment rights are provided to public officials and employees of the City of Vero Beach pursuant to state law and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA); and

**WHEREAS**, the attached Military Leave Policy provides updated guidelines bringing the City of Vero Beach Personnel Rules on military leave in line with current state and federal law; and

**WHEREAS**, Section 58-1 of the City of Vero Beach Code of Ordinances mandates that Personnel Rules shall be adopted by the City Council by resolution; and

**WHEREAS**, the City Council finds that adopting the attached Military Leave Policy as an amendment to the City of Vero Beach Personnel Rules will provide guidance consistent with state and federal law to those public officials and employees serving in the uniformed services, and that such policy is in the public interest and will serve to promote and protect the health, safety and general welfare of the citizens of the City of Vero Beach, the state of Florida and the United States of America,

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

1. The above-listed recitals are included herein and made a part of this Resolution.
2. The Military Leave Policy, attached hereto, is hereby adopted and made a part of the Personnel Rules of the City of Vero Beach. The attached Military Leave Policy hereby replaces in full the current "Military Leave" at section 11.05 of the Personnel Rules of the City of Vero Beach.
3. This Resolution shall become effective upon adoption.

This Resolution was read on the \_\_\_\_ day of \_\_\_\_\_, 2010, and was moved for adoption by Councilmember \_\_\_\_\_ seconded by Councilmember \_\_\_\_\_, and adopted on the \_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

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

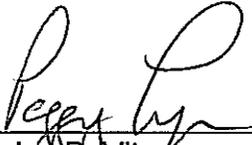
ATTEST:

CITY OF VERO BEACH, FLORIDA

\_\_\_\_\_  
Tammy P. Vock  
City Clerk

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

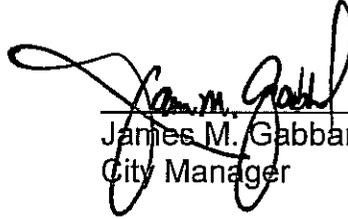
Approved as to form and  
legal sufficiency:



Charles P. Viturac  
City Attorney

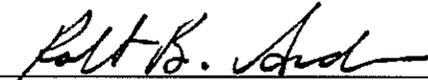
for:

Approved as conforming to  
municipal policy:



James M. Gabbard  
City Manager

Approved as to technical  
requirements:



Robert B. Anderson  
Human Resources Director

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

## Military Leave Policy

### **1.0 AUTHORITY**

This policy is in keeping with the current City of Vero Beach Personnel Rules and Regulations and Federal and State law.

### **2.0 PURPOSE**

The purpose of the policy is to provide guidelines for Military Leave. This policy may be amended as applicable when changes are made in Federal/State law.

### **3.0 MILITARY LEAVE**

The City of Vero Beach recognizes and supports the contributions of its public officers and employees serving in the military and seeks to aid in ensuring the state and national security at all times through a strong armed force of qualified and mobilization-ready personnel. Military leave and reemployment rights shall be granted to any public official or employee of the City of Vero Beach, whether full-time, temporary, part-time, probationary, or seasonal, serving in the uniformed services consistent with state law and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA). Service in the uniformed services covers all categories of military training and service, including duty performed on a voluntary or involuntary basis in time of peace or war.

- A. Federal Active or Inactive Duty Training. All public officials or employees who are commissioned reserve officers or reserve enlisted personnel in the United States military or naval service or members of the National Guard shall be granted military leave under Section 115.07, Fl. St. to engage in active or inactive duty training upon presentation of a copy of the public official or employee's official military orders. The first seventeen (17) days of such leave in a fiscal year shall be with pay. Such leave for additional periods shall be without pay.
- B. Florida National Guard Active State Duty. All public officials or employees who are members of the Florida National Guard shall be granted a leave of absence under Section 250.48, Fl. St. for his or her respective duties, without loss of pay, time, or efficiency rating, on all days during which the public official or employee is engaged in active state duty for a named event, declared disaster, or operation pursuant to Section 250.28, Fl. St. or Section 252.36, Fl. St. as established by executive order upon presentation of a copy of the public official or employee's official military orders. A leave of absence without loss of pay under this section may not exceed thirty (30) days for each emergency or disaster, as established by executive order.
- C. Active Military Service.
  1. All public officials or employees who are servicemembers in the National Guard or a reserve component of the Armed Forces of the United States shall be granted a leave of absence from their respective offices and duties to perform active military service upon notification, whether in writing or verbally, as far in advance as is reasonable under the circumstances pursuant to USERRA. The first thirty (30) calendar days of any such leave of absence shall be

with full pay. Pursuant to City Resolution, and in accordance with state law, after the first thirty (30) calendar days of active military service, all public city officials and city employees shall have their military pay supplemented in an amount necessary to bring their total salary, inclusive of their base military pay, and excluding any overtime, to the level earned at the time they were called to active military duty. Health insurance and other existing benefits, if any, shall continue to be provided to such public officials and employees pursuant to USERRA.

2. Reemployment rights shall be in accordance with USERRA. Upon completing service in the uniformed services, the public official or employee must notify the City of his or her intent to return to the employment position pursuant to USERRA. The public official or employee is required to submit to the City documentation necessary to establish eligibility for reemployment in accordance with USERRA.
- D. Retirement benefits. In accordance with USERRA and state law, on reemployment, military service is deemed to be service with the City for purposes of employee retirement plan benefits. Pension plan accrual and vesting shall continue during the employee's military service.

Current Military Leave Policy  
City of Vero Beach Personnel Rules

11.05 MILITARY LEAVE

Any employee who is called for military training or active duty in a uniformed service of the United States is eligible for Military Leave, provided the employee gives the City notice of the employee's military obligation as soon as received by the employee. These rules concerning military leave are intended to conform with Federal and State laws granting leave and re-employment.

A. Payment for Military Leaves of Absence:

1. Non-temporary full-time employees will receive up to seventeen (17) days per fiscal year of paid Military Leave for active duty or active duty for training. Temporary and part-time employees shall be eligible for non-paid Military Leave to the extent required by law.

2. If the employee's leave does not qualify for payment under Section 11.04 A.1, the employee may take any accrued annual leave or leave without pay to cover the absence caused by the military assignment. As a condition of granting non-paid military leave for employees having completed their allotted days of Military Leave in the same fiscal year, the employee must submit copies of orders to report for duty together with a written statement from the employee's Commanding Officer that the employee is being ordered to active duty or active duty for training and the employee did not have the option of declining the orders or declining to request the order to report for active duty.

B. Reemployment Rights

1. The employee should give advance notice of service as soon as possible. However, failure to do so will not necessarily have an adverse affect on the employee's right to reemployment. Employees are not required to decide before leaving for duty whether they will seek reemployment upon their return.

2. Reemployment rights are applicable for military leaves of absence of up to five (5) years.

3. Reemployment requirements are as follows:

a. Service up to 30 days: Employees will be required to request reemployment at the beginning of the next regularly scheduled work shift following completion of military service.

b. Service from 31 to 180 days: Employees will be required to request reemployment no later than 14 days following completion of military service.

c. Service of more than 180 days: Employees will be required to request reemployment no later than 90 days after completion of military service.

4. The City may request documentation from returning service members proving that they have made timely application for reemployment, have not exceeded service limitations, and have been released from service under other than dishonorable conditions.

#### C. Type of Position Upon Return from Military Leave

1. Service up to 90 days: Returning employees must be placed in the position and salary they would have attained had they remained continuously employed.

2. Service of 91 days up to 5 years: Employees shall be granted either the position and salary they would have attained had they remained continuously employed or a position of like seniority, status, and pay.

3. Returning employees who do not qualify for the position for any reason other than a service-related disability may be placed in a lesser position at an appropriate salary for which they are qualified, but will still retain full seniority.

4. A person with a service-connected disability who is not qualified for their original position, after reasonable efforts to accommodate the disability have been made, will be employed in an equivalent position - in terms of seniority, status and pay - for which the person is qualified with or without a reasonable accommodation.

#### D. Benefit Rights

##### 1. Health Insurance Benefits

a. For leaves up to 30 days, the employee will retain health insurance as if no leave had been taken.

b. For leaves of 31 days or more, the employee may continue health insurance under COBRA.

c. Upon return, employees are entitled to health insurance benefits as if their employment had not been interrupted.

##### 2. Life Insurance

a. Life insurance will be maintained for any leave of absence up to 30 days.

b. Life Insurance will be terminated for any leave of absence of more than 30 days.

c. Life insurance will be reinstated within 30 days of an employee's return to work.

3. Retirement

a. Military service is deemed to be service with the City for purposes of employee retirement plan benefits. Pension plan accrual and vesting will continue during the employee's military service.

b. When an employee returns from military service, the City will make any contributions to the pension that would have been made had the employee not been serving a military leave of absence.

c. With respect to the employee's contribution into the pension plan, the returning employee will be allowed to make up missed deferrals over a period equal to three times the period of military service, but not longer than five years.

4. Annual leave and medical leave do not accrue during any unpaid leave of absence. However, when an employee returns from Military Leave, accruals will start at the rate the employee would have received had the Military Leave not been taken.

5. Workers Compensation coverage will cease at the close of the employee's last day of work prior to the commencement of military service and will begin upon the employee's return from Military Leave.

4-C)



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OFFICE OF THE CITY ATTORNEY

MEMORANDUM

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**To:** Mayor Sawnick and City Councilmembers  
**Via:** Charles Vitunac, City Attorney *CV*  
**From:** Peggy Lyon, Assistant City Attorney *PL*  
**Subject:** Update of Resolution Supplementing Military Pay  
**Date:** April 13, 2010

---

Attached for your consideration is a proposed Resolution supplementing the military pay of public officials and employees and a proposed Military Leave Policy updated to reflect changes in state and federal law.

The proposed Resolution provides public officials and employees who are granted military leaves of absence for active military service full pay for the first *thirty* calendar days (currently *twenty-eight* days) as required by Chapter 115, Florida Statutes. The proposed Resolution continues to provide for supplementation of military pay of its officials and employees after the first thirty days of active military duty to bring total salary, inclusive of base military pay, to the level earned at the time they were called to active military duty. Such supplementation of military pay is discretionary, not mandatory, under Chapter 115, Florida Statutes, and has been provided by the City of Vero Beach to its public officials and employees performing active military service since Resolution 2003-07 was passed in January of 2003 and then re-adopted by Resolution 2004-44.

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

**A RESOLUTION OF THE CITY OF VERO BEACH, FLORIDA, ADOPTING THE SUPPLEMENTATION OF MILITARY PAY AUTHORIZED BY CHAPTER 115, FLORIDA STATUTES FOR PUBLIC OFFICIALS AND EMPLOYEES OF THE CITY OF VERO BEACH WHO PERFORM ACTIVE MILITARY SERVICE AS SERVICEMEMBERS IN THE NATIONAL GUARD OR A RESERVE COMPONENT OF THE ARMED FORCES OF THE UNITED STATES; REPEALING AND REPLACING RESOLUTION NO. 2004-44; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Vero Beach recognizes and supports the contributions of the public officials and employees of the City of Vero Beach who serve in the military, and seeks to aid in ensuring the state and national security at all times through a strong reserve force of qualified and mobilization-ready personnel; and

**WHEREAS**, the protection of veterans' employment and reemployment rights, including leaves of absence for military service, are governed by Chapter 115, Florida Statutes, and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA); and

**WHEREAS**, Chapter 115, Florida Statutes, requires that the City of Vero Beach, as a municipal employer, shall grant a leave of absence with full pay for the first thirty (30) calendar days to public officials and employees of the City of Vero Beach who are servicemembers performing active military service in the National Guard or a reserve component of the Armed Forces of the United States; and

**WHEREAS**, Chapter 115, Florida Statutes, authorizes the City Council, in its discretion, to grant supplemental pay after the first thirty (30) calendar days of

active military service to ensure that such public official or employee does not suffer a loss of pay as a result of serving; and

**WHEREAS**, the City Council of the City of Vero Beach hereby finds that it is in the public interest of the City to adopt a supplementation of military pay policy for public officials and employees of the City of Vero Beach who are servicemembers performing active military service in the National Guard or a reserve component of the Armed Forces of the United States,

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

Section 1. Supplementation of military pay.

After the first thirty (30) calendar days of active military service at full pay pursuant to Sections 115.09 and 115.14, Florida Statutes, public officials and employees of the City of Vero Beach who are granted a military leave of absence to perform active military service in the National Guard or a reserve component of the Armed Forces of the United States shall be paid a supplement to their military pay in an amount necessary to bring their total salary, inclusive of base military pay, and excluding any overtime, to the level earned at the time they were called to active military service. The supplementation of military pay described herein shall continue throughout the duration of the military leave of absence for active military service granted by the City of Vero Beach, or until such time as the City Council, in its discretion, amends or repeals this Resolution. This Resolution does not confer upon any affected public official or employee any contractual right, and the City Council of the City of Vero Beach

reserves the right, in its discretion, to amend or repeal this Resolution and to revoke the supplementation of military benefits granted thereby at any time.

Section 2. Repeal and Replacement.

This Resolution hereby repeals and replaces Resolution No. 2004-44.

Section 3. Effective date.

This Resolution shall become effective upon adoption and shall remain in effect until amended or repealed by the City Council for the City of Vero Beach.

This Resolution was read on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, and was moved \_\_\_\_\_ for adoption by \_\_\_\_\_ Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

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

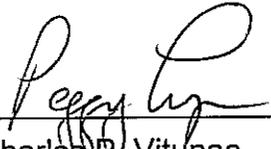
ATTEST:

CITY OF VERO BEACH, FLORIDA

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

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

Approved as to form and  
legal sufficiency:

  
\_\_\_\_\_  
for: Charles R. Vitunac  
City Attorney

Approved as conforming to  
municipal policy:

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

This instrument prepared by the  
Office of the City Attorney  
City of Vero Beach  
PO Box 1389  
Vero Beach, FL 32961-1389

RESOLUTION NO. 2004 - 44

**A RESOLUTION OF THE CITY OF VERO BEACH, FLORIDA, GRANTING A LEAVE OF ABSENCE TO CITY EMPLOYEES WHO ARE CALLED TO PERFORM ACTIVE MILITARY SERVICE IN THE NATIONAL GUARD OR IN A RESERVE COMPONENT OF THE UNITED STATES ARMED FORCES; AUTHORIZING FULL PAY FOR THE FIRST TWENTY-EIGHT (28) CALENDAR DAYS DURING CITY OFFICIALS' AND CITY EMPLOYEES' LEAVE OF ABSENCE TO PERFORM ACTIVE MILITARY SERVICE IN THE NATIONAL GUARD OR IN A RESERVE COMPONENT OF THE UNITED STATES ARMED FORCES; AUTHORIZING SUPPLEMENTATION OF CITY OFFICIALS' AND EMPLOYEES' PAY AFTER THE FIRST TWENTY-EIGHT (28) CALENDAR DAYS SERVICE IN AN AMOUNT NECESSARY TO BRING THEIR TOTAL SALARY, INCLUDING THEIR BASE MILITARY PAY, TO THE LEVEL EARNED AT THE TIME THEY WERE CALLED TO ACTIVE MILITARY DUTY; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City Council for the City of Vero Beach supports efforts "to ensure the state and national security at all times through a strong armed force of qualified and mobilization-ready personnel," Section 115.07(5), Florida Statutes; and

WHEREAS, Section 115.10, Florida Statutes, authorizes the Governor of the State of Florida to grant or deny, in his discretion, as the public interest may require, city officials' applications for leave of absence to perform active military service in the National Guard or in a reserve component of the Armed Forces of the United States; and

WHEREAS, Section 115.14, Florida Statutes, authorizes the City Council for the City of Vero Beach, in its discretion, to grant city employees a leave of absence to perform active military service in the National Guard or in a reserve component of the Armed Forces of the United States, and "supplement the military pay of its officials and employees who are reservists called to active military service."

**NOW, THEREFORE**, be it resolved by the City Council of the City of Vero Beach, Florida, as follows:

1. Upon presentation of an official mobilization order to his or her department/office director, an employee for the City of Vero Beach who is called to active military duty is hereby granted a leave of absence to perform active military service in the National Guard or in a reserve component of the Armed Forces of the United States. The first twenty-eight (28) calendar days of such active military service shall be with full pay at the employee's regular rate of pay, including incentives, but excluding overtime and shift premium.

2. A city official granted a leave of absence by the Governor of the State of Florida to perform active military service in the National Guard or in a reserve component of the Armed Forces of the United States shall receive full pay at the official's regular rate of pay (i.e., regular pay rate including incentives, but excluding overtime and shift premium), for the first twenty-eight (28) calendar days of such active military service.

3. After the first twenty-eight (28) calendar days of active military service, city employees' and city officials' military pay shall be supplemented by the City in an amount necessary to bring their total salary, inclusive of their base military pay, to the level earned at the time they were involuntarily called to active military duty (regular pay rate including incentives, but excluding overtime and shift premium).

4. This Resolution shall become effective January 1, 2004 and remain in effect until amended or rescinded by the City Council for the City of Vero Beach.

This Resolution was moved for adoption by Councilmember Bowden, seconded by Councilmember Larkin, and adopted on the 17<sup>th</sup> day of August, 2004, by the following vote:

Mayor Thomas P. White	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Vice Mayor Lynne A. Larkin	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Councilmember Sandra L. Bowden	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Councilmember Mary Beth McDonald	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Councilmember Sabin C. Abell, Jr.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

ATTEST:

CITY OF VERO BEACH, FLORIDA

Jammy K. Vock  
City Clerk

Thomas P. White  
Mayor

Approved as to form and  
legal sufficiency:

Approved as conforming to  
municipal policy:

Charles Uteneer  
City Attorney

[Signature]  
City Manager

This instrument prepared by the  
Office of the City Attorney  
City of Vero Beach  
PO Box 1389  
Vero Beach, FL 32961-1389

**CITY OF VERO BEACH, FLORIDA**  
**MAY 4, 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**

Pastor Greg Sempsrott of First Church of God gave the invocation.

**C. Pledge of Allegiance**

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

**2. PRELIMINARY MATTERS**

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

Mr. White referred to Old Business and pulled items 9-A-3), 4), 5), 6), 8) and 9) off of the agenda. He said that these items have been on the agenda for the last six months, discussed and answered. He then referred to New Business and pulled items 9-B-2), 3), 4), and 5) off of the agenda because there is no backup material provided. He also pulled items 10-D-B), C), and E) (correspondence is discussed under 10D-1) from the agenda. He then made a motion to pull these items from the agenda. Mr. Abell seconded the motion.

Mayor Sawnick recalled that at their last meeting they discussed any items being put under Old Business or New Business should have backup material so the public has the opportunity to understand what business will be coming before the Council.

Mr. Daige asked the City Attorney to give his opinion on Old Business and New Business.

Mr. Charles Vitunac, City Attorney, explained that under Old Business are items that have been before the Council at a previous time and under New Business are items/things that are new to Council. He said under Old Business, if there is an item that they have discussed and not reached an agreement on, then it can be put back on the agenda at another meeting. Their rules do require that there be some type of backup provided so

that the public, staff and Council are aware as to what is going to be discussed and can be prepared for the item. He said to do otherwise, he feels is not transparent.

Mr. Heady stated that this is yet another attempt to reinitiate the “Heady” button. The items that the former Mayor wants to remove from the agenda are the items that he put on under Old and New Business. Then he also wants to delete some items that he (Mr. Heady) has under his Councilmember’s matters. He reiterated this is another attempt to reinitiate the “Heady” button. He thinks that the voters of this community knew exactly what they were going to get when they voted for him and that is honest, open, public business being conducted in the public eye. Which means they discuss things at the meeting for the public to listen to. The City Attorney feels that backup material needs to be provided for the members to know what the discussion is going to be about. He said that the only way to know what the discussion is going to be is to discuss it with a Councilmember prior to the meeting and that would be outside of the Sunshine. He doesn’t necessarily know where the discussion will bring them, but it certainly is a matter that is important to the public. These items (referring to the items that Mr. White wants removed) should not be removed from the agenda and he can tell them (Council) if these items are removed from the agenda that the only remedy for him will be to file a Federal lawsuit, which will cost the City a lot of money. The people in this community are entitled to hear the public business conducted in the public eye and he intends to do exactly that. It is clear that there are Councilmembers who will continue in their efforts to prevent them from knowing what is going on.

Mr. White added that he did not pull Mr. Heady’s items off of the agenda. He left items 9-1), 2) and 7) on the agenda and pulled the other items off of Old Business only because they have been discussed several times in the public eye and answered. He said under New Business, the items that Mr. Heady has put on the agenda does not include any backup material. He said some of the things that Mr. Heady wishes to discuss are already on the agenda (such as the golf course). He said that item 2B-4) tax reductions, will be discussed at their July budget meetings and item 2B-2) A Federal Case, there is no backup provided so no one knows what Mr. Heady is talking about. Then under Councilmatters, Mr. Heady can talk about his items, but he has correspondence down as item E) and that is already on the agenda as item 10-D-1). He said that under 10D-B) and 10D-C) there are two items, Liars, Cheats and Thieves and Bad info=bad decisions and if Mr. Heady wants to discuss these items under his matters then he is allowed to, but these are items that need to be pulled from the agenda because they are here to do business and do it in the public eye. He mentioned that over the last 13 years Mr. Heady has stood behind the podium and talked under Public Comments and he was a critic of the City. He brought some good ideas before the Council and the Council listened to him and gave him respect.

Mayor Sawnick asked Mr. White to keep on the topic.

Mr. Heady called for Point of Order.

Mr. Daige also called for Point of Order. He was sorry to interrupt Mr. Heady, Mr. White, and Mayor Sawnick, but he feels when Councilmembers are speaking that they are entitled to make their point. He does not think that any of them should interrupt one another. He wanted to hear what Mr. White has to say. He said that there is no time limit on how long they can speak on this issue right now. The Council elected to put a time limit under Councilmember's matters and with the rest of the agenda there is no time limit. All of them sitting on this dais have the same amount of power and he would prefer that Mr. White is allowed to finish his comments.

Mayor Sawnick stated that as the Presiding Officer, when the discussion starts getting into personalities he feels it is not proper decorum in running a business meeting and he will point that out.

Mr. Daige understands what Mayor Sawnick said in regards to personalities, but he did not detect that from what Mr. White was saying. He asked that Mr. White be permitted to continue.

Mr. White started to speak.

Mr. Heady told the Mayor that there were two Points of Order made. He asked the Mayor if he could be heard. Mayor Sawnick told Mr. Heady to proceed. Mr. Heady thanked the Mayor and then stated that he could not agree more with the comments just made by Mr. Daige and contrary to the Mayor's opinion, he did not feel that Mr. White was getting personal with him and was saying things that were perfectly appropriate. In fact, Mr. White criticized Mr. Heady at their last meeting for not attending more Committee meetings and he applauds him for doing that. He said that is exactly what Councilmembers need to do. If they see something that they believe to be wrong then they need to say so publically. He told the Mayor that his constant interruption of Councilmembers is inappropriate and he, for one, will not tolerate it.

Mayor Sawnick again stated that as the Presiding Officer, if he feels that things that are being said are inappropriate he can make a ruling and if Council wants to appeal the ruling that they can. He wants to make sure that they stay civil, which will help things in the future.

Mr. Heady took exception to the Mayor's ruling. He did not believe that Mr. White was being personal.

Mayor White continued by saying that the fact is that once you sit on the dais they (Council) become the problem solvers of the City and what they need to do is work as a team and try to get things done and not rehash things that have been in existence since 2005. They need to start getting some business completed. He said that with the proper backup under New Business, he would not have a problem hearing an item.

Mayor Sawnick said the reason that he will be voting in favor to remove these items off of the agenda is because backup material has not been provided.

Mr. Heady brought up the removal of the item for the golf course because it is already on the agenda. He said that when a Councilmember is given a deadline to put items on the agenda, he does not know what is or is not on the agenda. He put discussion of the golf course on the agenda because he felt that there should be discussion on it. The City Manager has also put it on the agenda under his matters which is fine. He said that redundancy is not necessarily a problem. It might only take a few seconds to address the item. He said that it probably would take less time to address the item than to debate on whether or not he should put items on the agenda. He said with respect to tax reductions he thinks that it is appropriate to have discussions on how they are going to reduce taxes and the direction that they should be giving the City Manager. He said other Councilmembers feel that what they must do as leaders in the community is not say a word until a budget is put before them. He thinks that Councilmembers should take an initiative (before July) and discuss things that are unnecessary and should be cut. He brought up item 9A-7), which is Debate on Sale of Electric, under Old Business. He felt that they needed to debate the sale of electric and the ramifications of doing this should be on the table, which means having a discussion. He can't discuss these things with other Councilmembers outside the Sunshine and this is the appropriate place to do it. He thought that because the public has so many concerns with their electric bills that this would not be something that they would object discussing. He could go through each of the items that Mr. White wants to pull from the agenda, but he thinks that the appropriate time to do it is when these items come up on the agenda. He certainly would tell other Councilmembers to remove things from the agenda that Councilmembers want to speak about is absolutely inappropriate. It drives government into back rooms. He is sorry that they, don't like the new language that he is trying to teach here and that is government in the sunshine, in the public eye, with the public listening.

Mr. White told Mr. Heady that he did not pull item 9A-7) off of the agenda.

Mr. Abell called the question.

Mr. Daige stated that he would like the City Attorney to provide them in writing with his definition of Old Business and New Business, as he stated earlier in the meeting.

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

Mr. Abell made a motion to delete items 9-A-1), 2) and 7). The reason for this is because there is no backup provided, there is no transparency to the public, Council, or staff to know what these issues are without the proper backup material being provided. He said that some of these items appear to be request for information that could be supplied by the appropriate staff people. The motion died for lack of a second.

Mr. Daige made a motion to change the order that the items would be heard under City Manager's Matters. He said that the agenda would read 7-A) Director of Electric Utilities – Update on Utility Issues, B) County Commission Letter Requesting Joint Meeting, C) Consultants Competitive Negotiations Act Committee Report D) City-owned

Golf Course Property (Review of Draft Request for Proposals) and E) Police Department Pension Review. Mayor Sawnick seconded the motion.

Mr. White wanted to know the reason for the change.

Mr. Daige explained that in reading through the backup material there will be discussion on these items and he feels it would be better if this was the order that they were heard.

Mr. Abell wondered if there was anyone present for today's meeting to discuss these items and would this affect their schedule. He did not understand the need for the change.

Mr. Daige reiterated his motion to change the order of the items listed under City Manager's Matters. Mayor Sawnick seconded the motion.

Mr. Heady had no objections to the change or order, but it would seem to him that the City Manager should give his approval on changing the order.

Mr. James Gabbard, City Manager, had no problem with these changes.

Mr. White called the question.

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

Mrs. Vock asked that item 4-B) be deleted from the agenda and under Proclamations that 2D-6) be added, which is Foster Care Month.

Mayor Sawnick made a motion to add on the agenda as item 2B-6) Foster Care Month. Mr. White seconded the motion and it passed unanimously.

Mrs. Vock noted that under item 2B-4) "Recreation Director to report on The Annual Junior Staff Volunteer Dinner" was placed on the agenda at the request of Councilmember Daige.

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

## **B. Proclamations**

- 1. National Police Officers Week – May 9-15, 2010**
- 2. National Safe Boating Week – May 22-28, 2010**
- 3. Treasure Coast Women's 30 Year Anniversary**

Mayor Sawnick read and presented all three proclamations.

**4. Recreation Director to report on The Annual Junior Staff Volunteer Dinner – Requested by Councilmember Ken Daige**

Mr. Rob Slezak, Recreation Director, reported on the annual Junior Staff Volunteer Dinner that was held on April 26, 2010.

**5. Ms. Susie Sunkel to present the City with an Environmental Hall of Fame Award**

Ms. Susie Sunkel presented Mayor Sawnick with an Environmental Hall of Fame Award.

**6. Foster Care Month – May 2010**

Mayor Sawnick read and presented the proclamation.

**C. Public Comment**

**1. Mr. David Gregg – Discuss his proposal**

Mr. David Gregg mentioned that he and Mr. John Little came before the Council sometime ago with a proposal that they would be willing to negotiate with FP&L an outline of an agreement that would be satisfactory to the City at no charge. He said that he has received no comments back from Council. He then read a prepared speech and asked for a motion to vote up or down their request.

Mayor Sawnick suggested that at their next meeting he will put this item on under New Business. He said regardless of how the vote goes he is sure that Mr. Gregg and Mr. Little will be helpful in this matter and he appreciates everything that they have done.

Mr. Gregg wanted that motion made today.

Mr. Heady made that motion (to accept Mr. Gregg and Mr. Little's help with negotiating an outline of an agreement with FP&L).

Mayor Sawnick ruled that it was not appropriate to make that motion at this time.

Mr. Gregg withdrew his and Mr. Little's offer to help. He said that it is no longer on the table. If the public needs their help then they are willing to help them, but under their conditions.

Mrs. Tracy Carroll stated that she is mad each month that she has to write a check to the City to pay her electric bill because she feels that she is being vastly overcharged. She mentioned that there will be an election in November and that there was an Election last November. At the election last year two individuals were elected, Mr. Heady and Mr. Wilson. She said that Mr. Wilson was removed and the Council made the decision in January to place their buddy Mr. Daige back on the dais and go forward with the ways

things were going in the past. The citizens have another option and that is to have a referendum placed on the November ballot. She said that Operation Clean Sweep has been formed to bring relief to the City and County residents who are forced to write checks to the City of Vero Beach's electric company. She said at the Hibiscus Festival they presented the petition and in seven hours they had over 500 signatures (one person a minute was signing their petition).

Mr. Robert Walsh gave a citizen alert on some immigration matters. He said that the most important item before them now is the electric utility issue. He said that a Mayor who silences Councilmembers who wish to speak doesn't represent their citizens. He also said that there is not a Hillsprings Montana. He then went over time limits that other places use.

Mr. Bob Rumskey (spelling may not be correct) said that what he doesn't understand is when you live in the County, but still have Vero Beach City utilities.

Mr. Heady answered Mr. Rumskey's question by saying that there are jurisdictional agreements that determine this and some of those jurisdictions will be discussed in the near future as to whether or not they will remain.

Mr. J. Rock Tonkel commented that this has been an amazing morning. He sits back and reflects on what he sees and hears. He said first of all it is tragic not take up the opportunity to use the good will and knowledge of former Mayor David Gregg and former City Manager, John Little. He said that the Council treated Mr. Gregg badly. He thought that it was sad that Mr. Gregg made the decision that he did. He said it was amazing that there are few citizens in this community that take the time to educate the public. His main purpose in coming today was to introduce into the public records an article reported in the local paper on August 24<sup>th</sup> (please see attached). He then directed his comments to the City Manager. He noticed in the paper last weekend that Vero Beach has \$52 million dollars invested to meet current and future obligations of the City. He wondered if this would give the City Council the opportunity to reduce electric rates without affecting the City of Vero Beach. He asked that this be given consideration.

Mr. Heady told Mr. Tonkel that he did make a motion this morning in favor of Mr. Gregg's proposal, but no one seconded the motion. He also made a motion when Mr. Gregg first presented the proposal and he did not get a second to his motion at that time.

Mr. Heady told Mr. Tonkel that what he witnessed this morning was morally treasonable to the American public.

Mr. Joseph Guffanti told Council that they were in a panic mode. He would be only talking for three minutes or less because this time limit is still on the books. At the last meeting he expected to see an excerpt from the August 12, 2008 County Commission meeting, but there was a malfunction with the equipment in these Council Chambers so it could not be shown. He took the time to record and copy down the exact words that the City Manager said to the County Commission back in 2008. He said that if they are

going see the presentation then they should pay close attention to the demeanor and aura of emergency. He read to them exactly what the City Manager said. He felt that the statement made was very serious.

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

Mr. Charlie Wilson addressed the issue of the invitation that they received from the County to hold a joint workshop. He believed that the reason that they were not going to meet with the County was because it would endanger negotiations between the City and FP&L. He said that the truth shall set them free. He recalled that when he was sitting on Council a motion was made to have FP&L come and Mr. Abell voted against it. He said the question was asked to Mr. Abell that if he found that he could sell the electric system, pay all the debts, have no legal entanglements, lose no employees, would he do it. His answer was no. He was not surprised that they did not take Mr. Gregg up on his offer. He said that the number of people that he knows that want Mr. Abell, Mr. White, Mr. Gabbard, and Mr. Vitunac, negotiating a secret contract on their behalf is very small.

Mr. M.J. Wicker, a resident of Vero since 1999, was at today's meeting to talk about the golf course. He said that in the proposal (RFP) it calls for a lot of things. He provided Mr. Gabbard with a letter that was not part of the backup material (attached to the minutes). He read into the record his closing statement as it appears on his letter. He has seen a lot of changes in their community and losing the Dodgers was huge. He wants to bring back the golf course at old Dodgertown and not change anything. He asked Council to keep his letter in mind when they are making their decision on the proposal. This does not have to be complicated. He read the proposal (RFP) and it just seems that it can be a complicated matter if they go that route. The previous golf course was an operating viable business and it would be possible to open this new golf course in a couple of months.

Mrs. Pilar Turner was appalled by Councils' reluctance to open discussion under Old and New Business. She said this is an opportunity for Council to bring items up. She wished that they would reconsider that.

Mr. Heady thanked Mrs. Turner for her comments.

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

Mr. Daige pulled items 2D-1) and 2D-3) off of the consent agenda.

Mr. Heady pulled items 2D-4) and 2D-5) off of the consent agenda.

#### **1. Regular City Council Minutes – April 20, 2010**

Mr. Daige referred to page 17 of the minutes and said that the word "electric" should be "elected".

Mr. Heady had some corrections that he would like to see made to the minutes.

Mrs. Vock told Council that she would make these corrections to the minutes and bring them back to Council at their next meeting for approval.

## **2. Treasure Coast Regional League of Cities Interlocal Agreement**

Mr. Heady noted that in the agreement it refers to a couple of areas as the effective date being April 1, 2007. He wondered if the effective date should be changed to today's date.

Mr. White explained that is the date that the Treasure Coast Regional League of Cities was created. He then went over the minor changes being made to the agreement. He said that the date that each of the municipalities approves the agreement will be the effective date.

Mr. White made a motion to approve the Treasure Coast Regional League of Cities Interlocal Agreement. Mr. Daige seconded the motion and it passed unanimously.

## **3. 18<sup>th</sup> Street Paving, Drainage and Sidewalk Improvements – Community Development Block Grant (CDBG) Project – Recommendation of Final Acceptance, and Approval of the Final Change Order and Final Payment**

Mr. Daige wondered if approving this final change order and payment had any effect on the grant for Jacoby and Piece of Pie Park.

Mr. Monte Falls, Public Work's Director, answered no. He said that this work is only for the 18<sup>th</sup> Street paving, drainage and sidewalk improvements. He said that Jacoby and Piece of Pie Park are a different project.

Mr. Daige made a motion to approve the final acceptance and final change order and final payment. Mr. White seconded the motion and it passed unanimously.

## **4. Police Department Exercise Equipment Purchase**

Mr. Heady mentioned that anything that they spend is an expenditure to the taxpayers. He said anyone that doesn't understand that they are facing some critical financial decisions is not paying attention. This item is for a new treadmill at the Police Department that will cost \$4,250.00. He said there is already another treadmill located in the Police Department's workout room. He said that the taxpayers are being asked to spend this money. He visited the facility this morning to see the usage of this treadmill and while visiting he talked with people who have used the facility who said that the facility is rarely busy with the exception of lunch time. In the expenditure of \$4,250.00 there is a note that the treadmill can be repaired for half of this cost. He thinks that every dollar they spend is a burden on the taxpayers and if there is a working treadmill already at the facility and the facility is not used to the extent where all the equipment there is

being used then they could save the taxpayers money by eliminating this second treadmill. He made a motion that they do that. The motion died for lack of a second.

Mr. Daige noted that in the memo provided by the Police Chief it talks about where the funding is coming from for the treadmill and it is not coming out of taxpayers dollars. He also said that the treadmill is being used by various City employees.

Mr. Don Dappen, Police Chief, explained that there are 12 City employees who are authorized to use the facility in addition to the Police Officers. He said the money that is being used to pay for this treadmill comes out of their contraband and forfeiture fund which can only be spent on certain items. He said that what they are doing is allowing the drug dealers of this community to pay for the fitness of Vero Beach Police Officers. The money can only be used for certain items and cannot be used to subsidize budgetary items that they would need every year. They use this money for things that they feel they need and that will benefit the Department. He said that these treadmills were purchased back in 1997 and they just replaced one in 2007. As far as the usage of the facility, it is used most before a shift change or after a shift change and at lunch time. He said by having this equipment it will keep a lot of their Officers in good physical condition. If they only have one treadmill, then that one treadmill will take a lot of usage and will start breaking down. He urged Council to approve this item especially since the money is coming out of their forfeiture fund.

Mr. Daige agreed that it was prudent that Council approves this request. He said that they want their Police Officers using good equipment and this is a great use of this money.

Mayor Sawnick made a motion to approve the request. Mr. Abell seconded the motion.

Mr. Heady expressed that any dollars in possession of elected/appointed officials are tax dollars.

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

## **5. Settlement Agreement – Linda Tyner**

Mr. Heady asked why this City vehicle was down on Oslo Road.

Ms. Barbara Morey, Risk Manager, explained that there are City utilities along Oslo Road.

Mr. Heady noted that this case was settled by outside Counsel. He asked why they would need to have an outside attorney with all the attorneys that they have on staff.

Mr. Wayne Coment, Assistant City Attorney, stated that this claim was handled in-house. He reminded them that he is the only litigator in the office and he cannot do it all. He said if there are issues that they know they can defend then they will defend them. If this

had to go to trial then they would have had to hire an attorney who is knowledgeable in medical issues.

Mayor Sawnick made a motion to approve the settlement agreement to Linda Tyner. Mr. Daige seconded the motion and it passed unanimously.

At 11:13 a.m., Council took a ten-minute break.

### **3. PUBLIC HEARINGS**

- A) An Ordinance of the City of Vero Beach, Florida, renumbering and amending Chapter 30, Alcoholic Beverages, of the Land Development Regulations of the City of Vero Beach; providing for restrictions as to Location of Establishments dealing with or in Alcoholic Beverages; providing for exceptions; providing for consistency with Section 562.45(2) of Florida Statutes; providing for Method of Measurement of Separation Distances from Schools and Places of Worship; providing for Conflict and Severability; and providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, stated that under first reading there were questions brought up regarding what authority the City has in regulating this kind of business. He asked the Attorney to look at this in more detail. In reviewing the Florida Statutes, the City Attorney has determined that they don't entirely preempt the City from adopting its own regulations controlling both the time and location of such sales as long as it doesn't conflict with State law. In case of restaurants, which derive at least 51 percent of their gross sales from the sale of food and nonalcoholic beverages, the Florida Statutes allow the City to exempt such establishments from the 500 foot separation requirement. As this new information was not made known to the Planning and Zoning Board when the draft Ordinance was considered, Council may want to send it back to them for further consideration. Last week staff was contacted by a Representative of the Riomar Country Club requesting that the City Council adopt the Ordinance with amended language that restricts the sale and consumption of alcohol during regular school hours. The options for Council to consider would be 1) Remand the draft Ordinance back to the Planning and Zoning Board with guidance on any changes that should be considered by that advisory body; 2) Adopt the draft Ordinance as presented or with amendments; 3) Adopt the draft Ordinance as suggested by the Riomar Country Club, with the following amendment language to Section 60.16(b)(2): Restaurants, which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages, subject to the condition that the sale and consumption of alcoholic beverages shall not take place between 7:00 a.m. and 4:00 p.m. on school days, if the restaurant is located within 500 feet of a school and 4) Adopt the amended Ordinance as suggested by Riomar County Club, remand the Ordinance as amended back to the Planning and Zoning Board with guidance on any further changes that should be considered by that advisory body.

Mayor Sawnick was in favor of option three (3), not to serve alcohol when the school is in session.

Mr. Heady referred to the letter that they received from the Riomar Country Club, which indicates that St. Edwards School intends to close and the Ordinance precludes the issuance of a restaurant liquor license if it is within 500 feet of a school. He said that if Council decides to send the Ordinance back to the Planning and Zoning Board for their consideration, then it would prohibit Riomar from accomplishing their goal, which would not be helping their business. He made a motion to adopt the Ordinance using option three (3) as outlined by the Director of Planning and Development. He was told that they needed to first open the public hearing before a motion is made.

Mayor Sawnick opened the public hearing at 11:30 a.m.

Mr. Cal Davidson, President of Riomar Country Club, told Council that currently the Riomar Country Club does not have a liquor license and he would urge Council to vote in favor of the Ordinance using option three (3).

Mayor Sawnick closed the public hearing at 11:31 a.m., with no one else wishing to be heard.

Mayor Sawnick made a motion to adopt the Ordinance using option three (3) as outlined in Mr. McGarry's memo. 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.

**B) An Ordinance of the City of Vero Beach, Florida, amending Chapter 73, Article II, Drainage and Article III, Stormwater Management of the City of Vero Beach Code; deleting existing Article II, Drainage and replacing it with new Article II, Stormwater Management; deleting existing Article III, Stormwater Management and replacing it with New Article III, Construction Site Erosion and Sediment Control; creating New Article IV, Municipal Separate Storm Sewer System; providing for requirements, standards and review procedures for Stormwater Management Plans for Single Family/Duplex, Nonresidential, Multiple Family, and New Subdivision Development; providing for Requirements, Standards, and Review Procedures for Erosion and Sediment Control Plans for Construction Activity; providing for Florida Department of Environmental Protection Generic Permits for certain land disturbing activities; providing for Regulations for Discharges to the Municipal Separate Storm Sewer System; providing for conflict and severability; and providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mr. McGarry gave a Power Point Presentation concerning Stormwater Management.

Mr. Daige noted that this is in some POI districts that backup to residential neighborhoods. He said some of the buildings go up high because they have to because the drainage is put underneath the parking lot. He asked if this will help with the new drainage regulations on these smaller pieces of property so that they can do things differently with their drainage.

Mr. McGarry could not answer that. He said that Mr. Falls would need to answer that question.

Mr. Falls stated that it will not make it any easier for the property owners to lower those buildings. These people choose to use all of their open space and put the drainage underground.

Mr. Heady asked if there were some specific problems or circumstances that caused the need for this Ordinance.

Mr. McGarry answered yes. He said that they have had water quality issues that they have needed to address for a long time. He said that the City has some responsibility with the Indian River Lagoon and storm drainage going in there so they needed to take care of that. In the long term it is possible that the Department of Environmental Protection (DEP) will be putting requirements on this type of discharge. He said that DCA brought this to their attention while they were trying to adopt their comprehensive plan.

Mr. Heady said to answer his question there were no specific sites or big projects that caused this. Mr. McGarry said not to his knowledge.

Mayor Sawnick opened and closed the public hearing at 11:48 a.m., with no one wishing to be heard.

Mayor Sawnick made a motion to adopt 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**

- A) A Resolution of the City of Vero Beach, Florida, repealing and replacing Resolution 2008-30, and amending the Veterans Memorial Island Sanctuary Authorized Uses and Memorials to add additional area immediately East of the Veterans Memorial Island Sanctuary to existing Committee Rules regarding Memorials and Plaques; providing for an effective date.**

Mayor Sawnick read the Resolution by title only.

Mrs. Peggy Lyon, Assistant City Attorney, reported that this Resolution comes to the City Council from a unanimous decision of the Veterans Memorial Island Sanctuary

Advisory Committee (VMISAC). It adds an additional area lying East of the Veterans Memorial Island Sanctuary to the oversight of the Committee only as it applies to memorials and plaques. She said in regards to the comments made by Mr. Heady at the last meeting they have excluded the road around the traffic circle. She introduced the members of the VMISAC who were present for today's meeting.

Mr. Heady thanked Mrs. Lyon, Ms. Loy and Mrs. Glenn for bringing this Resolution forward and removing the road around the traffic circle.

Mrs. Helen Glenn, Chairman of the VMISAC, was at today's meeting to ask Council to repeal Resolution 2008-30 and replace it with this new revised Resolution. The Committee feels it is necessary to have an over site on that area to insure that the area remains a sacred place. She expressed that the paved road that concerned Mr. Heady is not included in this Resolution.

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

**B) A Resolution of the City of Vero Beach, Florida, adopting the Military Leave Policy as an Amendment to the City of Vero Beach Personnel Rules; providing for an effective date.**

This item was pulled off of the agenda.

**C) A Resolution of the City of Vero Beach, Florida, adopting the Supplementation of Military Pay Authorized by Chapter 115, Florida Statutes for Public Officials and Employees of the City of Vero Beach who perform active Military Service as Servicemembers in the National Guard or a Reserve Component of the Armed Forces of the United States; repealing and replacing Resolution No. 2004-44; providing for an effective date.**

Mayor Sawnick read the Resolution by title only.

Mrs. Lyon explained that this Resolution provides elected officials and employees who are granted military leaves of absence for active military service full pay for the first thirty calendar days (currently twenty-eight days) as required by Chapter 115, Florida Statutes. The proposed Resolution continues to provide for supplementation of military pay of its officials and employees after the first thirty days of active military duty to bring total salary, inclusive of base military pay, to the level earned at the time they were called to active military duty. Such supplementation of military pay is discretionally, not mandatory, and has been provided by the City to its elected officials and employees performing active military service since Resolution 2003-07 was passed in January of 2003 and then re-adopted by Resolution 2004-44.

Mr. White complimented the City for supporting their Veterans and was in favor of passing this Resolution.

Mr. Heady referred to D2-C) of the Resolution where it states that life insurance will be reinstated within 30 days of an employee's return to work. He made a motion that the insurance be reinstated the day the employee returns to work. Mr. White seconded the motion.

Mrs. Lyon would need to check with Ms. Morey on this because there usually is a waiting period for insurance.

At this time, it was pointed out that this was not the correct Resolution that they were discussing.

Mr. White withdrew his second. The motion died for lack of a second.

Mr. Daige put out a thank you to all of their active military.

Mr. Daige made a motion to approve the Resolution. 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.

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

None

**6. CITY CLERK'S MATTERS**

**A) Reappointments to the Finance Commission**

Mrs. Vock reported that both Mr. Tom Nason and Mrs. Pilar Turner's appointments on the Finance Commission expire on May 15, 2010. Both members are interested in being reappointed to the Commission.

Mayor Sawnick requested that the Clerk advertise for more applications from people interested in serving on this Commission and bring it back to Council at a later date.

Mr. Daige wanted to make sure that all the volunteers who serve on their different Boards and Commissions are aware when they are recommending different things that they know where the funding for those things is coming from. He will be working with the Attorney on this and will keep Council updated.

**7. CITY MANAGER'S MATTERS**

- **Please note because of the change in the agenda some of the items were not heard as they appear on the agenda.**

#### **A) Director of Electric Utilities – Update on Utility Issues**

Mr. John Lee, Acting Electric Utilities Director, gave Council a Power Point presentation of where they are to date (please see attached). He expressed that they were still waiting to hear back from FP&L.

Mr. Heady commented that Mr. Lee mentioned that there will be a small increase that will be going to the customers. He wanted it to be clear that the increase is less than five-percent (an increase to the five percent portion of the total cost), which is not a big number in terms of cost to their customers.

Mr. Lee agreed with Mr. Heady's comment. He said that if Council is in agreement he would like to present something like this to Council at their first Council meeting each month.

Mr. Daige was in favor of receiving this information and having Mr. Lee present it to them once a month. He mentioned the FP&L transmission increase and said that if this happens it will not only be passed on to the City of Vero Beach customers, but also FP&L customers. Mr. Lee agreed that everyone's bill in the State will see this increase.

Mr. Daige recalled at their last meeting, Mr. White expressed that he did not like to see the word "Bulk Power Cost" on their utilities bill. He asked Mr. White if he knew of a better way to handle this or another term to use.

Mr. White explained that a lot of customers that he talks to does not like the term "Bulk Rate Power Cost." He felt that they needed to change the name. He has a home up North and when he received his utility bill from that home all the costs are shown on one line. He hopes that Council could come up with different solutions to make it easier for the public to read their utility bill and make people more satisfied with what they are receiving.

Mr. Abell thanked staff for coming up with this presentation and he looked forward to seeing it every month.

Mayor Sawnick suggested presenting this at the next Utilities Commission meeting.

Mr. Heady agreed with making it more palatable and said the way to do that is make their electric bills equal to or lower than FP&L. He doesn't think changing the name is going to help.

Mr. Lee recalled that when they did the Cost of Service study, the \$125 level is what was presented, but the problem was that FP&L was at \$107 and then they dropped down to \$92, which upset their customers. He noted that they are required by the Public Service

Commission (PSC) to show two separate lines on their bill or give an explanation. He said because they have seven different services that they provide they could provide some sort of explanation, but it would be at an additional cost to their customers because they would have to have a bigger bill.

Mr. White felt that there was room on the bill to insert an explanation.

Mr. Lee said that they could look at this. He said the fact is that their customers had belief on what was going to happen and it didn't happen. They are now dealing with facts and he would rather defend this the right way then to continue changing things on how they present the bill.

Mr. Dage made it clear that their utility bills are still too high and they need to do better to get them lower. He will go over some ideas that he has with the City Manager, which will include the explanation on what should be put on the bills. He will report back to the Council in the future on this.

Mr. Heady had some further discussion on this item. Mayor Sawnick asked him if it would be tied into their next item, which would be to discuss the County Commission letter requesting a joint meeting. Mr. Heady said that his comments will tie into what was just said by Mr. Lee. Mayor Sawnick told Mr. Heady that he could continue.

Mr. Heady stated that the question and statement was were the customers over promised and undelivered; he thinks the answer to that question is pretty obvious. He said that one of the problems is that they had this OUC contract that was secret and out of State for a couple of years and no one was able to see it. Then when the contract finally comes to the public's attention you see that the numbers in it.... At this time Mr. White called for Point of Order. He told Mr. Heady that he has talked about this over and over again. He reiterated that they could not have the contract here when they were negotiating because of confidentiality.

Mayor Sawnick agreed that they needed to move forward. He said some of the things that Mr. Heady mentions are things that he has brought up in the past. Mayor Sawnick was looking forward to the future.

## **B) Police Department Pension Review**

Mr. David Pusher, Chairman of the Police Pension Board, introduced Mr. Chad Little, Actuary for the Police Pension Board.

Mr. Gabbard expressed to Council that this presentation today was just for informational purposes.

Mr. Chad Little gave a Power Point presentation (please see attached).

Mr. Daige asked Mr. Little that in moving forward for the budget what kind of dollars are they looking at as far as the City having to contribute to the fund.

Mr. Little said that a lot depends on how much the Pension Board receives from the State.

Mr. Daige said moving forward with the new budget cycle let's say it is \$one million dollars that the City would need to contribute. He asked do they have to give it all in one lump sum.

Mr. Little said no they could do it quarterly. He expressed that the plan is in very good shape and there is no funding deficit to be dealt with.

Mr. Pusher added that the three million dollar deficit could be made up with investment returns and it is not necessarily the City's liability.

### **C) City-owned Golf Course Property (Review of Draft Request for Proposals)**

Mr. Gabbard presented Council with a draft RFP, which is basically the same as what was issued in 2007 to seek proposals for the renovation of the golf course. He said things have become a little more complicated. The issue is the parking arrangement with Minor League Baseball (MiLB) that carried over from the LA Dodgers when they purchased the property back in 2005. He has received a letter from Joe Baird, County Administrator, (please see attached) that outlines some of the concerns that he has. He recommended that Council look at the letter and the RFP. He plans to meet with the County again and will be bringing this item back to Council at their next meeting. He said that when they received the lease for the nine acres from the County at the time of purchase, MiLB was not in the picture, and because MiLB now leases the facility there is an area outside the nine acres, which if they are going to do something with the golf course then this issue needs to be resolved. He explained exactly where these areas are located. He encouraged Council to call him and talk to him if they have any questions.

Mr. Daige commented that he has some concerns with the current agreement. He has been in contact with the City Attorney and does see some restrictions in the current agreement that he would like to share with the current Council. He will make his thoughts known to Council in a memo before this comes back to Council.

Mayor Sawnick felt that after meeting with Mr. O'Bryan and Mr. Baird on Monday he came away with the feeling that in order for the golf course to happen there would need to be some team efforts made. He would like to see the golf course restored to the way it once was.

Mr. Heady mentioned that when this first came up he made the suggestion that instead of staff spending a lot of time on this that they get the proposals from whoever is interested and look at the proposals first. He said one of the things that they hear constantly is the cost of government and taxes. It seems to him before they present these kinds of documents it would be nice to know what it is that the interested parties are interested in

doing. He said in looking at this letter from Mr. Wicker it is clear that what he wants to do is restore the golf course to its original Dodgertown Golf Course. He said one of the first things that he did after being elected was to bring it to Council's attention that there was some interest in doing this by certain entities and those entities have not shown any real interest since he has brought this back to Council's attention. He thinks that they are spending tax dollars on putting a lot of things together when the entry level question is whether or not the interested parties have a viable proposal, which is what they should be looking at.

Mr. Heady asked Mr. Gabbard if he was the City Manager when the golf course was purchased. Mr. Gabbard answered yes. Mr. Heady then asked if the Council was aware they were buying a golf course, but they were only buying a portion of a golf course at the time. Mr. Gabbard stated that Council was aware that they were purchasing 36 acres and were going to get an additional nine acres that would be leased to the City so that they could have a golf course if that is what they chose to do with the land.

Mr. Gabbard stated that yes they did know because part of the deal was a lease back from the County for a dollar a year.

Mr. Heady referred to the section on the map that MiLB has and it cuts out part of the first fairway and asked if that section is being used by MiLB for any purposes. Mr. Gabbard said no. He said that when this piece of land was going to be developed by a developer the LA Dodgers held that piece out as a buffer. He said when the County leased the City the nine acres it was for the purpose of the restoration of the golf course. At that time there were no issues and it was owned by the County. But since that time MiLB has leased the baseball facility and that piece of land falls under their control. If the City wants to use this piece of land they will now need to negotiate with MiLB, along with the County. Mr. Heady noted that the Dodgers didn't use the golf course for parking. Mr. Gabbard told him that they used hole number one routinely for overflow parking. Mr. Heady said that Mr. Gabbard mentioned that there were some carryover provisions. He asked were these provisions in the Dodger's contract that carried over to MiLB. Mr. Gabbard said that he did not use the word carryover, but explained that when the Dodgers sold the land to the County, the County had a parking agreement with the Dodgers. He said remember that the County owned the facility while the Dodgers were still there and they wanted guaranteed parking. Also, in terms of the lease that they obtained from the County on the nine acre piece there is a parking agreement that is part of that. Mr. Heady referred to the proposal by Mr. Wicker and asked if that was the only proposal that is before the Council at this point. Mr. Gabbard explained that there is another group, the Wadsworth Foundation, who has expressed some interest. However, they have not presented a document like Mr. Wicker has.

Mayor Sawnick stated that once the City Council looks over the proposal then they will give some direction to the City Manager.

Mr. Daige asked when the City of Vero Beach purchased the land for \$9.5 million dollars, how many acres did they buy. Mr. Gabbard said 36 acres. The City has control of the 36 acres, plus the other nine acres.

Mr. Abell noted that this is a complicated issue. He said for anyone who was not on the Council at the time or is interested they can get the history and talk to the City Manager concerning the property. He said that the nine acres and areas around the pond and areas further south around the pond was used for parking when the Dodgers were here.

Mr. Heady stated that if they are going to get some proposals then they need to allow those people who are interested to use their own expertise and spend their time and energy putting a proposal before Council rather than Council putting out criteria, which limits the proposal that could possibly come before them. He said that they need to let it be known that they have a golf course and anyone interested in developing it should bring them a proposal by the next meeting, and then they can look at the proposals and make a decision on whether or not they want to go forward before spending tax dollars on coming up with the criteria.

Mayor Sawnick requested that they take a five-minute break and hear Mr. Zimmermann's item first before discussing the items under Old Business.

Mr. Heady pointed out that Mr. Wicker wished to be heard again and asked if they could listen to him.

Mayor Sawnick wanted to move forward with taking a break.

#### **D) County Commission Letter Requesting Joint Meeting**

Mayor Sawnick reported that they (him and the City Manager) met with Commissioner Peter O'Bryan and County Administrator Joe Baird yesterday. He informed them that once the City hears back from FP&L and gets more communication and figures then that would be the time to compare actual numbers and hold a joint meeting. The track that they are on right now is the right track.

Mr. Heady asked the Mayor to define communication.

Mayor Sawnick said that when they hear back from FP&L on whether or not they are interested in purchasing their electric utilities. He said right now they are discussing how they should respond to the letter that they received from the County.

Mr. Heady stated that with regards to how they were going to respond to the County Commission, he made it clear that they are not only City residents, but they are County residents also and the County has requested a joint workshop. He made a motion that they have this joint workshop. The motion died for lack of a second.

Mr. White agreed with the Mayor that they need to know what the numbers are before they sit down and talk to the County Commission.

Mayor Sawnick made a motion to wait until they here from FP&L before having this joint meeting with the County. Mr. White seconded the motion.

Mr. Heady commented that if they are going to get answers to serious problems that they are facing then they need to discuss those items openly and in the public eye. He amended the motion to have a meeting with the County Commission. The amendment died for lack of a second.

Mr. Abell felt that to meet with the County at this point would be ridiculous. He said that FP&L has not expressed an interest in purchasing their electric utilities, nor has any other power providers. It does not make any sense to talk about something when they don't have figures.

Mr. Heady appreciated Mr. Abell's comments that they have nothing to discuss until the deadline. He said it was a serious mistake to wait to the deadline when they are going to discuss this. It is clearly not the right move. It has been demonstrated that those kinds of decisions are not well thought out. The intelligent way is to discuss those things at a public meeting.

Mr. Abell made it clear that at no point did he say wait to the last minute. He doesn't know what Mr. Heady is talking about.

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

Mr. Lee encouraged the Council to read the "Evaluation of Impact" report that was done in the 1970's. He plans to bring the report up at the next Utilities Commission meeting.

#### **E) Consultants Competitive Negotiation Act Committee Report (Rob Bolton)**

Mr. Rob Bolton, Water & Sewer Director, told Council that what they have in front of them today is the findings/proposal from GAI Consultants. He said that back in October 2009 they had a joint meeting with the County and out of that meeting the CCNAC Committee was formed. He appeared before Council in November to get approval for the RFQ for a consultant to be hired and the RFQ went out and they received proposals from five consulting firms and GAI was the top consultant firm. They met with GAI on April 15<sup>th</sup> and some ideas on the proposal and scope of work that was consistent with the original RFQ and the wishes of the Committee. He said that GAI put together a proposal and presented it to the entities. Since the original proposal, Mr. Tom Cadden, Chairman of the Competitive Negotiation Act Committee, met with GAI and he requested that the Phase 1 work be split into Phase 1-A) and Phase 1-B). The Committee met again and this was agreed upon by the Consultant and most of the Committee to first go with Phase 1-A) which would consist of gathering information from the facilities, the agreements that they have among the different entities, the financial background they have for all of the

different entities which would enable the Consultants to determine possible scenarios. Then they would sit down and have interviews with each of the elected officials and members of staff. The Consultant has posed a questionnaire that they would ask each individual, they would be taking notes and then come back with a report as to whether some sort of consolidation could occur. Then once this is complete they would move forward with Phase 1-B) of the proposal. At this point he said that it is open to discussion.

Mayor Sawnick made it clear that Indian River Shores had originally requested going this way and he is still in favor of going forward with this. He said that right now they are only approving going forward with Phase 1-A).

Mr. Bolton expressed that they are not asking you to determine who would pay for what. He is just here to discuss approval of the scope, then they will sit down with the Committee on a fair way to pay for it.

Mr. Daige recalled that CCNAC met yesterday and he asked Mr. Bolton to touch on how the vote went.

Mr. Bolton stated that the meeting was held yesterday at 2:00 p.m. and it was opened by Chairman Cadden for some discussion on the scope of work. He said what happened was that there was a vote taken and it was 4-2 with the two County members voting against. He felt that the scope identified what they needed to know. Mr. Cadden felt that they did not need to spend any more money if it is not the will of the different elected officials to move forward.

Mr. Daige was in favor of moving forward as suggested by Mr. Bolton.

Mr. Heady felt that in the future that the documentation needs to be readable.

Mr. Abell made a motion to take Mr. Bolton's suggestion and approve Phase 1-A). Mr. Daige seconded the motion and it passed unanimously.

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

None

## **9. CITY COUNCIL MATTERS**

### **A. Old Business**

\*Please Note: Items 9A-1), 3), 4), 5), 6), 8), and 9) were pulled off of the agenda.

#### **1. Date for presentation by Dr. Faherty and Glenn Heran – Requested by Councilmember Brian Heady**

Mr. Heady mentioned that Dr. Faherty and Mr. Heran have gone throughout the County and given presentations on the City electric utilities and is a presentation that Council should entertain having to see the information that they have. He said it is important to do that. He made a motion to set a date in the short term to have them make a presentation to the Council. The motion died for lack of a second.

## **2. Discussion on changes to City Council meetings – Requested by Councilmember Brian Heady**

Mayor Sawnick suggested to Mr. Heady that he list the items that he would like to discuss under Old Business for the next meeting. He said also Council has a right to appeal any ruling that he makes if they don't agree with it.

Mr. Heady thanked the Mayor for his suggestions on how he should be effective. The discussion under Old Business is a discussion on changes to City Council meetings. He said at the last meeting there was a proposal made by Councilmember Abell on changes to their meetings and there was discussion by Council and when his opportunity came up to discuss this item the Mayor refused to allow him to discuss it. He felt that was appalling. He said that if they are going to make changes or have discussions then every Councilmember should be afforded the opportunity to do this. In addition, on one of the items to be changed he asked the Mayor if there were any cities doing this and the Mayor said yes there were and he asked the Mayor to name some and the Mayor didn't and he asked the Mayor to just name one city and he mentioned Hillsprings, Montana. So after the meeting because he was unfamiliar with Hillsprings, Montana and the Mayor didn't provide any backup on that Town, did do some research and found out that there is no Hillsprings, Montana. He said that if you are going to make good decisions, the way that you make good decisions is by having good information and when a Councilmember gives bad information to other Councilmembers then you will wind up in the final analysis of making bad decisions. He said in addition, the Mayor said that he had correspondence and he asked the Mayor to provide him with the correspondence that would be of public record and the Mayor said that his correspondence was "verbal." He did not think that the Mayor's command of the English language is such that he believes that correspondence is verbal. He thinks that what happened was that the Mayor did not give truthful answers about Hillsprings, Montana or truthful answers about really being in possession of correspondence from members of the community. When he (Mr. Heady) was a citizen he used to stand at the podium and say three words, "liars, cheats and thieves" should not be in charge of governing agencies. The reason he made that comment was because he does not think that they should lie, cheat or steal from the public. When they give the public bad information that they know not to be true that is lying to them, it is cheating them and stealing from them. He feels that they should stop running their meetings that way.

Mayor Sawnick stated that Mr. Heady's next item was 9A-7) Debate on Sale of Electric. He said that Mr. Heady has brought this up multiple times before. He asked Mr. Heady if he wanted to explain what he was asking for and they can take some action on it.

Mr. Heady stated that before they move on there is a possibility to take action under Old Business and that under item 9-2) he wanted to make a motion. He made a motion that he be afforded an opportunity to discuss those things and ask questions in regards to the Mayor's input at the next meeting. He said at this meeting many of his items were removed from the agenda (13 items in total) and he thinks that if one Councilmember is entitled to a discussion that all Councilmembers are entitled to a discussion. He would like to make a motion that they add these things to the next agenda without the possibility of pulling them off. The motion died for lack of a second.

- 3. Still waiting for written answers from City Manager – Requested by Councilmember Brian Heady**
- 4. OUC Contract – Requested by Councilmember Brian Heady**
- 5. 50MM penalty – Requested by Councilmember Brian Heady**
- 6. November Elections – Requested by Councilmember Brian Heady**
- 7. Debate on Sale of Electric – Requested by Councilmember Brian Heady**

Mr. Heady mentioned that there was a lot of discussion within the community as to whether or not Vero Beach should sell their electric utilities and what we should do about moving forward. He has heard from the Mayor and others to wait until FP&L comes back with their comments. He thinks that they have heard that before, they were told to wait until OUC comes in effect in January and then they would see rates equal to or lower than FP&L's. When they are in a position of doing something as significant as selling the electric, he thinks that there should be a public debate held and they should discuss different things, set up the parameters and know what they are looking at. He made a motion to set up a date and a time that they could sit down and have that debate on the sale of the electric with presentations from members of the community who may have something to contribute and perhaps that would be the appropriate time for a presentation from Dr. Faherty and Mr. Heran. The motion died for lack of a second.

Mr. Daige wished to make comments on the debate of the sale of the electric utilities. He wanted the public to know that there are a lot of people who don't like the OUC contract and there are a lot of people who do like it. He said that Councils in the past elected to move forward and there was no doubt that they needed to exit FMPA. The Council who sat up here before (including himself) relied on expert testimony and experts in the electric field. Going forward they have talked about selling the utilities in part or in whole. They are in a waiting pattern now and waiting to hear back from FP&L. He said so far none of the individuals who have spoke at the podium are certified in the field of electric and utility matters. This Council has to rely on facts when moving forward. In the event that FP&L comes forward with some sort of paperwork they will look at it. As far as having people give presentations and getting into a debate with the general public he is not favor of doing that. He will always rely on the experts so he can move forward with some wise decisions. He reiterated that he still is not happy with the bottom line of the bills and wants to continue to see them being lowered. He said if a Councilmember is wrong in their judgment they could actually have the City ratepayers paying more than

what they are paying now. He again cautioned Council that when testimony is presented it is presented by experts.

Mr. Abell agreed with the comments just made by Mr. Daige.

- 8. 8/12/08 – Requested by Councilmember Brian Heady**
- 9. Direction City Manager selection process – Requested by Councilmember Brian Heady**

These items were pulled off of the agenda.

**B. New Business**

- 1. Expend Funds from the Tree and Beautification Commission – Requested by Chairman Karl Zimmermann**

Mr. Karl Zimmermann, Chairman of the Tree and Beautification Commission, was before Council today to ask permission for the Commission to expend up to \$413 from the Tree and Beautification fund to purchase plaques for dedicatory trees.

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

- 2. A Federal Case – Requested by Councilmember Brian Heady**
- 3. Golf Course – Requested by Councilmember Brian Heady**
- 4. Discussions on tax reductions – Requested by Councilmember Brian Heady**
- 5. Honest Services Fraud – Requested by Councilmember Brian Heady**

These items were removed from the agenda.

**10. INDIVIDUAL COUNCILMEMBERS' MATTERS**

- A. Mayor Kevin Sawnick's Matters**
  - 1. Correspondence**
  - 2. Committee Reports**

Mayor Sawnick reported that on April 21<sup>st</sup> he spoke to a class at Indian River State College, then on April 24<sup>th</sup> he attended the Indian River Day of Service, also on April 24<sup>th</sup> he attended the Mayor's beach cleanup at Mulligans.

Mayor Sawnick commented that at their next meeting he will be bringing forth a proposed Resolution saying that the City is opposed to off-site drilling. He then continued with his Committee Report. He said that on May 1<sup>st</sup> he had the opportunity to ride on the proposed Amtrak train and there will be future workshops on this matter

(schedule available in the Clerk's office). Also, on May 21<sup>st</sup> there will be a Coffee with the Council.

Mayor Sawnick recognized the importance of having backup provided when they have items on the agenda. He recalled that he may have named a City that has time limits that was incorrect. He told Mr. Heady if he wanted a list of places that do impose time limits, then it could be provided. He said that research is important to see how other cities are handling things. He looks forward to working together with all of the Council.

**3. Comments**

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

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

Mr. Abell agreed with Mayor Sawnick's comments concerning providing backup material. He pointed out that they have exceeded the four hours that they spent at their April 20<sup>th</sup> meeting. He would like to see Council be one-hundred percent informed when they come to these meetings.

**C. Councilmember Tom White's Matters**

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

Mr. White reported that he attended the Volunteer Junior Staff dinner, he installed new officers for the Italian American Club, and he attended the Hunter Club banquet. He asked Council to approve the Mayor sending a congratulatory letter to the police officers who were given awards at the Hunter Club banquet. He then mentioned the census forms and noted that Indian River County had an overall return rate of 77%.

Mr. White commented that the City of Ft. Pierce is still involved with FMPA and they have the fourth highest utility rates in the State of Florida. He said that if the City of Vero Beach were still contracting with FMPA then they would also be high on the list.

Mr. Daige was in favor of the Mayor sending a letter to the two Police Officers as just mentioned by Mr. White.

**3. Comments**

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

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

Mr. Heady stated that President Theodore Roosevelt said to declare criticism wrong is morally treasonable to the American public. He expressed that what happened earlier in this meeting by the majority of this Council to bar a Councilmembers from bringing up important issues falls within the President's definition of morally treasonable.

- B. Liars, Cheats and Thieves**
- C. Bad info=bad decisions**
- E. Correspondence**

These items were pulled off of the agenda.

- A. Mayors continued abuse of power**
- D. Other Mayors in county**

Mr. Heady stated that under correspondence, he sent a memo to the City Manager requesting that he put in writing what statements he made that stunned him and that were inaccurate. These statements were made at a County Commission meeting and he has asked every meeting since if the City Manager could identify with specificity any single statement that he said that stunned him or any single statement that he said was inaccurate. The City Manager's constant refrain has been to go back and look at the meeting. Mr. Heady noted he said several things like his name, which was not inaccurate and he doubted that it stunned the City Manager. He again asked the City Manager to identify with specificity anything that he said that stunned him and anything he said at that meeting that was inaccurate.

Mr. Heady stated that the real problem that they have is often elected officials or staff just say things that are not truthful. He again brought up Hillsprings, Montana. He said that Hillsprings, Montana does not exist and the correspondence that the Mayor claimed was verbal he does not believe the Mayor's command of the English language is so poor that he thinks correspondence is verbal. He said what really happened is that we had an elected official that stated the first thing that came to his mind whether it was truthful or not to support his point of view. He said the Mayor has stated that they need to provide backup, but for that particular item the backup that the Mayor states he has or researched was never provided. Mr. Heady commented that he did not need the backup because he thinks that in this City what they need to do is conduct public business in the public eye and he will continue to fight for that whether or not the majority of the Council wants to shut him up or not. That will not stop him from asking that the public business be conducted in the public eye.

Mr. Heady commented that at the last meeting he had the 8/12/08 County Commission meeting that he wanted to play and he still would request that this happens. This item was pulled off of this agenda by the majority of the Council and he will put it back on for the next meeting. He said that it is important for this body to see it and discuss it. He feels that the comments that were made when you see the DVD will trouble them and if they don't then he feels that they are neglecting their obligations as an elected official.

Mr. Heady stated that one of the things that he had on his agenda, which was removed was "A Federal Case." He said the reason that he put this item on the agenda was because if the City Council continues on the path to silence this elected official, then the only remedy that he has is to make a Federal case out of these issues and to get Councilmembers and staff under oath and ask them questions and have depositions taken. He said it is clear from the action taken by the Council at the beginning of this meeting that is exactly the path that they want to send him down and he does not think that it is the best path, but it is pretty clear that is the only way that he is going to get Councilmembers to answer in a public forum where their answers can be proven. He will see that he does exactly this. He said that it is not a threat, just a matter of fact on what he is going to do.

Mr. Heady brought up at the last meeting there was some questions brought up concerning the 8/12/08 meeting and the City Manager said just that morning he received notification concerning bonds. However, at the last Council meeting the City Manager said that he didn't receive notification at all and what he received was a telephone notification. Mr. Lee then came up to the podium and said what he received was a courtesy telephone call from FMFA staff who had some concerns of a possible sale.

Mr. Heady stated that in restricting Councilmembers comments at the last meeting, the Mayor said that other Mayors in this County had suggested this to him. He said that in his research he cannot find any documentation that any other Mayor in this County, in any community, has suggested that they should be restricted on public debate on public issues. He does not know where this came from and there are no documents that prove and demonstrate that this is correct. He said that if the Mayor has something to demonstrate like mentioning Hillsprings Montana, and his so called correspondence, he would make a public records request that these things be delivered to him.

Mayor Sawnick would make sure that the City Clerk provides a copy of the minutes from the last Mayor's meeting.

Mr. Heady brought up Honest Services Fraud and expressed that the City Council should be aware of the provisions of Honest Services Fraud. He reiterated that when you don't tell the public the truth, when you make resolutions and motions to shield or hide from the public, that you are in very dangerous territory in respect to the provisions of Honest Services Fraud.

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

Mr. Daige requested to the City Manager to put in writing his comments and thoughts that were made to the County Commission at their 8/12/08 meeting to get it on the record once and for all so that they can put this issue to bed.

Mr. Heady felt that they should play the tape at the next meeting and they could resolve everything at that meeting.

Mr. Daige stands by this request that he is making to the City Manager.

Mr. Daige asked the City Attorney if an individual Councilmember could take the City to court. And in the event that a Councilmember does that, can they have at their disposal City funds in order to do that.

Mr. Vitunac stated that a Councilmember has a right to file suit in Federal Court, but it would have to be done at their own expense.

Mr. Daige read his report into the record (please see attached).

## **11. ADJOURNMENT**

Mr. White made a motion to adjourn today's meeting at 2:09 p.m. Mr. Abell seconded the motion and it passed unanimously.

/tv

**CITY OF VERO BEACH, FLORIDA  
MAY 4, 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**

Pastor Greg Sempsrott of First Church of God gave the invocation.

**C. Pledge of Allegiance**

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

**2. PRELIMINARY MATTERS**

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

Mr. White referred to Old Business and pulled items 9-A-3), 4), 5), 6), 8) and 9) off of the agenda. He said that these items have been on the agenda for the last six months, discussed and answered. He then referred to New Business and pulled items 9-B-2), 3), 4), and 5) off of the agenda because there is no backup material provided. He also pulled items 10-D-B), C), and E) (correspondence is discussed under 10D-1) from the agenda. He then made a motion to pull these items from the agenda. Mr. Abell seconded the motion.

Mayor Sawnick recalled that at their last meeting they discussed any items being put under Old Business or New Business should have backup material so the public has the opportunity to understand what business will be coming before the Council.

Mr. Daige asked the City Attorney to give his opinion on Old Business and New Business.

Mr. Charles Vitunac, City Attorney, explained that under Old Business are items that have been before the Council at a previous time and under New Business are items/things that are new to Council. He said under Old Business, if there is an item that they have discussed and not reached an agreement on, then it can be put back on the agenda at another meeting. Their rules do require that there be some type of backup provided so

that the public, staff and Council are aware as to what is going to be discussed and can be prepared for the item. He said to do otherwise, he feels is not transparent.

Mr. Heady stated that this is yet another attempt to reinitiate the “Heady” button. The items that the former Mayor wants to remove from the agenda are the items that he put on under Old and New Business. Then he also wants to delete some items that he (Mr. Heady) has under his Councilmember’s matters. He reiterated this is another attempt to reinitiate the “Heady” button. He thinks that the voters of this community knew exactly what they were going to get when they voted for him and that is honest, open, public business being conducted in the public eye. Which means they discuss things at the meeting for the public to listen to. The City Attorney feels that backup material needs to be provided for the members to know what the discussion is going to be about. He said that the only way to know what the discussion is going to be is to discuss it with a Councilmember prior to the meeting and that would be outside of the Sunshine. He doesn’t necessarily know where the discussion will bring them, but it certainly is a matter that is important to the public. These items (referring to the items that Mr. White wants removed) should not be removed from the agenda and he can tell them (Council) if these items are removed from the agenda that the only remedy for him will be to file a Federal lawsuit, which will cost the City a lot of money. The people in this community are entitled to hear the public business conducted in the public eye and he intends to do exactly that. It is clear that there are Councilmembers who will continue in their efforts to prevent them from knowing what is going on.

Mr. White added that he did not pull Mr. Heady’s items off of the agenda. He left items 9-1), 2) and 7) on the agenda and pulled the other items off of Old Business only because they have been discussed several times in the public eye and answered. He said under New Business, the items that Mr. Heady has put on the agenda does not include any backup material. He said some of the things that Mr. Heady wishes to discuss are already on the agenda (such as the golf course). He said that item 2B-4) tax reductions, will be discussed at their July budget meetings and item 2B-2) A Federal Case, there is no backup provided so no one knows what Mr. Heady is talking about. Then under Councilmatters, Mr. Heady can talk about his items, but he has correspondence down as item E) and that is already on the agenda as item 10-D-1). He said that under 10D-B) and 10D-C) there are two items, Liars, Cheats and Thieves and Bad info=bad decisions and if Mr. Heady wants to discuss these items under his matters then he is allowed to, but these are items that need to be pulled from the agenda because they are here to do business and do it in the public eye. He mentioned that over the last 13 years Mr. Heady has stood behind the podium and talked under Public Comments and he was a critic of the City. He brought some good ideas before the Council and the Council listened to him and gave him respect.

Mayor Sawnick asked Mr. White to keep on the topic.

Mr. Heady called for Point of Order.

Mr. Daige also called for Point of Order. He was sorry to interrupt Mr. Heady, Mr. White, and Mayor Sawnick, but he feels when Councilmembers are speaking that they are entitled to make their point. He does not think that any of them should interrupt one another. He wanted to hear what Mr. White has to say. He said that there is no time limit on how long they can speak on this issue right now. The Council elected to put a time limit under Councilmember's matters and with the rest of the agenda there is no time limit. All of them sitting on this dais have the same amount of power and he would prefer that Mr. White is allowed to finish his comments.

Mayor Sawnick stated that as the Presiding Officer, when the discussion starts getting into personalities he feels it is not proper decorum in running a business meeting and he will point that out.

Mr. Daige understands what Mayor Sawnick said in regards to personalities, but he did not detect that from what Mr. White was saying. He asked that Mr. White be permitted to continue.

Mr. White started to speak.

Mr. Heady told the Mayor that there were two Points of Order made. He asked the Mayor if he could be heard. Mayor Sawnick told Mr. Heady to proceed. Mr. Heady thanked the Mayor and then stated that he could not agree more with the comments just made by Mr. Daige and contrary to the Mayor's opinion, he did not feel that Mr. White was getting personal with him and was saying things that were perfectly appropriate. In fact, Mr. White criticized Mr. Heady at their last meeting for not attending more Committee meetings and he applauds him for doing that. He said that is exactly what Councilmembers need to do. If they see something that they believe to be wrong then they need to say so publically. He told the Mayor that his constant interruption of Councilmembers is inappropriate and he, for one, will not tolerate it.

Mayor Sawnick again stated that as the Presiding Officer, if he feels that things that are being said are inappropriate he can make a ruling and if Council wants to appeal the ruling that they can. He wants to make sure that they stay civil, which will help things in the future.

Mr. Heady took exception to the Mayor's ruling. He did not believe that Mr. White was being personal.

Mayor White continued by saying that the fact is that once you sit on the dais they (Council) become the problem solvers of the City and what they need to do is work as a team and try to get things done and not rehash things that have been in existence since 2005. They need to start getting some business completed. He said that with the proper backup under New Business, he would not have a problem hearing an item.

Mayor Sawnick said the reason that he will be voting in favor to remove these items off of the agenda is because backup material has not been provided.

Mr. Heady brought up the removal of the item for the golf course because it is already on the agenda. He said that when a Councilmember is given a deadline to put items on the agenda, he does not know what is or is not on the agenda. He put discussion of the golf course on the agenda because he felt that there should be discussion on it. The City Manager has also put it on the agenda under his matters which is fine. He said that redundancy is not necessarily a problem. It might only take a few seconds to address the item. He said that it probably would take less time to address the item than to debate on whether or not he should put items on the agenda. He said with respect to tax reductions he thinks that it is appropriate to have discussions on how they are going to reduce taxes and the direction that they should be giving the City Manager. He said other Councilmembers feel that what they must do as leaders in the community is not say a word until a budget is put before them. He thinks that Councilmembers should take an initiative (before July) and discuss things that are unnecessary and should be cut. He brought up item 9A-7), which is Debate on Sale of Electric, under Old Business. He felt that they needed to debate the sale of electric and the ramifications of doing this should be on the table, which means having a discussion. He can't discuss these things with other Councilmembers outside the Sunshine and this is the appropriate place to do it. He thought that because the public has so many concerns with their electric bills that this would not be something that they would object discussing. He could go through each of the items that Mr. White wants to pull from the agenda, but he thinks that the appropriate time to do it is when these items come up on the agenda. He certainly would tell other Councilmembers to remove things from the agenda that Councilmembers want to speak about is absolutely inappropriate. It drives government into back rooms. He is sorry that they, don't like the new language that he is trying to teach here and that is government in the sunshine, in the public eye, with the public listening.

Mr. White told Mr. Heady that he did not pull item 9A-7) off of the agenda.

Mr. Abell called the question.

Mr. Daige stated that he would like the City Attorney to provide them in writing with his definition of Old Business and New Business, as he stated earlier in the meeting.

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

Mr. Abell made a motion to delete items 9-A-1), 2) and 7). The reason for this is because there is no backup provided, there is no transparency to the public, Council, or staff to know what these issues are without the proper backup material being provided. He said that some of these items appear to be request for information that could be supplied by the appropriate staff people. The motion died for lack of a second.

Mr. Daige made a motion to change the order that the items would be heard under City Manager's Matters. He said that the agenda would read 7-A) Director of Electric Utilities – Update on Utility Issues, B) County Commission Letter Requesting Joint Meeting, C) Consultants Competitive Negotiations Act Committee Report D) City-owned

Golf Course Property (Review of Draft Request for Proposals) and E) Police Department Pension Review. Mayor Sawnick seconded the motion.

Mr. White wanted to know the reason for the change.

Mr. Daige explained that in reading through the backup material there will be discussion on these items and he feels it would be better if this was the order that they were heard.

Mr. Abell wondered if there was anyone present for today's meeting to discuss these items and would this affect their schedule. He did not understand the need for the change.

Mr. Daige reiterated his motion to change the order of the items listed under City Manager's Matters. Mayor Sawnick seconded the motion.

Mr. Heady had no objections to the change or order, but it would seem to him that the City Manager should give his approval on changing the order.

Mr. James Gabbard, City Manager, had no problem with these changes.

Mr. White called the question.

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

Mrs. Vock asked that item 4-B) be deleted from the agenda and under Proclamations that 2D-6) be added, which is Foster Care Month.

Mayor Sawnick made a motion to add on the agenda as item 2B-6) Foster Care Month. Mr. White seconded the motion and it passed unanimously.

Mrs. Vock noted that under item 2B-4) "Recreation Director to report on The Annual Junior Staff Volunteer Dinner" was placed on the agenda at the request of Councilmember Daige.

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

## **B. Proclamations**

- 1. National Police Officers Week – May 9-15, 2010**
- 2. National Safe Boating Week – May 22-28, 2010**
- 3. Treasure Coast Women's 30 Year Anniversary**

Mayor Sawnick read and presented all three proclamations.

**4. Recreation Director to report on The Annual Junior Staff Volunteer Dinner – Requested by Councilmember Ken Daige**

Mr. Rob Slezak, Recreation Director, reported on the annual Junior Staff Volunteer Dinner that was held on April 26, 2010.

**5. Ms. Susie Sunkel to present the City with an Environmental Hall of Fame Award**

Ms. Susie Sunkel presented Mayor Sawnick with an Environmental Hall of Fame Award.

**6. Foster Care Month – May 2010**

Mayor Sawnick read and presented the proclamation.

**C. Public Comment**

**1. Mr. David Gregg – Discuss his proposal**

Mr. David Gregg mentioned that he and Mr. John Little came before the Council sometime ago with a proposal that they would be willing to negotiate with FP&L an outline of an agreement that would be satisfactory to the City at no charge. He said that he has received no comments back from Council. He then read a prepared speech and asked for a motion to vote up or down their request.

Mayor Sawnick suggested that at their next meeting he will put this item on under New Business. He said regardless of how the vote goes he is sure that Mr. Gregg and Mr. Little will be helpful in this matter and he appreciates everything that they have done.

Mr. Gregg wanted that motion made today.

Mr. Heady made that motion (to accept Mr. Gregg and Mr. Little's help with negotiating an outline of an agreement with FP&L).

Mayor Sawnick ruled that it was not appropriate to make that motion at this time.

Mr. Gregg withdrew his and Mr. Little's offer to help. He said that it is no longer on the table. If the public needs their help then they are willing to help them, but under their conditions.

Mrs. Tracy Carroll stated that she is mad each month that she has to write a check to the City to pay her electric bill because she feels that she is being vastly overcharged. She mentioned that there will be an election in November and that there was an Election last November. At the election last year two individuals were elected, Mr. Heady and Mr. Wilson. She said that Mr. Wilson was removed and the Council made the decision in January to place their buddy Mr. Daige back on the dais and go forward with the ways

things were going in the past. The citizens have another option and that is to have a referendum placed on the November ballot. She said that Operation Clean Sweep has been formed to bring relief to the City and County residents who are forced to write checks to the City of Vero Beach's electric company. She said at the Hibiscus Festival they presented the petition and in seven hours they had over 500 signatures (one person a minute was signing their petition).

Mr. Robert Walsh gave a citizen alert on some immigration matters. He said that the most important item before them now is the electric utility issue. He said that a Mayor who silences Councilmembers who wish to speak doesn't represent their citizens. He also said that there is not a Hillsprings Montana. He then went over time limits that other places use.

Mr. Bob Rumskey (spelling may not be correct) said that what he doesn't understand is when you live in the County, but still have Vero Beach City utilities.

Mr. Heady answered Mr. Rumskey's question by saying that there are jurisdictional agreements that determine this and some of those jurisdictions will be discussed in the near future as to whether or not they will remain.

Mr. J. Rock Tonkel commented that this has been an amazing morning. He sits back and reflects on what he sees and hears. He said first of all it is tragic not take up the opportunity to use the good will and knowledge of former Mayor David Gregg and former City Manager, John Little. He said that the Council treated Mr. Gregg badly. He thought that it was sad that Mr. Gregg made the decision that he did. He said it was amazing that there are few citizens in this community that take the time to educate the public. His main purpose in coming today was to introduce into the public records an article reported in the local paper on August 24<sup>th</sup> (please see attached). He then directed his comments to the City Manager. He noticed in the paper last weekend that Vero Beach has \$52 million dollars invested to meet current and future obligations of the City. He wondered if this would give the City Council the opportunity to reduce electric rates without affecting the City of Vero Beach. He asked that this be given consideration.

Mr. Heady told Mr. Tonkel that he did make a motion this morning in favor of Mr. Gregg's proposal, but no one seconded the motion. He also made a motion when Mr. Gregg first presented the proposal and he did not get a second to his motion at that time.

Mr. Heady told Mr. Tonkel that what he witnessed this morning was morally treasonable to the American public.

Mr. Joseph Guffanti told Council that they were in a panic mode. He would be only talking for three minutes or less because this time limit is still on the books. At the last meeting he expected to see an excerpt from the August 12, 2008 County Commission meeting, but there was a malfunction with the equipment in these Council Chambers so it could not be shown. He took the time to record and copy down the exact words that the City Manager said to the County Commission back in 2008. He said that if they are

going see the presentation then they should pay close attention to the demeanor and aura of emergency. He read to them exactly what the City Manager said. He felt that the statement made was very serious.

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

Mr. Charlie Wilson addressed the issue of the invitation that they received from the County to hold a joint workshop. He believed that the reason that they were not going to meet with the County was because it would endanger negotiations between the City and FP&L. He said that the truth shall set them free. He recalled that when he was sitting on Council a motion was made to have FP&L come and Mr. Abell voted against it. He said the question was asked to Mr. Abell that if he found that he could sell the electric system, pay all the debts, have no legal entanglements, lose no employees, would he do it. His answer was no. He was not surprised that they did not take Mr. Gregg up on his offer. He said that the number of people that he knows that want Mr. Abell, Mr. White, Mr. Gabbard, and Mr. Vitunac, negotiating a secret contract on their behalf is very small.

Mr. M.J. Wicker, a resident of Vero since 1999, was at today's meeting to talk about the golf course. He said that in the proposal (RFP) it calls for a lot of things. He provided Mr. Gabbard with a letter that was not part of the backup material (attached to the minutes). He read into the record his closing statement as it appears on his letter. He has seen a lot of changes in their community and losing the Dodgers was huge. He wants to bring back the golf course at old Dodgertown and not change anything. He asked Council to keep his letter in mind when they are making their decision on the proposal. This does not have to be complicated. He read the proposal (RFP) and it just seems that it can be a complicated matter if they go that route. The previous golf course was an operating viable business and it would be possible to open this new golf course in a couple of months.

Mrs. Pilar Turner was appalled by Councils' reluctance to open discussion under Old and New Business. She said this is an opportunity for Council to bring items up. She wished that they would reconsider that.

Mr. Heady thanked Mrs. Turner for her comments.

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

Mr. Daige pulled items 2D-1) and 2D-3) off of the consent agenda.

Mr. Heady pulled items 2D-4) and 2D-5) off of the consent agenda.

#### **1. Regular City Council Minutes – April 20, 2010**

Mr. Daige referred to page 17 of the minutes and said that the word "electric" should be "elected".

Mr. Heady had some corrections that he would like to see made to the minutes.

Mrs. Vock told Council that she would make these corrections to the minutes and bring them back to Council at their next meeting for approval.

## **2. Treasure Coast Regional League of Cities Interlocal Agreement**

Mr. Heady noted that in the agreement it refers to a couple of areas as the effective date being April 1, 2007. He wondered if the effective date should be changed to today's date.

Mr. White explained that is the date that the Treasure Coast Regional League of Cities was created. He then went over the minor changes being made to the agreement. He said that the date that each of the municipalities approves the agreement will be the effective date.

Mr. White made a motion to approve the Treasure Coast Regional League of Cities Interlocal Agreement. Mr. Daige seconded the motion and it passed unanimously.

## **3. 18<sup>th</sup> Street Paving, Drainage and Sidewalk Improvements – Community Development Block Grant (CDBG) Project – Recommendation of Final Acceptance, and Approval of the Final Change Order and Final Payment**

Mr. Daige wondered if approving this final change order and payment had any effect on the grant for Jacoby and Piece of Pie Park.

Mr. Monte Falls, Public Work's Director, answered no. He said that this work is only for the 18<sup>th</sup> Street paving, drainage and sidewalk improvements. He said that Jacoby and Piece of Pie Park are a different project.

Mr. Daige made a motion to approve the final acceptance and final change order and final payment. Mr. White seconded the motion and it passed unanimously.

## **4. Police Department Exercise Equipment Purchase**

Mr. Heady mentioned that anything that they spend is an expenditure to the taxpayers. He said anyone that doesn't understand that they are facing some critical financial decisions is not paying attention. This item is for a new treadmill at the Police Department that will cost \$4,250.00. He said there is already another treadmill located in the Police Department's workout room. He said that the taxpayers are being asked to spend this money. He visited the facility this morning to see the usage of this treadmill and while visiting he talked with people who have used the facility who said that the facility is rarely busy with the exception of lunch time. In the expenditure of \$4,250.00 there is a note that the treadmill can be repaired for half of this cost. He thinks that every dollar they spend is a burden on the taxpayers and if there is a working treadmill already at the facility and the facility is not used to the extent where all the equipment there is

being used then they could save the taxpayers money by eliminating this second treadmill. He made a motion that they do that. The motion died for lack of a second.

Mr. Daige noted that in the memo provided by the Police Chief it talks about where the funding is coming from for the treadmill and it is not coming out of taxpayers dollars. He also said that the treadmill is being used by various City employees.

Mr. Don Dappen, Police Chief, explained that there are 12 City employees who are authorized to use the facility in addition to the Police Officers. He said the money that is being used to pay for this treadmill comes out of their contraband and forfeiture fund which can only be spent on certain items. He said that what they are doing is allowing the drug dealers of this community to pay for the fitness of Vero Beach Police Officers. The money can only be used for certain items and cannot be used to subsidize budgetary items that they would need every year. They use this money for things that they feel they need and that will benefit the Department. He said that these treadmills were purchased back in 1997 and they just replaced one in 2007. As far as the usage of the facility, it is used most before a shift change or after a shift change and at lunch time. He said by having this equipment it will keep a lot of their Officers in good physical condition. If they only have one treadmill, then that one treadmill will take a lot of usage and will start breaking down. He urged Council to approve this item especially since the money is coming out of their forfeiture fund.

Mr. Daige agreed that it was prudent that Council approves this request. He said that they want their Police Officers using good equipment and this is a great use of this money.

Mayor Sawnick made a motion to approve the request. Mr. Abell seconded the motion.

Mr. Heady expressed that any dollars in possession of elected/appointed officials are tax dollars.

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

## **5. Settlement Agreement – Linda Tyner**

Mr. Heady asked why this City vehicle was down on Oslo Road.

Ms. Barbara Morey, Risk Manager, explained that there are City utilities along Oslo Road.

Mr. Heady noted that this case was settled by outside Counsel. He asked why they would need to have an outside attorney with all the attorneys that they have on staff.

Mr. Wayne Coment, Assistant City Attorney, stated that this claim was handled in-house. He reminded them that he is the only litigator in the office and he cannot do it all. He said if there are issues that they know they can defend then they will defend them. If this

had to go to trial then they would have had to hire an attorney who is knowledgeable in medical issues.

Mayor Sawnick made a motion to approve the settlement agreement to Linda Tyner. Mr. Daige seconded the motion and it passed unanimously.

At 11:13 a.m., Council took a ten-minute break.

### **3. PUBLIC HEARINGS**

- A) An Ordinance of the City of Vero Beach, Florida, renumbering and amending Chapter 30, Alcoholic Beverages, of the Land Development Regulations of the City of Vero Beach; providing for restrictions as to Location of Establishments dealing with or in Alcoholic Beverages; providing for exceptions; providing for consistency with Section 562.45(2) of Florida Statutes; providing for Method of Measurement of Separation Distances from Schools and Places of Worship; providing for Conflict and Severability; and providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mr. Tim McGarry, Planning and Development Director, stated that under first reading there were questions brought up regarding what authority the City has in regulating this kind of business. He asked the Attorney to look at this in more detail. In reviewing the Florida Statutes, the City Attorney has determined that they don't entirely preempt the City from adopting its own regulations controlling both the time and location of such sales as long as it doesn't conflict with State law. In case of restaurants, which derive at least 51 percent of their gross sales from the sale of food and nonalcoholic beverages, the Florida Statutes allow the City to exempt such establishments from the 500 foot separation requirement. As this new information was not made known to the Planning and Zoning Board when the draft Ordinance was considered, Council may want to send it back to them for further consideration. Last week staff was contacted by a Representative of the Riomar Country Club requesting that the City Council adopt the Ordinance with amended language that restricts the sale and consumption of alcohol during regular school hours. The options for Council to consider would be 1) Remand the draft Ordinance back to the Planning and Zoning Board with guidance on any changes that should be considered by that advisory body; 2) Adopt the draft Ordinance as presented or with amendments; 3) Adopt the draft Ordinance as suggested by the Riomar Country Club, with the following amendment language to Section 60.16(b)(2): Restaurants, which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages, subject to the condition that the sale and consumption of alcoholic beverages shall not take place between 7:00 a.m. and 4:00 p.m. on school days, if the restaurant is located within 500 feet of a school and 4) Adopt the amended Ordinance as suggested by Riomar County Club, remand the Ordinance as amended back to the Planning and Zoning Board with guidance on any further changes that should be considered by that advisory body.

Mayor Sawnick was in favor of option three (3), not to serve alcohol when the school is in session.

Mr. Heady referred to the letter that they received from the Riomar Country Club, which indicates that St. Edwards School intends to close and the Ordinance precludes the issuance of a restaurant liquor license if it is within 500 feet of a school. He said that if Council decides to send the Ordinance back to the Planning and Zoning Board for their consideration, then it would prohibit Riomar from accomplishing their goal, which would not be helping their business. He made a motion to adopt the Ordinance using option three (3) as outlined by the Director of Planning and Development. He was told that they needed to first open the public hearing before a motion is made.

Mayor Sawnick opened the public hearing at 11:30 a.m.

Mr. Cal Davidson, President of Riomar Country Club, told Council that currently the Riomar Country Club does not have a liquor license and he would urge Council to vote in favor of the Ordinance using option three (3).

Mayor Sawnick closed the public hearing at 11:31 a.m., with no one else wishing to be heard.

Mayor Sawnick made a motion to adopt the Ordinance using option three (3) as outlined in Mr. McGarry's memo. 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.

**B) An Ordinance of the City of Vero Beach, Florida, amending Chapter 73, Article II, Drainage and Article III, Stormwater Management of the City of Vero Beach Code; deleting existing Article II, Drainage and replacing it with new Article II, Stormwater Management; deleting existing Article III, Stormwater Management and replacing it with New Article III, Construction Site Erosion and Sediment Control; creating New Article IV, Municipal Separate Storm Sewer System; providing for requirements, standards and review procedures for Stormwater Management Plans for Single Family/Duplex, Nonresidential, Multiple Family, and New Subdivision Development; providing for Requirements, Standards, and Review Procedures for Erosion and Sediment Control Plans for Construction Activity; providing for Florida Department of Environmental Protection Generic Permits for certain land disturbing activities; providing for Regulations for Discharges to the Municipal Separate Storm Sewer System; providing for conflict and severability; and providing for an effective date.**

Mayor Sawnick read the Ordinance by title only.

Mr. McGarry gave a Power Point Presentation concerning Stormwater Management.

Mr. Daige noted that this is in some POI districts that backup to residential neighborhoods. He said some of the buildings go up high because they have to because the drainage is put underneath the parking lot. He asked if this will help with the new drainage regulations on these smaller pieces of property so that they can do things differently with their drainage.

Mr. McGarry could not answer that. He said that Mr. Falls would need to answer that question.

Mr. Falls stated that it will not make it any easier for the property owners to lower those buildings. These people choose to use all of their open space and put the drainage underground.

Mr. Heady asked if there were some specific problems or circumstances that caused the need for this Ordinance.

Mr. McGarry answered yes. He said that they have had water quality issues that they have needed to address for a long time. He said that the City has some responsibility with the Indian River Lagoon and storm drainage going in there so they needed to take care of that. In the long term it is possible that the Department of Environmental Protection (DEP) will be putting requirements on this type of discharge. He said that DCA brought this to their attention while they were trying to adopt their comprehensive plan.

Mr. Heady said to answer his question there were no specific sites or big projects that caused this. Mr. McGarry said not to his knowledge.

Mayor Sawnick opened and closed the public hearing at 11:48 a.m., with no one wishing to be heard.

Mayor Sawnick made a motion to adopt 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**

- A) A Resolution of the City of Vero Beach, Florida, repealing and replacing Resolution 2008-30, and amending the Veterans Memorial Island Sanctuary Authorized Uses and Memorials to add additional area immediately East of the Veterans Memorial Island Sanctuary to existing Committee Rules regarding Memorials and Plaques; providing for an effective date.**

Mayor Sawnick read the Resolution by title only.

Mrs. Peggy Lyon, Assistant City Attorney, reported that this Resolution comes to the City Council from a unanimous decision of the Veterans Memorial Island Sanctuary

Advisory Committee (VMISAC). It adds an additional area lying East of the Veterans Memorial Island Sanctuary to the oversight of the Committee only as it applies to memorials and plaques. She said in regards to the comments made by Mr. Heady at the last meeting they have excluded the road around the traffic circle. She introduced the members of the VMISAC who were present for today's meeting.

Mr. Heady thanked Mrs. Lyon, Ms. Loy and Mrs. Glenn for bringing this Resolution forward and removing the road around the traffic circle.

Mrs. Helen Glenn, Chairman of the VMISAC, was at today's meeting to ask Council to repeal Resolution 2008-30 and replace it with this new revised Resolution. The Committee feels it is necessary to have an over site on that area to insure that the area remains a sacred place. She expressed that the paved road that concerned Mr. Heady is not included in this Resolution.

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

**B) A Resolution of the City of Vero Beach, Florida, adopting the Military Leave Policy as an Amendment to the City of Vero Beach Personnel Rules; providing for an effective date.**

This item was pulled off of the agenda.

**C) A Resolution of the City of Vero Beach, Florida, adopting the Supplementation of Military Pay Authorized by Chapter 115, Florida Statutes for Public Officials and Employees of the City of Vero Beach who perform active Military Service as Servicemembers in the National Guard or a Reserve Component of the Armed Forces of the United States; repealing and replacing Resolution No. 2004-44; providing for an effective date.**

Mayor Sawnick read the Resolution by title only.

Mrs. Lyon explained that this Resolution provides elected officials and employees who are granted military leaves of absence for active military service full pay for the first thirty calendar days (currently twenty-eight days) as required by Chapter 115, Florida Statutes. The proposed Resolution continues to provide for supplementation of military pay of its officials and employees after the first thirty days of active military duty to bring total salary, inclusive of base military pay, to the level earned at the time they were called to active military duty. Such supplementation of military pay is discretionally, not mandatory, and has been provided by the City to its elected officials and employees performing active military service since Resolution 2003-07 was passed in January of 2003 and then re-adopted by Resolution 2004-44.

Mr. White complimented the City for supporting their Veterans and was in favor of passing this Resolution.

Mr. Heady referred to D2-C) of the Resolution where it states that life insurance will be reinstated within 30 days of an employee's return to work. He made a motion that the insurance be reinstated the day the employee returns to work. Mr. White seconded the motion.

Mrs. Lyon would need to check with Ms. Morey on this because there usually is a waiting period for insurance.

At this time, it was pointed out that this was not the correct Resolution that they were discussing.

Mr. White withdrew his second. The motion died for lack of a second.

Mr. Daige put out a thank you to all of their active military.

Mr. Daige made a motion to approve the Resolution. 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.

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

None

**6. CITY CLERK'S MATTERS**

**A) Reappointments to the Finance Commission**

Mrs. Vock reported that both Mr. Tom Nason and Mrs. Pilar Turner's appointments on the Finance Commission expire on May 15, 2010. Both members are interested in being reappointed to the Commission.

Mayor Sawnick requested that the Clerk advertise for more applications from people interested in serving on this Commission and bring it back to Council at a later date.

Mr. Daige wanted to make sure that all the volunteers who serve on their different Boards and Commissions are aware when they are recommending different things that they know where the funding for those things is coming from. He will be working with the Attorney on this and will keep Council updated.

**7. CITY MANAGER'S MATTERS**

- **Please note because of the change in the agenda some of the items were not heard as they appear on the agenda.**

#### **A) Director of Electric Utilities – Update on Utility Issues**

Mr. John Lee, Acting Electric Utilities Director, gave Council a Power Point presentation of where they are to date (please see attached). He expressed that they were still waiting to hear back from FP&L.

Mr. Heady commented that Mr. Lee mentioned that there will be a small increase that will be going to the customers. He wanted it to be clear that the increase is less than five-percent, which is not a big number in terms of cost to their customers.

Mr. Lee agreed with Mr. Heady's comment. He said that if Council is in agreement he would like to present something like this to Council at their first Council meeting each month.

Mr. Daige was in favor of receiving this information and having Mr. Lee present it to them once a month. He mentioned the FP&L transmission increase and said that if this happens it will not only be passed on to the City of Vero Beach customers, but also FP&L customers. Mr. Lee agreed that everyone's bill in the State will see this increase.

Mr. Daige recalled at their last meeting, Mr. White expressed that he did not like to see the word "Bulk Power Cost" on their utilities bill. He asked Mr. White if he knew of a better way to handle this or another term to use.

Mr. White explained that a lot of customers that he talks to does not like the term "Bulk Rate Power Cost." He felt that they needed to change the name. He has a home up North and when he received his utility bill from that home all the costs are shown on one line. He hopes that Council could come up with different solutions to make it easier for the public to read their utility bill and make people more satisfied with what they are receiving.

Mr. Abell thanked staff for coming up with this presentation and he looked forward to seeing it every month.

Mayor Sawnick suggested presenting this at the next Utilities Commission meeting.

Mr. Heady agreed with making it more palatable and said the way to do that is make their electric bills equal to or lower than FP&L. He doesn't think changing the name is going to help.

Mr. Lee recalled that when they did the Cost of Service study, the \$125 level is what was presented, but the problem was that FP&L was at \$107 and then they dropped down to \$92, which upset their customers. He noted that they are required by the Public Service Commission (PSC) to show two separate lines on their bill or give an explanation. He

said because they have seven different services that they provide they could provide some sort of explanation, but it would be at an additional cost to their customers because they would have to have a bigger bill.

Mr. White felt that there was room on the bill to insert an explanation.

Mr. Lee said that they could look at this. He said the fact is that their customers had belief on what was going to happen and it didn't happen. They are now dealing with facts and he would rather defend this the right way then to continue changing things on how they present the bill.

Mr. Daige made it clear that their utility bills are still too high and they need to do better to get them lower. He will go over some ideas that he has with the City Manager, which will include the explanation on what should be put on the bills. He will report back to the Council in the future on this.

Mr. Heady had some further discussion on this item. Mayor Sawnick asked him if it would be tied into their next item, which would be to discuss the County Commission letter requesting a joint meeting. Mr. Heady said that his comments will tie into what was just said by Mr. Lee. Mayor Sawnick told Mr. Heady that he could continue.

Mr. Heady stated that the question and statement was were the customers over promised and undelivered; he thinks the answer to that question is pretty obvious. He said that one of the problems is that they had this OUC contract that was secret and out of State for a couple of years and no one was able to see it. Then when the contract finally comes to the public's attention you see that the numbers in it.... At this time Mr. White called for Point of Order. He told Mr. Heady that he has talked about this over and over again. He reiterated that they could not have the contract here when they were negotiating because of confidentiality.

Mayor Sawnick agreed that they needed to move forward. He said some of the things that Mr. Heady mentions are things that he has brought up in the past. Mayor Sawnick was looking forward to the future.

## **B) Police Department Pension Review**

Mr. David Pusher, Chairman of the Police Pension Board, introduced Mr. Chad Little, Actuary for the Police Pension Board.

Mr. Gabbard expressed to Council that this presentation today was just for informational purposes.

Mr. Chad Little gave a Power Point presentation (please see attached).

Mr. Daige asked Mr. Little that in moving forward for the budget what kind of dollars are they looking at as far as the City having to contribute to the fund.

Mr. Little said that a lot depends on how much the Pension Board receives from the State.

Mr. Daige said moving forward with the new budget cycle let's say it is \$one million dollars that the City would need to contribute. He asked do they have to give it all in one lump sum.

Mr. Little said no they could do it quarterly. He expressed that the plan is in very good shape and there is no funding deficit to be dealt with.

Mr. Pusher added that the three million dollar deficit could be made up with investment returns and it is not necessarily the City's liability.

### **C) City-owned Golf Course Property (Review of Draft Request for Proposals)**

Mr. Gabbard presented Council with a draft RFP, which is basically the same as what was issued in 2007 to seek proposals for the renovation of the golf course. He said things have become a little more complicated. The issue is the parking arrangement with Minor League Baseball (MiLB) that carried over from the LA Dodgers when they purchased the property back in 2005. He has received a letter from Joe Baird, County Administrator, (please see attached) that outlines some of the concerns that he has. He recommended that Council look at the letter and the RFP. He plans to meet with the County again and will be bringing this item back to Council at their next meeting. He said that when they received the lease for the nine acres from the County at the time of purchase, MiLB was not in the picture, and because MiLB now leases the facility there is an area outside the nine acres, which if they are going to do something with the golf course then this issue needs to be resolved. He explained exactly where these areas are located. He encouraged Council to call him and talk to him if they have any questions.

Mr. Daige commented that he has some concerns with the current agreement. He has been in contact with the City Attorney and does see some restrictions in the current agreement that he would like to share with the current Council. He will make his thoughts known to Council in a memo before this comes back to Council.

Mayor Sawnick felt that after meeting with Mr. O'Bryan and Mr. Baird on Monday he came away with the feeling that in order for the golf course to happen there would need to be some team efforts made. He would like to see the golf course restored to the way it once was.

Mr. Heady mentioned that when this first came up he made the suggestion that instead of staff spending a lot of time on this that they get the proposals from whoever is interested and look at the proposals first. He said one of the things that they hear constantly is the cost of government and taxes. It seems to him before they present these kinds of documents it would be nice to know what it is that the interested parties are interested in doing. He said in looking at this letter from Mr. Wicker it is clear that what he wants to do is restore the golf course to its original Dodgertown Golf Course. He said one of the

first things that he did after being elected was to bring it to Council's attention that there was some interest in doing this by certain entities and those entities have not shown any real interest since he has brought this back to Council's attention. He thinks that they are spending tax dollars on putting a lot of things together when the entry level question is whether or not the interested parties have a viable proposal, which is what they should be looking at.

Mr. Heady asked Mr. Gabbard if he was the City Manager when the golf course was purchased. Mr. Gabbard answered yes. Mr. Heady then asked if the Council was aware they were buying a golf course, but they were only buying a portion of a golf course at the time. Mr. Gabbard stated that Council was aware that they were purchasing 36 acres and were going to get an additional nine acres that would be leased to the City so that they could have a golf course if that is what they chose to do with the land.

Mr. Gabbard stated that yes they did know because part of the deal was a lease back from the County for a dollar a year.

Mr. Heady referred to the section on the map that MiLB has and it cuts out part of the first fairway and asked if that section is being used by MiLB for any purposes. Mr. Gabbard said no. He said that when this piece of land was going to be developed by a developer the LA Dodgers held that piece out as a buffer. He said when the County leased the City the nine acres it was for the purpose of the restoration of the golf course. At that time there were no issues and it was owned by the County. But since that time MiLB has leased the baseball facility and that piece of land falls under their control. If the City wants to use this piece of land they will now need to negotiate with MiLB, along with the County. Mr. Heady noted that the Dodgers didn't use the golf course for parking. Mr. Gabbard told him that they used hole number one routinely for overflow parking. Mr. Heady said that Mr. Gabbard mentioned that there were some carryover provisions. He asked were these provisions in the Dodger's contract that carried over to MiLB. Mr. Gabbard said that he did not use the word carryover, but explained that when the Dodgers sold the land to the County, the County had a parking agreement with the Dodgers. He said remember that the County owned the facility while the Dodgers were still there and they wanted guaranteed parking. Also, in terms of the lease that they obtained from the County on the nine acre piece there is a parking agreement that is part of that. Mr. Heady referred to the proposal by Mr. Wicker and asked if that was the only proposal that is before the Council at this point. Mr. Gabbard explained that there is another group, the Wadsworth Foundation, who has expressed some interest. However, they have not presented a document like Mr. Wicker has.

Mayor Sawnick stated that once the City Council looks over the proposal then they will give some direction to the City Manager.

Mr. Daige asked when the City of Vero Beach purchased the land for \$9.5 million dollars, how many acres did they buy. Mr. Gabbard said 36 acres. The City has control of the 36 acres, plus the other nine acres.

Mr. Abell noted that this is a complicated issue. He said for anyone who was not on the Council at the time or is interested they can get the history and talk to the City Manager concerning the property. He said that the nine acres and areas around the pond and areas further south around the pond was used for parking when the Dodgers were here.

Mr. Heady stated that if they are going to get some proposals then they need to allow those people who are interested to use their own expertise and spend their time and energy putting a proposal before Council rather than Council putting out criteria, which limits the proposal that could possibly come before them. He said that they need to let it be known that they have a golf course and anyone interested in developing it should bring them a proposal by the next meeting, and then they can look at the proposals and make a decision on whether or not they want to go forward before spending tax dollars on coming up with the criteria.

Mayor Sawnick requested that they take a five-minute break and hear Mr. Zimmermann's item first before discussing the items under Old Business.

Mr. Heady pointed out that Mr. Wicker wished to be heard again and asked if they could listen to him.

Mayor Sawnick wanted to move forward with taking a break.

#### **D) County Commission Letter Requesting Joint Meeting**

Mayor Sawnick reported that they (him and the City Manager) met with Commissioner Peter O'Bryan and County Administrator Joe Baird yesterday. He informed them that once the City hears back from FP&L and gets more communication and figures then that would be the time to compare actual numbers and hold a joint meeting. The track that they are on right now is the right track.

Mr. Heady asked the Mayor to define communication.

Mayor Sawnick said that when they hear back from FP&L on whether or not they are interested in purchasing their electric utilities. He said right now they are discussing how they should respond to the letter that they received from the County.

Mr. Heady stated that with regards to how they were going to respond to the County Commission, he made it clear that they are not only City residents, but they are County residents also and the County has requested a joint workshop. He made a motion that they have this joint workshop. The motion died for lack of a second.

Mr. White agreed with the Mayor that they need to know what the numbers are before they sit down and talk to the County Commission.

Mayor Sawnick made a motion to wait until they here from FP&L before having this joint meeting with the County. Mr. White seconded the motion.

Mr. Heady commented that if they are going to get answers to serious problems that they are facing then they need to discuss those items openly and in the public eye. He amended the motion to have a meeting with the County Commission. The amendment died for lack of a second.

Mr. Abell felt that to meet with the County at this point would be ridiculous. He said that FP&L has not expressed an interest in purchasing their electric utilities, nor has any other power providers. It does not make any sense to talk about something when they don't have figures.

Mr. Heady appreciated Mr. Abell's comments that they have nothing to discuss until the deadline. He said it was a serious mistake to wait to the deadline when they are going to discuss this. It is clearly not the right move. It has been demonstrated that those kinds of decisions are not well thought out. The intelligent way is to discuss those things at a public meeting.

Mr. Abell made it clear that at no point did he say wait to the last minute. He doesn't know what Mr. Heady is talking about.

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

Mr. Lee encouraged the Council to read the "Evaluation of Impact" report that was done in the 1970's. He plans to bring the report up at the next Utilities Commission meeting.

#### **E) Consultants Competitive Negotiation Act Committee Report (Rob Bolton)**

Mr. Rob Bolton, Water & Sewer Director, told Council that what they have in front of them today is the findings/proposal from GAI Consultants. He said that back in October 2009 they had a joint meeting with the County and out of that meeting the CCNAC Committee was formed. He appeared before Council in November to get approval for the RFQ for a consultant to be hired and the RFQ went out and they received proposals from five consulting firms and GAI was the top consultant firm. They met with GAI on April 15<sup>th</sup> and some ideas on the proposal and scope of work that was consistent with the original RFQ and the wishes of the Committee. He said that GAI put together a proposal and presented it to the entities. Since the original proposal, Mr. Tom Cadden, Chairman of the Competitive Negotiation Act Committee, met with GAI and he requested that the Phase 1 work be split into Phase 1-A) and Phase 1-B). The Committee met again and this was agreed upon by the Consultant and most of the Committee to first go with Phase 1-A) which would consist of gathering information from the facilities, the agreements that they have among the different entities, the financial background they have for all of the different entities which would enable the Consultants to determine possible scenarios. Then they would sit down and have interviews with each of the elected officials and members of staff. The Consultant has posed a questionnaire that they would ask each individual, they would be taking notes and then come back with a report as to whether some sort of consolidation could occur. Then once this is complete they would move

forward with Phase 1-B) of the proposal. At this point he said that it is open to discussion.

Mayor Sawnick made it clear that Indian River Shores had originally requested going this way and he is still in favor of going forward with this. He said that right now they are only approving going forward with Phase 1-A).

Mr. Bolton expressed that they are not asking you to determine who would pay for what. He is just here to discuss approval of the scope, then they will sit down with the Committee on a fair way to pay for it.

Mr. Daige recalled that CCNAC met yesterday and he asked Mr. Bolton to touch on how the vote went.

Mr. Bolton stated that the meeting was held yesterday at 2:00 p.m. and it was opened by Chairman Cadden for some discussion on the scope of work. He said what happened was that there was a vote taken and it was 4-2 with the two County members voting against. He felt that the scope identified what they needed to know. Mr. Cadden felt that they did not need to spend any more money if it is not the will of the different elected officials to move forward.

Mr. Daige was in favor of moving forward as suggested by Mr. Bolton.

Mr. Heady felt that in the future that the documentation needs to be readable.

Mr. Abell made a motion to take Mr. Bolton's suggestion and approve Phase 1-A). Mr. Daige seconded the motion and it passed unanimously.

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

None

## **9. CITY COUNCIL MATTERS**

### **A. Old Business**

\*Please Note: Items 9A-1), 3), 4), 5), 6), 8), and 9) were pulled off of the agenda.

#### **1. Date for presentation by Dr. Faherty and Glenn Heran – Requested by Councilmember Brian Heady**

Mr. Heady mentioned that Dr. Faherty and Mr. Heran have gone throughout the County and given presentations on the City electric utilities and is a presentation that Council should entertain having to see the information that they have. He said it is important to do that. He made a motion to set a date in the short term to have them make a presentation to the Council. The motion died for lack of a second.

## **2. Discussion on changes to City Council meetings – Requested by Councilmember Brian Heady**

Mayor Sawnick suggested to Mr. Heady that he list the items that he would like to discuss under Old Business for the next meeting. He said also Council has a right to appeal any ruling that he makes if they don't agree with it.

Mr. Heady thanked the Mayor for his suggestions on how he should be effective. The discussion under Old Business is a discussion on changes to City Council meetings. He said at the last meeting there was a proposal made by Councilmember Abell on changes to their meetings and there was discussion by Council and when his opportunity came up to discuss this item the Mayor refused to allow him to discuss it. He felt that was appalling. He said that if they are going to make changes or have discussions then every Councilmember should be afforded the opportunity to do this. In addition, on one of the items to be changed he asked the Mayor if there were any cities doing this and the Mayor said yes there were and he asked the Mayor to name some and the Mayor didn't and he asked the Mayor to just name one city and he mentioned Hillsprings, Montana. So after the meeting because he was unfamiliar with Hillsprings, Montana and the Mayor didn't provide any backup on that Town, did do some research and found out that there is no Hillsprings, Montana. He said that if you are going to make good decisions, the way that you make good decisions is by having good information and when a Councilmember gives bad information to other Councilmembers then you will wind up in the final analysis of making bad decisions. He said in addition, the Mayor said that he had correspondence and he asked the Mayor to provide him with the correspondence that would be of public record and the Mayor said that his correspondence was "verbal." He did not think that the Mayor's command of the English language is such that he believes that correspondence is verbal. He thinks that what happened was that the Mayor did not give truthful answers about Hillsprings, Montana or truthful answers about really being in possession of correspondence from members of the community. When he (Mr. Heady) was a citizen he used to stand at the podium and say three words, "liars, cheats and thieves" should not be in charge of governing agencies. The reason he made that comment was because he does not think that they should lie, cheat or steal from the public. When they give the public bad information that they know not to be true that is lying to them, it is cheating them and stealing from them. He feels that they should stop running their meetings that way.

Mayor Sawnick stated that Mr. Heady's next item was 9A-7) Debate on Sale of Electric. He said that Mr. Heady has brought this up multiple times before. He asked Mr. Heady if he wanted to explain what he was asking for and they can take some action on it.

Mr. Heady stated that before they move on there is a possibility to take action under Old Business and that under item 9-2) he wanted to make a motion. He made a motion that he be afforded an opportunity to discuss those things and ask questions in regards to the Mayor's input at the next meeting. He said at this meeting many of his items were removed from the agenda (13 items in total) and he thinks that if one Councilmember is

entitled to a discussion that all Councilmembers are entitled to a discussion. He would like to make a motion that they add these things to the next agenda without the possibility of pulling them off. The motion died for lack of a second.

3. **Still waiting for written answers from City Manager – Requested by Councilmember Brian Heady**
4. **OUC Contract – Requested by Councilmember Brian Heady**
5. **50MM penalty – Requested by Councilmember Brian Heady**
6. **November Elections – Requested by Councilmember Brian Heady**
7. **Debate on Sale of Electric – Requested by Councilmember Brian Heady**

Mr. Heady mentioned that there was a lot of discussion within the community as to whether or not Vero Beach should sell their electric utilities and what we should do about moving forward. He has heard from the Mayor and others to wait until FP&L comes back with their comments. He thinks that they have heard that before, they were told to wait until OUC comes in effect in January and then they would see rates equal to or lower than FP&L's. When they are in a position of doing something as significant as selling the electric, he thinks that there should be a public debate held and they should discuss different things, set up the parameters and know what they are looking at. He made a motion to set up a date and a time that they could sit down and have that debate on the sale of the electric with presentations from members of the community who may have something to contribute and perhaps that would be the appropriate time for a presentation from Dr. Faherty and Mr. Heran. The motion died for lack of a second.

Mr. Daige wished to make comments on the debate of the sale of the electric utilities. He wanted the public to know that there are a lot of people who don't like the OUC contract and there are a lot of people who do like it. He said that Councils in the past elected to move forward and there was no doubt that they needed to exit FMPA. The Council who sat up here before (including himself) relied on expert testimony and experts in the electric field. Going forward they have talked about selling the utilities in part or in whole. They are in a waiting pattern now and waiting to hear back from FP&L. He said so far none of the individuals who have spoke at the podium are certified in the field of electric and utility matters. This Council has to rely on facts when moving forward. In the event that FP&L comes forward with some sort of paperwork they will look at it. As far as having people give presentations and getting into a debate with the general public he is not favor of doing that. He will always rely on the experts so he can move forward with some wise decisions. He reiterated that he still is not happy with the bottom line of the bills and wants to continue to see them being lowered. He said if a Councilmember is wrong in their judgment they could actually have the City ratepayers paying more than what they are paying now. He again cautioned Council that when testimony is presented it is presented by experts.

Mr. Abell agreed with the comments just made by Mr. Daige.

8. **8/12/08 – Requested by Councilmember Brian Heady**

**9. Direction City Manager selection process – Requested by Councilmember Brian Heady**

These items were pulled off of the agenda.

**B. New Business**

**1. Expend Funds from the Tree and Beautification Commission – Requested by Chairman Karl Zimmermann**

Mr. Karl Zimmermann, Chairman of the Tree and Beautification Commission, was before Council today to ask permission for the Commission to expend up to \$413 from the Tree and Beautification fund to purchase plaques for dedicatory trees.

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

- 2. A Federal Case – Requested by Councilmember Brian Heady**
- 3. Golf Course – Requested by Councilmember Brian Heady**
- 4. Discussions on tax reductions – Requested by Councilmember Brian Heady**
- 5. Honest Services Fraud – Requested by Councilmember Brian Heady**

These items were removed from the agenda.

**10. INDIVIDUAL COUNCILMEMBERS' MATTERS**

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

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

Mayor Sawnick reported that on April 21<sup>st</sup> he spoke to a class at Indian River State College, then on April 24<sup>th</sup> he attended the Indian River Day of Service, also on April 24<sup>th</sup> he attended the Mayor's beach cleanup at Mulligans.

Mayor Sawnick commented that at their next meeting he will be bringing forth a proposed Resolution saying that the City is opposed to off-site drilling. He then continued with his Committee Report. He said that on May 1<sup>st</sup> he had the opportunity to ride on the proposed Amtrak train and there will be future workshops on this matter (schedule available in the Clerk's office). Also, on May 21<sup>st</sup> there will be a Coffee with the Council.

Mayor Sawnick recognized the importance of having backup provided when they have items on the agenda. He recalled that he may have named a City that has time limits that was incorrect. He told Mr. Heady if he wanted a list of places that do impose time limits,

then it could be provided. He said that research is important to see how other cities are handling things. He looks forward to working together with all of the Council.

**3. Comments**

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

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

Mr. Abell agreed with Mayor Sawnick's comments concerning providing backup material. He pointed out that they have exceeded the four hours that they spent at their April 20<sup>th</sup> meeting. He would like to see Council be one-hundred percent informed when they come to these meetings.

**C. Councilmember Tom White's Matters**

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

Mr. White reported that he attended the Volunteer Junior Staff dinner, he installed new officers for the Italian American Club, and he attended the Hunter Club banquet. He asked Council to approve the Mayor sending a congratulatory letter to the police officers who were given awards at the Hunter Club banquet. He then mentioned the census forms and noted that Indian River County had an overall return rate of 77%.

Mr. White commented that the City of Ft. Pierce is still involved with FMPA and they have the fourth highest utility rates in the State of Florida. He said that if the City of Vero Beach were still contracting with FMPA then they would also be high on the list.

Mr. Daige was in favor of the Mayor sending a letter to the two Police Officers as just mentioned by Mr. White.

**3. Comments**

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

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

Mr. Heady stated that President Theodore Roosevelt said to declare criticism wrong is morally treasonable to the American public. He expressed that what happened earlier in this meeting by the majority of this Council to bar a Councilmembers from bringing up important issues falls within the President's definition of morally treasonable.

**B. Liars, Cheats and Thieves**

**C. Bad info=bad decisions**

## **E. Correspondence**

These items were pulled off of the agenda.

- A. Mayors continued abuse of power**
- D. Other Mayors in county**

Mr. Heady stated that under correspondence, he sent a memo to the City Manager requesting that he put in writing what statements he made that stunned him and that were inaccurate. These statements were made at a County Commission meeting and he has asked every meeting since if the City Manager could identify with specificity any single statement that he said that stunned him or any single statement that he said was inaccurate. The City Manager's constant refrain has been to go back and look at the meeting. Mr. Heady noted he said several things like his name, which was not inaccurate and he doubted that it stunned the City Manager. He again asked the City Manager to identify with specificity anything that he said that stunned him and anything he said at that meeting that was inaccurate.

Mr. Heady stated that the real problem that they have is often elected officials or staff just say things that are not truthful. He again brought up Hillsprings, Montana. He said that Hillsprings, Montana does not exist and the correspondence that the Mayor claimed was verbal he does not believe the Mayor's command of the English language is so poor that he thinks correspondence is verbal. He said what really happened is that we had an elected official that stated the first thing that came to his mind whether it was truthful or not to support his point of view. He said the Mayor has stated that they need to provide backup, but for that particular item the backup that the Mayor states he has or researched was never provided. Mr. Heady commented that he did not need the backup because he thinks that in this City what they need to do is conduct public business in the public eye and he will continue to fight for that whether or not the majority of the Council wants to shut him up or not. That will not stop him from asking that the public business be conducted in the public eye.

Mr. Heady commented that at the last meeting he had the 8/12/08 County Commission meeting that he wanted to play and he still would request that this happens. This item was pulled off of this agenda by the majority of the Council and he will put it back on for the next meeting. He said that it is important for this body to see it and discuss it. He feels that the comments that were made when you see the DVD will trouble them and if they don't then he feels that they are neglecting their obligations as an elected official.

Mr. Heady stated that one of the things that he had on his agenda, which was removed was "A Federal Case." He said the reason that he put this item on the agenda was because if the City Council continues on the path to silence this elected official, then the only remedy that he has is to make a Federal case out of these issues and to get Councilmembers and staff under oath and ask them questions and have depositions taken. He said it is clear from the action taken by the Council at the beginning of this meeting that is exactly the path that they want to send him down and he does not think that it is

the best path, but it is pretty clear that is the only way that he is going to get Councilmembers to answer in a public forum where their answers can be proven. He will see that he does exactly this. He said that it is not a threat, just a matter of fact on what he is going to do.

Mr. Heady brought up at the last meeting there was some questions brought up concerning the 8/12/08 meeting and the City Manager said just that morning he received notification concerning bonds. However, at the last Council meeting the City Manager said that he didn't receive notification at all and what he received was a telephone notification. Mr. Lee then came up to the podium and said what he received was a courtesy telephone call from FMPA staff who had some concerns of a possible sale.

Mr. Heady stated that in restricting Councilmembers comments at the last meeting, the Mayor said that other Mayors in this County had suggested this to him. He said that in his research he cannot find any documentation that any other Mayor in this County, in any community, has suggested that they should be restricted on public debate on public issues. He does not know where this came from and there are no documents that prove and demonstrate that this is correct. He said that if the Mayor has something to demonstrate like mentioning Hillsprings Montana, and his so called correspondence, he would make a public records request that these things be delivered to him.

Mayor Sawnick would make sure that the City Clerk provides a copy of the minutes from the last Mayor's meeting.

Mr. Heady brought up Honest Services Fraud and expressed that the City Council should be aware of the provisions of Honest Services Fraud. He reiterated that when you don't tell the public the truth, when you make resolutions and motions to shield or hide from the public, that you are in very dangerous territory in respect to the provisions of Honest Services Fraud.

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

Mr. Daige requested to the City Manager to put in writing his comments and thoughts that were made to the County Commission at their 8/12/08 meeting to get it on the record once and for all so that they can put this issue to bed.

Mr. Heady felt that they should play the tape at the next meeting and they could resolve everything at that meeting.

Mr. Daige stands by this request that he is making to the City Manager.

Mr. Heady asked the City Attorney if an individual Councilmember could take the City to court. And in the event that a Councilmember does that, can they have at their disposal City funds in order to do that.

Mr. Vitunac stated that a Councilmember has a right to file suit in Federal Court, but it would have to be done at their own expense.

Mr. Daige read his report into the record (please see attached).

## **11. ADJOURNMENT**

Mr. White made a motion to adjourn today's meeting at 2:09 p.m. Mr. Abell seconded the motion and it passed unanimously.

/tv

Honorable City Council Members  
City of Vero Beach, Florida  
1053 20<sup>th</sup> Place  
Vero Beach, Fl 32960

April 14, 2010

MJ Wicker  
1036 29<sup>th</sup> St.  
Vero Beach, Fl 32960  
(772)713-7754

Dear City Council Members,

After several weeks of exploring the possibilities of opening the nine hole golf course located at the corner of 43<sup>rd</sup> Ave and 26<sup>th</sup> Street referred to as The Dodgertown Golf Club, my associates and I have reach a point where we would like to ask for a letter of intent from the City of Vero Beach.

The letter would explain the desires of the City concerning the property regarding items such as:

**1) Lease, rent, term of the lease, insurance/liability requirements, property tax requirements, and "our renewal options"**. As potential operators of the golf course and the business pertaining there to, we would ask for an initial 30 year lease with an option to renew. In addition, we would ask to have some type of clause regarding our sole ability to transfer the lease. The transfer clause would note that the property "use" would not change and in fact would be required to continue to be operated in it's original intended use, that of a golf course. Also, the lease would contain a buy out clause so as to protect our investment should the city decide to take control of the golf course property for any unknown reason.

**2) Improvements to the property** would consist of improving many different facets regarding the club house, parking lot and the course itself. It would go without saying that the tee boxes, fairways and greens would require much improvement. We also wish to improve the clubhouse with the addition of a snack bar, shelving etc...and increased decking for outdoor seating. We would want to have the support of the city in making the clubhouse a "**center piece**" that would offer the same gratuities and comforts as other surrounding country clubs and county golf courses. In addition, we would like to put a call out to the city and general public for their help in acquiring any historical pictures, memorabilia and other items of interest related to the history of the Dodgertown course. It is the desire of all who are involved in this venture to make the clubhouse a memorial to the history of Dodgertown and it's patrons so that the community and its visitors will have the opportunity to know the importance of, and the effect that the great Dodger organization had here in our wonderful city.

**3) Inspection of the irrigation system, well, pump(s), along with the AC unit** at the clubhouse, so as all parties would be aware of their initial condition and operating abilities. We are aware that the irrigation lines are probably in need of replacement. We are not asking that the irrigation lines be intact and in good working condition as we expect to have to repair the

irrigation lines. However, it will be important to see that the pump is working and to what extent.

Obviously, the operation of the irrigation system will be critical in getting the course up and running and knowing the original condition of these systems will be important to both parties prior to entering into a lease agreement. According to the site property maintenance crew we are under the impression that the pump and well are shared with Holman Stadium. In fact, they have indicated that the stadium irrigation is maintained using this well and pump. This is good news, but it would be important to open the stations up to the course and see where the water is possibly going on the course. According to some past employees of the Dodgertown course, only the tee boxes and greens were receiving water through the system. None the less, it is understandable regarding the necessity in knowing the working condition of these systems.

4) **The name, “Dodgertown Golf Club”**, would be a wonderful asset in keeping with tradition and upholding the history of this terrific course and it’s legacy in Vero Beach. We would ask the city to assist us in any negotiations necessary in continuing to call the course by it’s original name.

These items are a beginning and could quite possibly lead to the reopening of, “The Dodgertown Golf Club”. That just sounds good doesn’t it?

In the initial stage of this venture, much information has been collected. A representative of the city has indicated that the city would, in fact, lease the property mentioned and referred to as the, “Dodgertown Golf Club” for **“a dollar a month”**. He jokingly stated, “where are you going to rent a golf course for a dollar a month”. He also added that such a lease would only be available to an entity with the sole interest of putting the course back into its original intended use, that being a public golf course.

There was some question as to a lease that the city has with the county regarding the approximately nine acres adjacent to Holman Stadium. According to the information found in the files at city hall regarding the golf course, there is a “Parking Property Lease Agreement” dated November 17, 2005 between the LOS ANGELES DODGERS and the CITY OF VERO BEACH that indicates that the rent being paid by the CITY OF VERO BEACH is “one dollar per year”and that this agreement shall expire on November 30, 2045. This leaves approximately 35 years left on this lease.

While aware that the property is now owned and controlled by Indian River County, according to the, “ **THIRD AMENDMENT TO FACILITY LEASE AGREEMENT**”, dated February 19, 2008. On pages 8 and 9 of that amendment, item (f) states that the county shall assume all of the rights and obligations of the Dodgers under the Parking Property Lease and the City shall be entitled to continue to occupy and use the Parking Property in accordance with the terms and conditions thereof until the Parking Property Lease expires or is terminated which, according to the original lease is November 30, 2045.

As this information was all that was available at City Hall according to the city clerk’s office, we may not be aware of another agreement or amendment to the lease that may exist and state

otherwise.

This is mentioned only because there was commentary indicating that there is a 20 year lease between Indian River County and the City Of Vero Beach involving this parking area which is the approximately nine acres adjacent to Holman Stadium. This area is used for overflow parking due to events at Holman Stadium. It was believed that there was approximately 18 years left on this lease according to the city official. However, there was no information in the files at the Vero Beach City Clerk's office to verify the 20 year lease. Please see enclosed copies of the information collected. As mentioned in item #1, we were asking for a initial 30 year lease and this request would require negotiating with the county too, if in fact, there is such a lease in tact for the 20 years. Some clarity to this possible 20 year lease would be helpful.

Closing, it is important to indicate that this course shall be virtually a family run business with the purpose of not only providing a more affordable recreational option to the surrounding community, but to also reach out to the city and county residents in a way that the Dodgers did by providing opportunities to learn and play the game of golf to all people of all ages. As mentioned before, the clubhouse will be used to not only facilitate the course, but to also inform and offer entertainment and knowledge as a historical memorial to the Dodgers. The possibility of other activities at the course are being explored as well. It will be important to seek and have the City's and County's involvement and most importantly, their support in putting this unique and special asset of our community back into operation.

With the utmost respect,

MJ Wicker

**Presentation to City Council  
By Dr. Stephen J. Faherty, Sr.  
April 20, 2010  
9:30 am**

**At the City Council Meeting on April 20, 2010, I made a number of comments and received a number of inaccurate statements from the City Council to which I could not respond.**

**It was stated that the City eliminated the Municipal surcharge. This is not quite accurate. The City did eliminate the Municipal Surcharge under §25-9.0525 (Municipal Surcharge on Customers Outside Municipal Limits) under which it collected a 10% surcharge totalling about \$3,000,000 annually from County customers. However, according to the City's Rate and Service consultants in August 2009, the \$3,000,000 previously collected by the City under this statute from the County customers was now added by the City to its Base Service (meter) Rate not as a cost related factor, but as an additional revenue generation factor. Thus, the surcharge was eliminated in name only, BUT not as a rate charge to electric customers. In addition, the September 2009 City Council approved the new rates, but did not advise City customers and voters that the 39% of the customers in the City would now pay about \$1,200,000 in additional electric costs (of the \$3,000,000 that used to be paid solely by County customers). Outside City customers still pay about \$1,800,000 of the \$3,000,000 they previously paid in the**

**tax, but now pay it in a higher electric rate, not a separate tax.**

**It was stated that bids would have to be solicited from multiple bidders if the City wanted to sell its electric utility. I believe the City Attorney has said a number of times that the City could solicit a bid from, and sell to, one bidder, i.e., go sole source in the sale of the electric utility.**

**It was stated that the City's participation with the FL Public Service Commission (PSC) was voluntary. Please refer to FL Statutes §366.04, Public Service Commission Jurisdiction, and the multiple references to PSC jurisdiction over municipal utilities relating to reporting, approval of rate structure, municipal surcharge changes, territorial agreements, etc.**

**It was stated inaccurately that the customer numbers I referred to and that the City's auditors cited on p. 132 of their 2009 audit report and the City reported to the PSC were incorrect. They were numbers from Auditor and City submitted reports and if incorrect should be revised by the auditors and/or the City.**

**Other misstatements such as Studies versus conversations, Correspondence versus conversations, comparing COVB and FPL reliability and underground wiring on a system wide basis when FPL has about half of its system in rural areas all put a spin on facts and erode public confidence in the City Council and City Administration.**

**Rock Tonkel mentioned at the last meeting that there is a different environment at the City Council meetings versus the County Board and the Shores Town Council**

meetings. After having given numerous presentations to State, County, City and Town governments, as well as various organizations, I would have to agree. There is a responsibility of those in public positions to be civil and accurate in their statements so as not to mislead the public regardless of personal beliefs or personal dislikes. This responsibility encourages openness, transparency, and differing opinions which are beneficial for the public good. However, inaccurate, misleading, and caustic comments and a similar environment are counter productive for the public good.

The City really missed an opportunity to have the volunteered knowledge and experience of David Gregg and John Little by refusing to allow them assist the City they once worked for.

It was recently reported in the Press Journal that Mr. Bolton was going to recommend to the City Council that the approach of having the tri-jurisdiction WSI consultant perform all of Phase I at a cost of nearly \$170,000 be followed. Today's Press Journal states that the Shores and City favor just getting the political opinions of the elected and appointed officials.

It seems that after getting the data, the opinions of the elected officials would have to be obtained to determine the direction to take. The fact that the three jurisdictions established the Commission in October 2009 should be taken at face value that the jurisdictions are open to change. The County and City both have cost and rate data but they are not compared on the same basis and one government does not trust the other. An

**independent analysis and comparison of the data using the same factors is necessary in order to determine comparability of costs and rates.**

**This is similar to the approach on the electric utility where we were assured from 2006 – 2009 that the City's new electric supplier would provide rates equal to FPL. It was only when the City rate study was completed in the late summer of 2009 that the disparity in rates between FPL and the City was confirmed.**

**Thank You.**

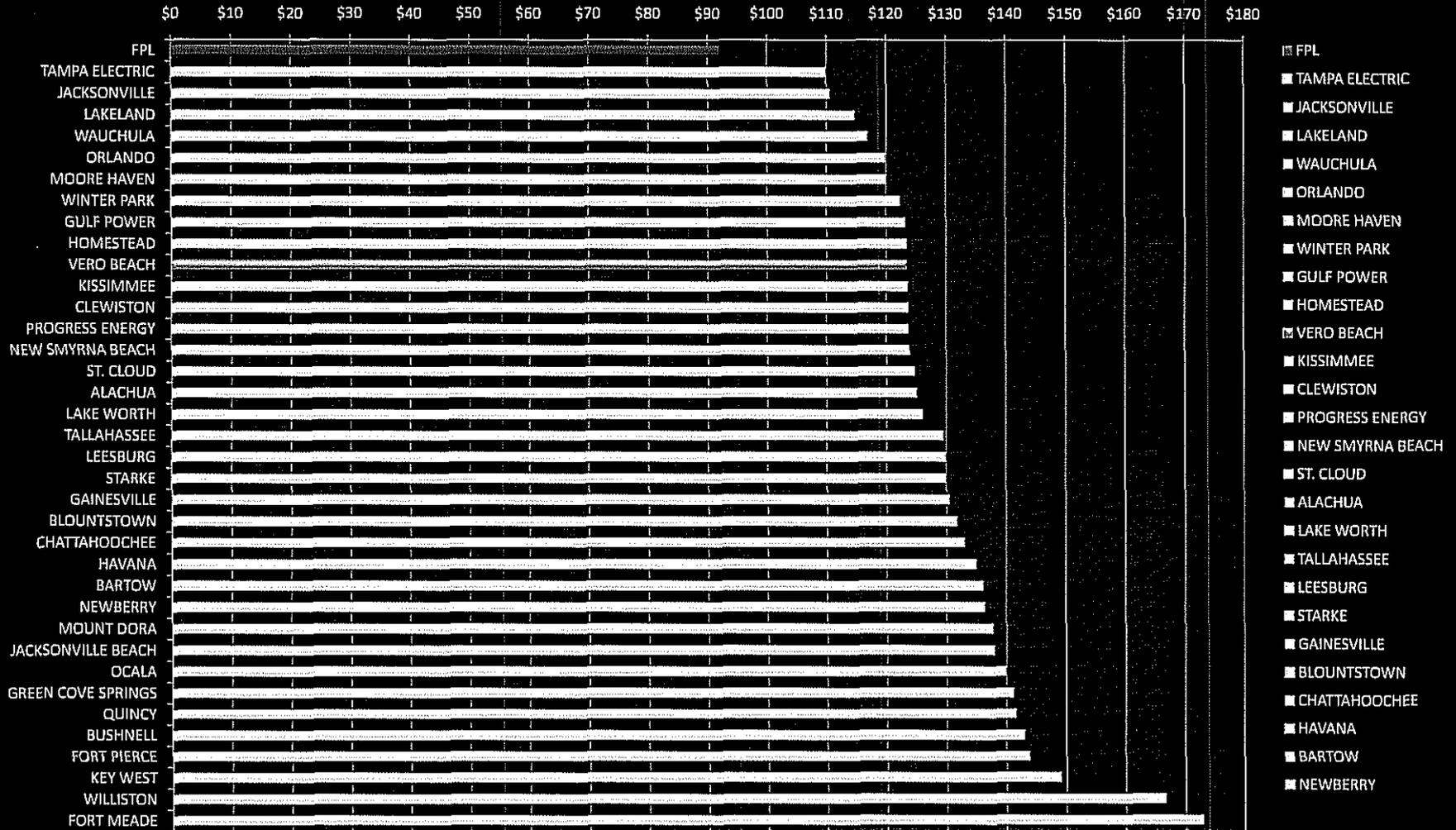
**Comparison of Residential Electric Rates**

**Information provided by Florida Municipal Electric Association, Inc.**

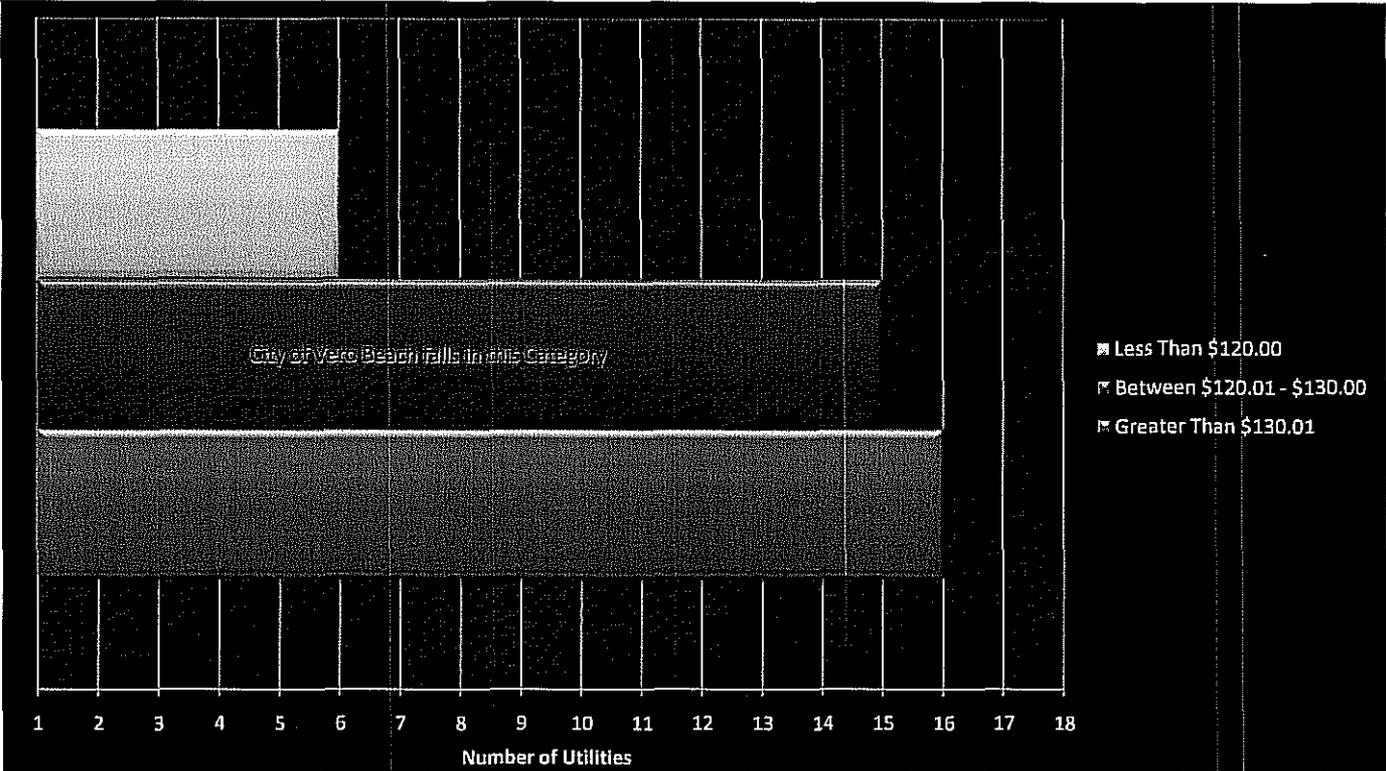
**MARCH 2010**

<b>Municipal-Owned Utilities and Investor-Owned Utilities</b>		<b>Total Cost Based on 1,000 KWH</b>
1	FPL	\$ 92.08
2	TAMPA ELECTRIC	\$ 109.91
3	JACKSONVILLE	\$ 110.46
4	LAKELAND	\$ 114.59
5	WAUCHULA	\$ 116.85
6	ORLANDO	\$ 119.82
7	MOORE HAVEN	\$ 120.00
8	WINTER PARK	\$ 122.26
9	GULF POWER	\$ 123.02
10	HOMESTEAD	\$ 123.30
11	<b>VERO BEACH</b>	<b>\$ 123.45</b>
12	KISSIMMEE	\$ 123.53
13	CLEWISTON	\$ 123.71
14	PROGRESS ENERGY	\$ 123.73
15	NEW SMYRNA BEACH	\$ 123.80
16	ST. CLOUD	\$ 124.61
17	ALACHUA	\$ 125.00
18	LAKE WORTH	\$ 126.00
19	TALLAHASSEE	\$ 129.50
20	LEESBURG	\$ 129.83
21	STARKE	\$ 129.85
22	GAINESVILLE	\$ 130.45
23	BLOUNTSTOWN	\$ 131.71
24	CHATTAHOOCHEE	\$ 132.95
25	HAVANA	\$ 134.94
26	BARTOW	\$ 136.06
27	NEWBERRY	\$ 136.36
28	MOUNT DORA	\$ 137.72
29	JACKSONVILLE BEACH	\$ 137.91
30	OCALA	\$ 139.84
31	GREEN COVE SPRINGS	\$ 141.16
32	QUINCY	\$ 141.55
33	BUSHNELL	\$ 143.05
34	FORT PIERCE	\$ 143.84
35	KEY WEST	\$ 149.00
36	WILLISTON	\$ 166.64
37	FORT MEADE	\$ 172.86

Total Cost Based  
on 1,000 KWH



Comparison of the Number of Utilities Per Cost Category

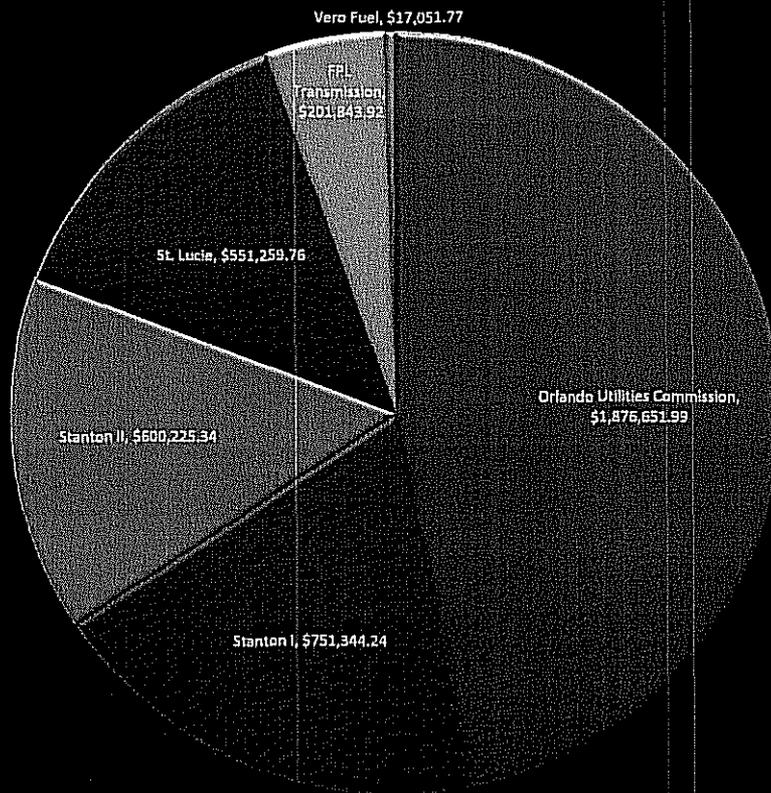


Greater Than \$130.01	16
Between \$120.01 - \$130.00	15
Less Than \$120.00	6

Bulk Power Cost  
March 2010

Orlando Utilities Commission	\$ 1,876,651.99
Stanton I	\$ 751,344.24
Stanton II	\$ 600,225.34
St. Lucie	\$ 551,259.76
FPL Transmission	\$ 201,843.92
Vero Fuel	\$ 17,051.77
<b>Total Cost</b>	<b>\$ 3,998,377.02</b>
Total MWH	59,156
Cost Per MWH	\$ 67.59

Bulk Power Cost



Meetings, Seminars and Events Attended:  
Submitted by Councilmember Ken Daige  
5-4-2010

4-26-2010 Annual Junior Staff Volunteer Dinner  
Sponsored by the City of Vero Beach Recreation Department  
The Vero Beach Lion's Club and  
The Treasure Coast Pilot Club.

Honorees are:

Matt Woodson

Savannah Rath

Courtney Vose

Jessica Richardson

Brooks Maxwell

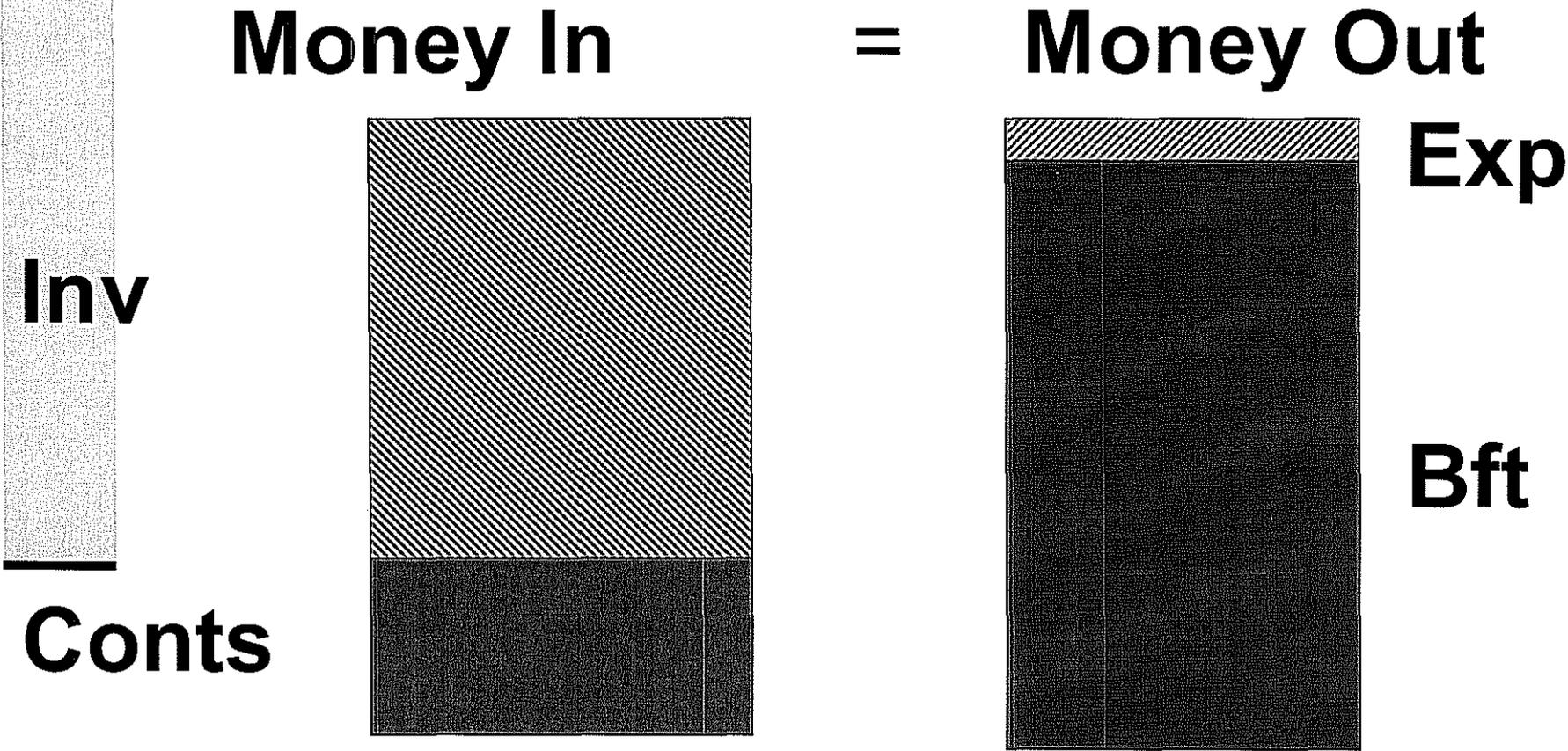
And the Tot Spot of Vero Beach, Inc.

5-3-2010 Attended the Special Call Consultants Competitive Negotiation  
Act Committee Meeting.

# Vero Beach Police

10/1/2009 Valuation Results

# Funding Equation



# Required Contributions

	For FYE 9/30/11 Based on 10/1/2009 Valuation	For FYE 9/30/10 Based on 10/1/2008 Valuation	Increase (Decrease)
Required Employer/State Contribution As % of Covered Payroll	\$ 1,003,043 24.69 %	\$ 808,241 19.95 %	\$ 194,802 4.74 %
Estimated State Contribution As % of Covered Payroll	\$ 271,043 6.67 %	\$ 271,043 * 6.69 %	\$ 0 (0.02) %
Required Employer Contribution As % of Covered Payroll	\$ 732,000 18.02 %	\$ 537,198 13.26 %	\$ 194,802 4.76 %

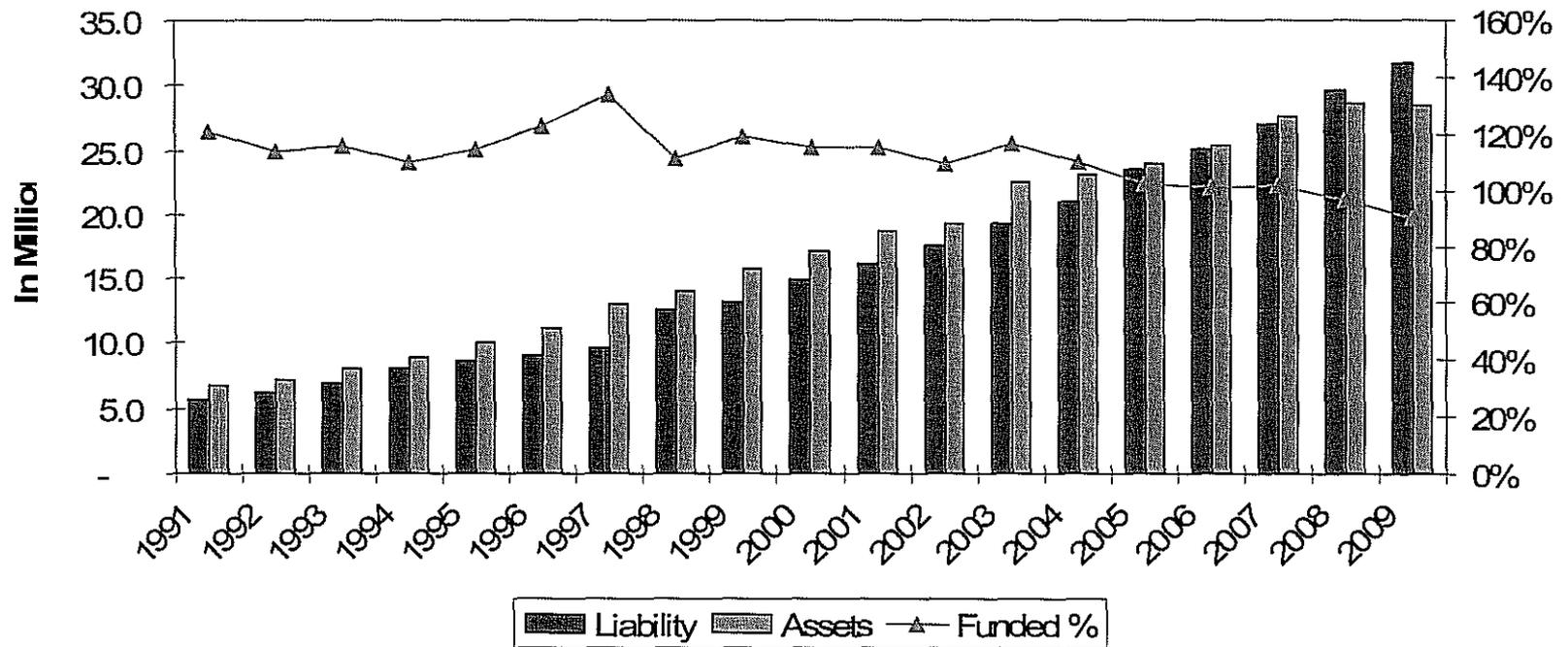
# Change in Minimum Funding

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Contribution rate last year	13.26 %
Amortization payment on UAAL	0.20
Change in normal cost rate	0.07
Actuarial experience	4.54
Change in investment return assumption	0.00
Change in administrative expense	(0.07)
Change in State revenue	<u>0.02</u>
Contribution rate this year	18.02

# Funded Status

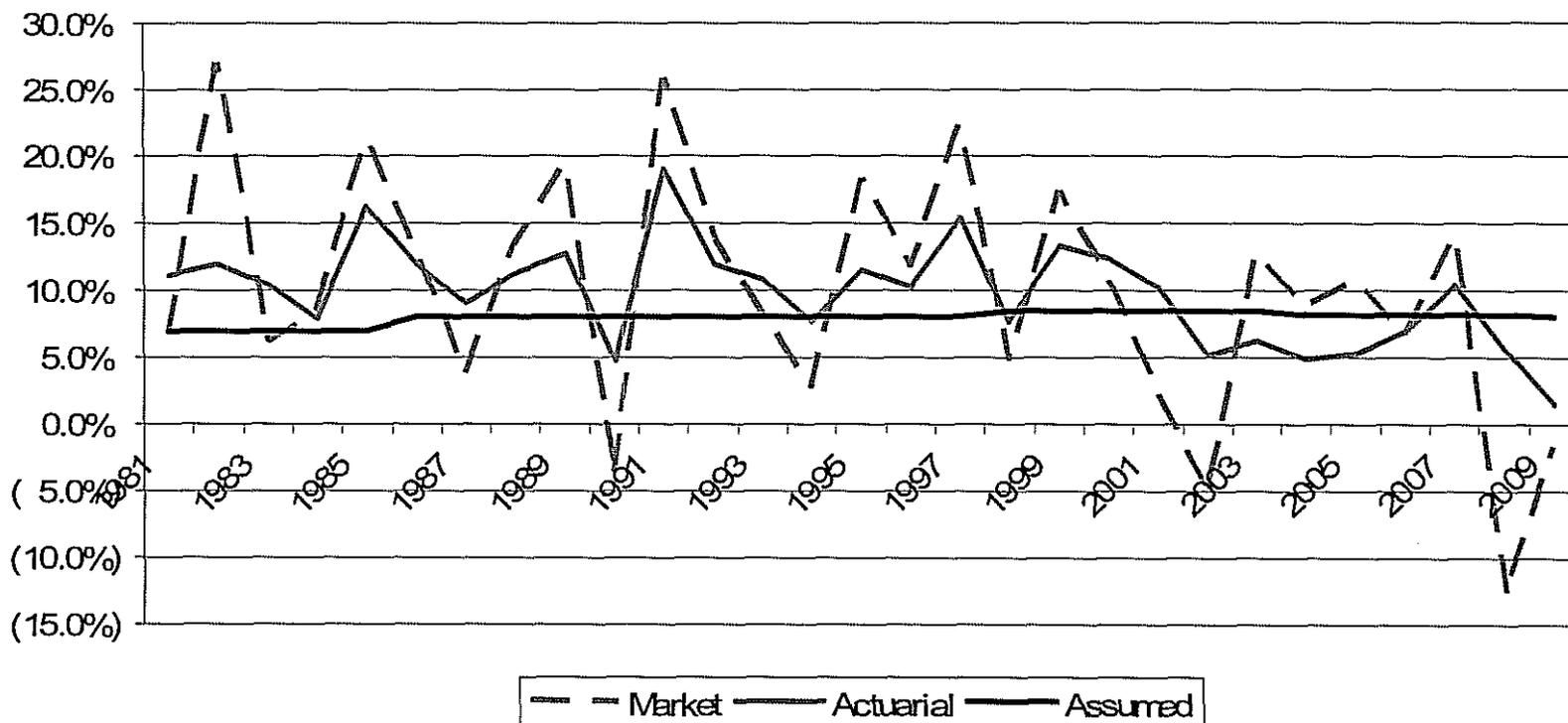
## Historical Funded Percentage



Funded %	
2006	101%
2007	102%
2008	99%
2008	97%
2009	90%

# Investment Returns

Historic Investment Return

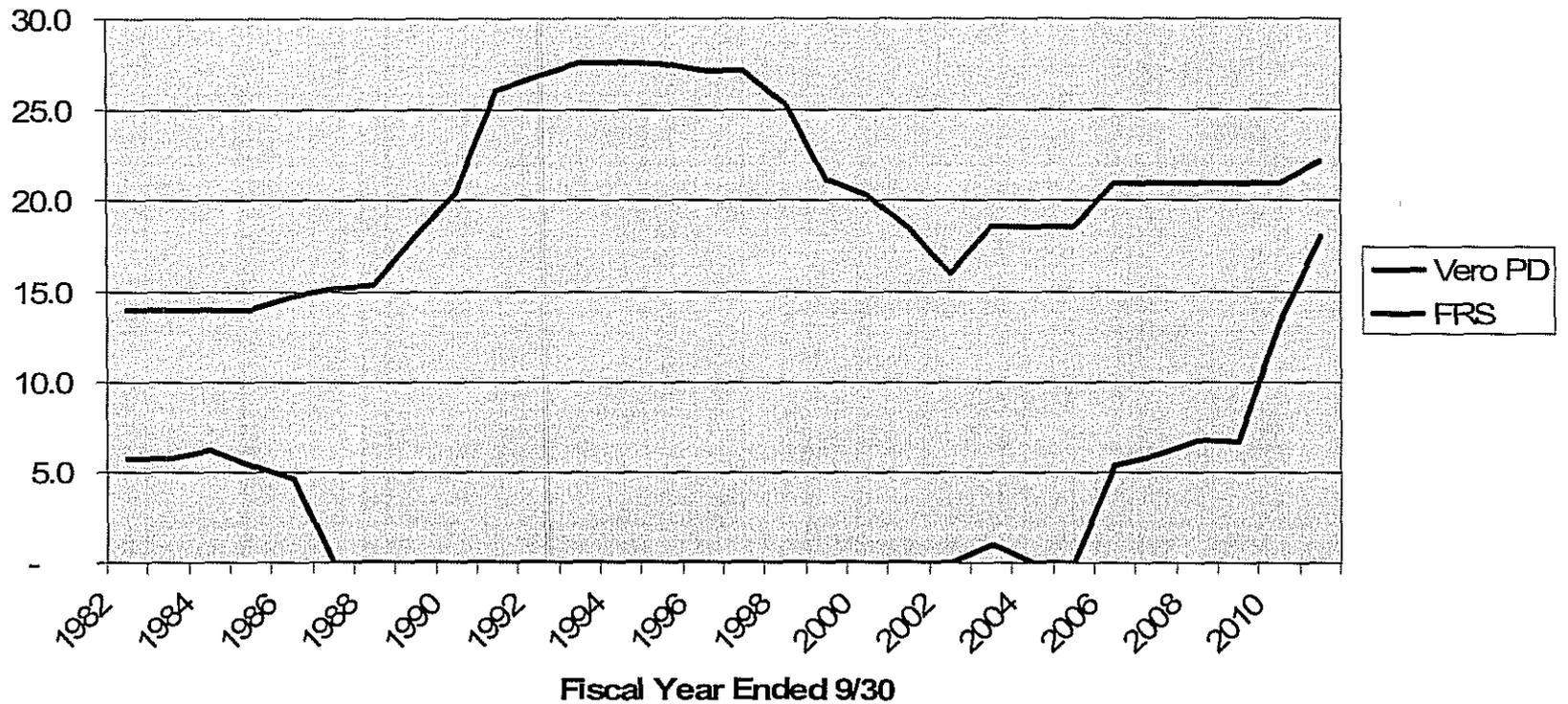


**Average Returns:**

Last 5 Years	3.0 %	5.9 %
Last 10 Years	4.4 %	6.8 %
All Years	9.3 %	9.8 %

# Change to Minimum Funding

Employer Contribution Rate



# Business

PAGE B 6 • SATURDAY, APRIL 24

## LOCAL FLORIDA

### FPL reports clean power generation record

Florida Power & Light Co. said Friday that its power generation fleet delivered 35 percent cleaner power than the industry average in 2009 — a record in clean generation for the utility.

FPL's power plants produced 845 pounds of carbon dioxide emissions per megawatt hour of electricity compared with the industry average of 1,297 pounds per megawatt, according to U.S. Department of Energy data.

FPL has been upgrading its fleet of fossil fuel plants to state-of-the-art combined cycle natural gas units that are more fuel efficient and have lower emissions. Nearly 90 percent of FPL's generation now comes from low-emissions natural gas units and emissions-free nuclear units.

Earlier this month, FPL's Space Coast Next Generation Solar Energy Center opened near NASA's Kennedy Space Center. This is the second of three large-scale solar facilities in Florida that the company has completed. The plants will generate 110 megawatts of clean energy with zero emissions.

*Palm Beach Post*

## TREASURE COAST

### Have a new business?

Do you know about it? Advertise in this section to reach new business.

April 30, 2010



Mr. James Gabbard, City Manager  
City of Vero Beach  
1053 20th Place  
Vero Beach, FL 32960

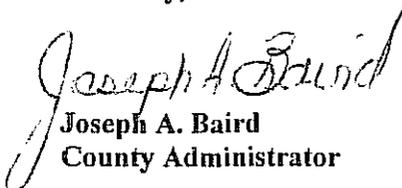
Dear Mr. Gabbard:

As you present the elements of a request for proposals to reestablish use of the City's acreage formerly known as Dodgertown Golf Course, please disclose the following to the City Council and any interested parties:

- The City's original purchase of the subject property did not include a substantial portion of the area comprising 3 holes of the "Dodgertown" golf course.
- On November 17, 2005, the County authorized a sublease of 9.127 acres to the City subject to the terms of the Parking Property Lease Agreement between the City and the Dodgers ("Parking Lease"). On May 9, 2009 the City, County, and MiLB executed an Estoppel Certificate affecting the terms and conditions of the Parking Lease.
- The Parking Lease and Estoppel Certificate still allow the City to operate a golf facility, however, any golf course operation would be subject to the parking rights retained by the County and currently leased to MiLB of Vero Beach, LLC ("MiLB"). Additionally, the 9.127 acres leased by the City appears to exclude a portion of the first hole which is owned by the County subject only to the rights of MiLB under the terms of MiLB's Facility Lease Agreement with the County. Any proposal to provide alternative parking facilities will require approval by the Board of County Commissioners.

It is apparent that any request for proposals advanced by the City to reestablish a nine hole golf facility will impact the County's property rights noted above. If you would like to address the Board of County Commissioners on the matter, please contact my office to be placed on a future agenda.

Sincerely,

  
Joseph A. Baird  
County Administrator

**OFFICE OF THE COUNTY ADMINISTRATOR  
INDIAN RIVER COUNTY**

1801 27<sup>th</sup> Street, Vero Beach, FL 32960-3388  
PHONE: 772-226-1408 - FAX: 772-978-1822

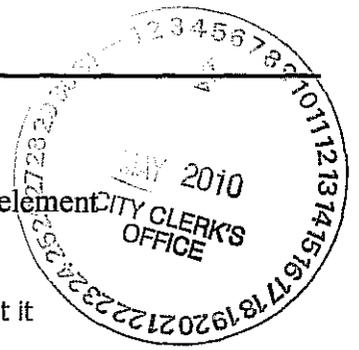


THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION  
CITY PROJECT #10  
SHEET 1 OF 1

Vock, Tammy

From: kevin sawnick [sawnickkev@gmail.com]  
Sent: Tuesday, May 04, 2010 7:52 PM  
To: Vock, Tammy  
Subject: Vero Beach Vision for other county mayors



**From Vero Beach Vision Plan: Overall Vision Statement followed by economic Goal element**

To what does Vero Beach aspire in the future? In many ways the community desires to be what it always has been and remains today, but with all the advantages and conveniences of the future.

Envision a place where the best of "old Florida" is nurtured. A place that is filled with community pride, but not boastful or arrogant. That pride is reflected in well-kept private property and public land. That pride is embodied in the manner in which people treat one another and work together to address problems and issues. That pride embraces a respect for the natural environment and the unique history of the community.

Envision a place that is different from any other place in Florida. A place where spring training is a family event. A place that is made up of a variety of neighborhoods. A place that you can "fall in love" with on your first visit and, ultimately, make it your home. A place where the expectations and standards for quality and excellence are clearly stated in public policies, private actions, and community decisions.

Envision a community that values its location. A community where tree canopies are preserved and enhanced. A community that uses but does not exploit its natural beauty or geographic location. A community that both recreates in and respects sensitive environmental areas. A community that does not succumb to trends, but establishes its own image based on its vision for the future.

Economic :

**Goal**

Create a diversity of good employment opportunities in Vero Beach for the benefit of workers, to support younger residents in their desire to remain in Vero Beach, and to create a more stable and sustainable tax base.

6-A)

**MEMORANDUM**

**TO:** Mayor Kevin Sawnick and  
City Councilmembers

**FROM:** Tammy K. Vock, MMC *Tammy*  
City Clerk

**DATE:** April 27, 2010

**SUBJECT:** Reappointments to the Finance Commission

Both Tom Nason and Pilar Turner's appointments to the Finance Commission expire on May 5, 2010. Both Mr. Nason and Mrs. Turner would like to be reappointed.

Applications on File:

Laura Torres  
Peter Gorry  
Rhett Wilson

/tv

**COUNCIL AGENDA REPORT**  
**MEETING OF MAY 4, 2010**

**TO:** The Honorable Mayor and Members of the City Council

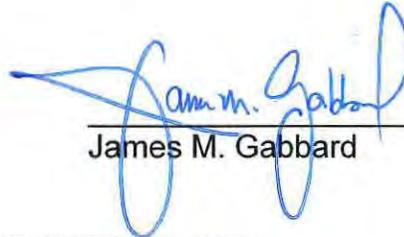
**FROM:** James M. Gabbard, City Manager

**DATE:** April 28, 2010

**SUBJECT: DIRECTOR OF ELECTRIC UTILITIES – UPDATE ON UTILITY ISSUES**

---

John Lee will update the City Council on utility issues.



---

James M. Gabbard

JMG:jav

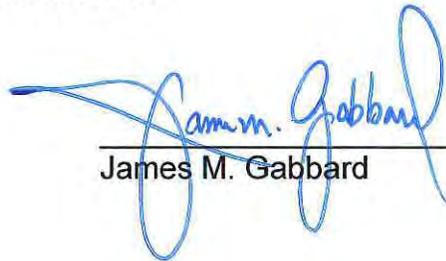
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**COUNCIL AGENDA REPORT**  
**MEETING OF MAY 4, 2010**

**TO:** The Honorable Mayor and Members of the City Council  
**FROM:** James M. Gabbard, City Manager  
**DATE:** April 28, 2010  
**SUBJECT: POLICE DEPARTMENT PENSION REVIEW**

---

The attached City of Vero Beach Police Officers' Retirement Fund Actuarial Valuation Report will be presented for Council's review.

  
\_\_\_\_\_  
James M. Gabbard

:jav  
Attachment

xc: Chief Dappen  
Stephen Maillet

N:\AGENDA\POLICE\2010\PENSION REVIEW.DOC

**CITY OF VERO BEACH POLICE OFFICERS' RETIREMENT FUND**  
ACTUARIAL VALUATION REPORT AS OF OCTOBER 1, 2009

ANNUAL EMPLOYER CONTRIBUTION FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2011

February 5, 2010

Board of Trustees  
City of Vero Beach Police  
Officers' Retirement Fund  
Vero Beach, Florida

Dear Board Members:

We are pleased to present our October 1, 2009 Actuarial Valuation Report for the Plan. The purpose of the Report is to set forth required contribution levels, to disclose plan assets and actuarial liabilities, to comment on funding progress and to provide supporting information regarding the operation of the Plan. This Report is also designed to comply with requirements of the State.

The valuation was performed on the basis of employee, retiree and financial information supplied by the City. Although we did not audit this information, it was reviewed for reasonableness and comparability to prior years.

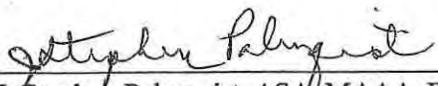
The benefits valued are outlined at the end of the Report. Actuarial assumptions and the actuarial cost method are also described herein. Any changes in benefits, assumptions or methods are described in the first section.

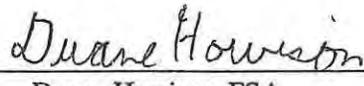
As indicated below, the undersigned is a Member of the American Academy of Actuaries (MAAA) and meets the Qualification Standards of the Academy of Actuaries to render the actuarial opinion herein.

We will be pleased to answer any questions pertaining to the valuation and to meet with you to review this Report.

Respectfully submitted,

GABRIEL, ROEDER, SMITH AND COMPANY

By   
J. Stephen Palmquist, ASA, MAAA, FCA  
Enrolled Actuary No. 08-1560

By   
Duane Howison, FSA  
Enrolled Actuary No. 08-6169

**Statement by Enrolled Actuary**

This actuarial valuation and/or cost determination was prepared and completed by me or under my direct supervision, and I acknowledge responsibility for the results. To the best of my knowledge, the results are complete and accurate. In my opinion, the techniques and assumptions used are reasonable, meet the requirements and intent of Part VII, Chapter 112, Florida Statutes, and are based on generally accepted actuarial principles and practices. There is no benefit or expense to be provided by the plan and/or paid from the plan's assets for which liabilities or current costs have not been established or otherwise taken into account in the valuation. All known events or trends which may require a material increase in plan costs or required contribution rates have been taken into account in the valuation.

Stephen Paluzmit  
Signature

2-5-2010  
Date

08-1560  
Enrollment Number

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**SECTION A**  
**DISCUSSION OF VALUATION RESULTS**

## DISCUSSION OF VALUATION RESULTS

### Comparison of Required Employer Contributions

The following is a comparison of required contributions developed in this year's and last year's actuarial valuations.

	<b>For FYE 9/30/11 Based on 10/1/2009 Valuation</b>	<b>For FYE 9/30/10 Based on 10/1/2008 Valuation</b>	<b>Increase (Decrease)</b>
Required Employer/State Contribution As % of Covered Payroll	\$ 1,003,043 24.69 %	\$ 808,241 19.95 %	\$ 194,802 4.74 %
Estimated State Contribution As % of Covered Payroll	\$ 271,043 6.67 %	\$ 271,043 * 6.69 %	\$ 0 (0.02) %
Required Employer Contribution As % of Covered Payroll	\$ 732,000 18.02 %	\$ 537,198 13.26 %	\$ 194,802 4.76 %

*\* We have updated the amount shown in our October 1, 2008 Report to reflect the actual State contribution received during the fiscal year ending September 30, 2009.*

The contribution developed in this valuation has been calculated as though payment would be made quarterly. Further, the required Employer contribution has been computed with the assumption that the amount to be received from the State in 2011 will be equal to the last amount of \$271,043. If the actual payment from the State falls below this amount, then the City must increase its contribution by the difference.

The actual Employer and State contributions for the year ending September 30, 2009 were \$343,454 and \$271,043, respectively, totaling \$614,497. The total minimum required payment was \$614,497.

### Revisions in Benefits

There were no revisions in benefits since the last valuation.

### **Revisions in Actuarial Assumptions or Methods**

There were no revisions in actuarial assumption or methods since the last valuation. However, we recommend that the mortality rates be lowered to reflect increased longevity.

### **Actuarial Experience**

During the past year, there was a net actuarial loss of \$2,037,391 which means that actual experience was less favorable than expected. The loss is mainly due to recognized investment return below the assumed rate of 8.00%. The investment return was -1.7% based on market value of assets and 1.5% based on actuarial value of assets. The net loss increased the required employer contribution by 4.54% of covered payroll.

### **Funded Ratio**

The funded ratio this year is 90.1% compared to 96.7% last year. The funded ratio is equal to the actuarial value of assets divided by the actuarial accrued (past service) liability.

### **Analysis of Change in Employer Contribution**

The components of change in the net required employer contribution are as follows:

Contribution rate last year	13.26 %
Amortization payment on UAAL	0.20
Change in normal cost rate	0.07
Actuarial experience	4.54
Change in investment return assumption	0.00
Change in administrative expense	(0.07)
Change in State revenue	<u>0.02</u>
Contribution rate this year	18.02

### **Variability of Future Contribution Rates**

The Actuarial Cost Method used to determine the contribution rate is intended to produce contribution rates which are generally level as a percent of payroll. Even so, when experience differs from the assumptions, as it often does, the employer's contribution rate can vary significantly from year-to-year.

Over time, if the year-to-year gains and losses offset each other, the contribution rate would be expected to return to the current level, but this does not always happen.

The Actuarial Value of Assets exceeds the Market Value of Assets by \$4,761,385 as of the valuation date (see Section C). This difference will be gradually recognized over the next five years in the absence of offsetting gains. In turn, the computed employer contribution rate will increase by approximately 10.6% of covered payroll over the same period.

#### **Relationship to Market Value**

If Market Value had been the basis for the valuation, the City contribution rate would have been 28.63% and the funded ratio would have been 75.0%. In the absence of other gains and losses, the City contribution rate should increase to that level over the next several years.

The remainder of this Report includes detailed actuarial valuation results, financial information, miscellaneous information and statistics, and a summary of plan provisions.

### CHAPTER REVENUE

Increments in Chapter revenue over that received in 1998 must first be used to fund the cost of compliance with minimum benefits. Once minimums are met, any subsequent additional Chapter revenue must be used to provide extra benefits.

As of the valuation date, all minimum benefit requirements have been met. Thus, any additional revenue must be used to provide extra benefits.

Actuarial Confirmation of the Use of State Chapter Money	
1. Base Amount Previous Plan Year	\$ 358,179
2. Amount Received for Previous Plan Year	271,043
3. Benefit Improvements Made in Previous Plan Year	0
4. Excess Funds for Previous Plan Year	0
5. Accumulated Excess at Beginning of Previous Year	0
6. Prior Excess Used in Previous Plan Year	0
7. Accumulated Excess as of Valuation Date (Available for Benefit Improvements): (4) + (5) - (6)	0
8. Base Amount This Plan Year	271,043

The Accumulated Excess shown in line 7 (if any) is being held in reserve to pay for additional benefits. The reserve is subtracted from Plan assets (see Section C of this Report). The Base Amount in line 8 is the maximum amount the employer may take as a credit against its required contribution; however, in no event may the employer take credit for more than the actual amount of Chapter revenue received.

In order to fund previous benefit improvements, the Base Amount will continue to be updated each year based on actual Chapter revenue up to a maximum of \$460,881.

**SECTION B**  
**VALUATION RESULTS**

<b>PARTICIPANT DATA</b>		
	<b>October 1, 2009</b>	<b>October 1, 2008</b>
<b>ACTIVE MEMBERS</b>		
Number	55	57
Covered Annual Payroll	\$ 3,869,093	\$ 3,858,411
Average Annual Payroll	\$ 70,347	\$ 67,691
Average Age	37.8	36.9
Average Past Service	12.2	11.3
Average Age at Hire	25.6	25.6
<b>RETIREES, BENEFICIARIES &amp; DROP</b>		
Number	35	33
Annual Benefits	\$ 1,271,090	\$ 1,146,589
Average Annual Benefit	\$ 36,317	\$ 34,745
Average Age	61.4	60.6
<b>DISABILITY RETIREES</b>		
Number	3	3
Annual Benefits	\$ 34,813	\$ 34,468
Average Annual Benefit	\$ 11,604	\$ 11,489
Average Age	63.0	62.0
<b>TERMINATED VESTED MEMBERS</b>		
Number	1	1
Annual Benefits	\$ 21,277	\$ 21,277
Average Annual Benefit	\$ 21,277	\$ 21,277
Average Age	47.2	46.2

ANNUAL REQUIRED CONTRIBUTION (ARC)		
A. Valuation Date	October 1, 2009	October 1, 2008
B. ARC to Be Paid During Fiscal Year Ending	9/30/2011	9/30/2010
C. Assumed Dates of Employer Contributions	Quarterly	Quarterly
D. Annual Payment to Amortize Unfunded Actuarial Liability	\$ 252,172	\$ 76,963
E. Employer Normal Cost	658,798	657,197
F. ARC if Paid on the Valuation Date: D + E	910,970	734,160
G. ARC Adjusted for Frequency of Payments	955,188	769,796
H. ARC as % of Covered Payroll	24.69 %	19.95 %
I. Assumed Rate of Increase in Covered Payroll to Contribution Year	5.00 %	5.00 %
J. Covered Payroll for Contribution Year	4,062,547	4,051,331
K. ARC for Contribution Year: H x J	1,003,043	808,241
L. Estimate of State Revenue in Contribution Year	271,043	271,043 *
M. Required Employer Contribution (REC) in Contribution Year	732,000	537,198
N. REC as % of Covered Payroll in Contribution Year: M ÷ J	18.02 %	13.26 %

\* We have updated the amount shown in our October 1, 2008 Report to reflect the actual State contribution received during the fiscal year ending September 30, 2009.

<b>ACTUARIAL VALUE OF BENEFITS AND ASSETS</b>		
A. Valuation Date	October 1, 2009	October 1, 2008
B. Actuarial Present Value of All Projected Benefits for		
1. Active Members		
a. Service Retirement Benefits	\$ 20,205,426	\$ 19,718,099
b. Vesting Benefits	679,068	679,734
c. Disability Benefits	1,087,864	1,051,703
d. Preretirement Death Benefits	296,500	277,062
e. Return of Member Contributions	40,547	42,464
f. Total	<u>22,309,405</u>	<u>21,769,062</u>
2. Inactive Members		
a. Service Retirees & Beneficiaries	15,106,673	13,693,343
b. Disability Retirees	303,288	308,753
c. Terminated Vested Members	130,748	120,764
d. Total	<u>15,540,709</u>	<u>14,122,860</u>
3. Total for All Members	37,850,114	35,891,922
C. Actuarial Accrued (Past Service) Liability per GASB No. 25	31,682,021	29,623,745
D. Actuarial Value of Accumulated Plan Benefits per FASB No. 35	27,756,917	25,815,996
E. Plan Assets		
1. Market Value	23,769,428	24,676,814
2. Actuarial Value	28,530,813	28,608,568
F. Unfunded Accrued Liability: C - E2	3,151,208	1,015,177
G. Actuarial Present Value of Projected Covered Payroll	31,880,864	32,432,783
H. Actuarial Present Value of Projected Member Contributions	956,426	972,983

CALCULATION OF EMPLOYER NORMAL COST		
A. Valuation Date	October 1, 2009	October 1, 2008
B. Normal Cost for		
1. Service Retirement Benefits	\$ 603,183	\$ 599,482
2. Vesting Benefits	50,549	50,362
3. Disability Benefits	69,311	68,606
4. Preretirement Death Benefits	12,398	12,225
5. Return of Member Contributions	<u>9,700</u>	<u>9,742</u>
6. Total for Future Benefits	745,141	740,417
7. Assumed Amount for Administrative Expenses	<u>29,730</u>	<u>32,532</u>
8. Total Normal Cost	774,871	772,949
C. Expected Member Contribution	116,073	115,752
D. Employer Normal Cost: B8-C	658,798	657,197
E. Employer Normal Cost as a % of Covered Payroll	17.03%	17.03%

**LIQUIDATION OF THE UNFUNDED ACTUARIAL ACCRUED LIABILITY**

<b>A. UAAL Amortization Period and Payments</b>					
<b>Original UAAL</b>			<b>Current UAAL</b>		
<b>Years</b>	<b>Amortization Period (Years)</b>	<b>Amount</b>	<b>Years Remaining</b>	<b>Amount</b>	<b>Payment</b>
10/1/2003	30	\$ (3,200,363)	24	\$ (3,504,075)	\$ (308,157)
10/1/2004	30	532,934	25	591,317	51,291
10/1/2004	30	584,872	25	648,946	56,289
10/1/2005	30	1,469,238	26	1,650,092	141,338
10/1/2005	30	120,858	26	135,734	11,626
10/1/2006	30	157,440	27	172,426	14,600
10/1/2007	30	(177,005)	28	(207,219)	(17,362)
10/1/2008	30	702,547	29	765,443	63,517
10/1/2008	30	790,392	29	861,153	71,459
10/1/2009	30	<u>2,037,391</u>	30	<u>2,037,391</u>	<u>167,571</u>
		\$ 3,018,304		\$ 3,151,208	\$ 252,172

**B. Amortization Schedule**

The UAAL is being amortized as a level dollar amount over the number of years remaining in the amortization period. The expected amortization schedule is as follows:

<b>Amortization Schedule</b>	
<b>Year</b>	<b>Expected UAAL</b>
2009	\$ 3,151,208
2010	3,130,975
2011	3,109,107
2012	3,085,490
2013	3,059,983
2014	3,032,436
2019	2,857,900
2024	2,601,449
2029	2,224,638
2034	1,338,169
2039	0

### ACTUARIAL GAINS AND LOSSES

The assumptions used to anticipate mortality, employment turnover, investment income, expenses, salary increases, and other factors have been based on long range trends and expectations. Actual experience can vary from these expectations. The variance is measured by the gain and loss for the period involved. If significant long term experience reveals consistent deviation from what has been expected and that deviation is expected to continue, the assumptions should be modified. The net actuarial gain (loss) for the past year has been computed as follows:

1. Last Year's UAAL	\$ 1,015,177
2. Last Year's Employer Normal Cost	600,355
3. Last Year's Contributions	
a. Employer	343,454
b. State	271,043
c. a + b	<u>614,497</u>
4. Interest at the Assumed Rate on:	
a. 1 and 2 for one year	129,243
b. 3 from dates paid	<u>16,461</u>
c. a - b	112,782
5. This Year's Expected UAAL: 1 + 2 - 3c + 4c	1,113,817
6. This Year's Actual UAAL (before any Changes in Benefits or Assumptions)	3,151,208
7. Net Actuarial Gain (Loss): 5 - 6	(2,037,391)
8. Gain (Loss) Due to Investments	(1,852,844)
9. Gain (Loss) from Other Sources	(184,547)
10. Change in UAAL Due to Change in Benefits or Assumptions	0
11. This Year's Actual UAAL (after Changes in Benefits or Assumptions)	3,151,208

Net actuarial gains in previous years have been as follows:

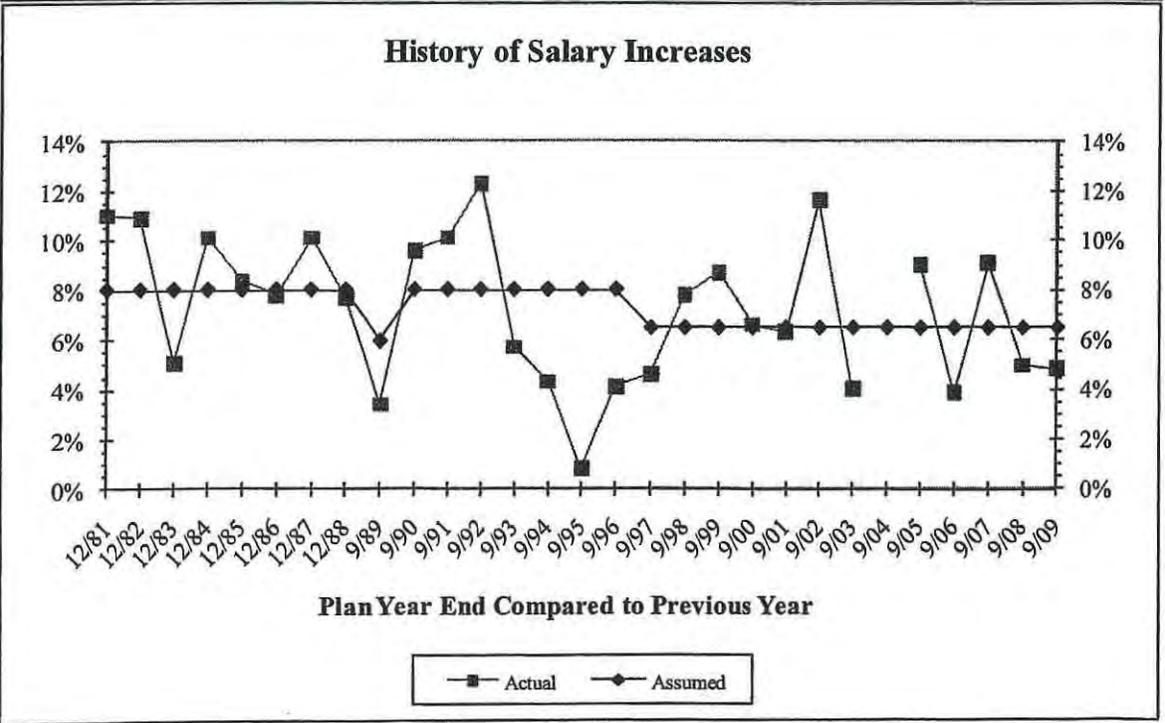
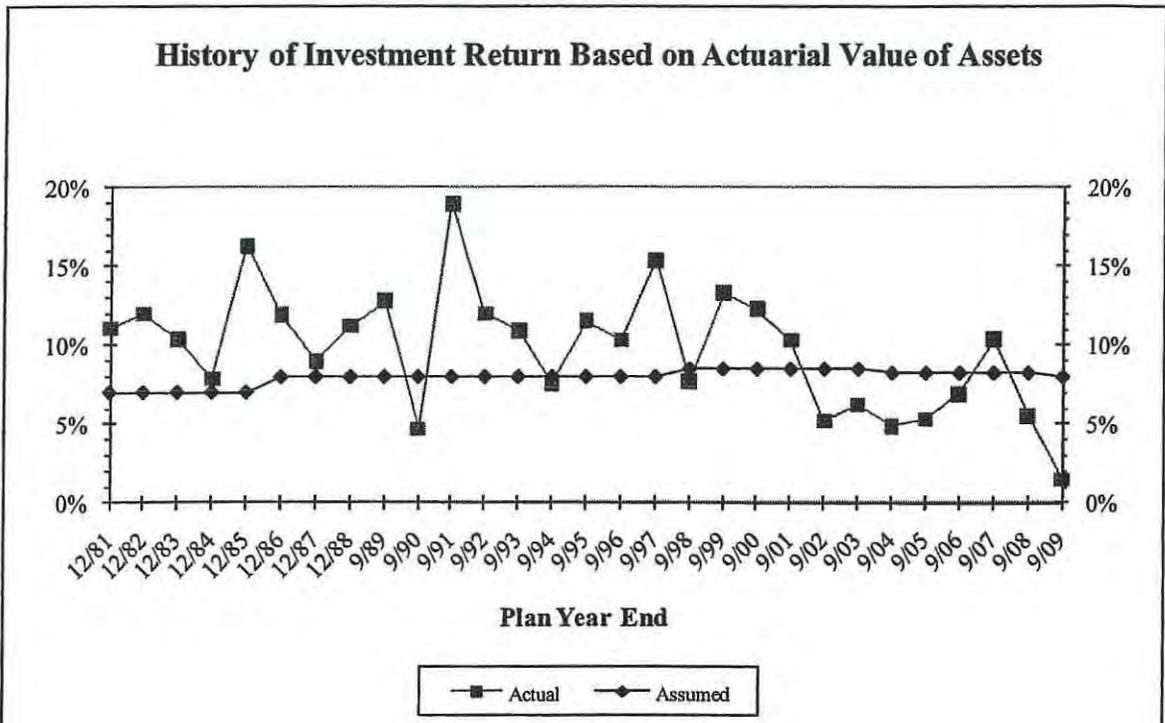
<b>Year Ended</b>	<b>Gain (Loss)</b>
12/31/1981	\$ 13,953
12/31/1982	(55,923)
12/31/1983	(9,316)
12/31/1984	(73,058)
12/31/1985	290,170
12/31/1986	119,806
12/31/1987	72,430
12/31/1988	184,931
9/30/1989	621,889
9/30/1990	(430,912)
9/30/1991	534,111
9/30/1992	175,969
9/30/1993	174,067
9/30/1994	99,622
9/30/1995	553,527
9/30/1996	239,566
9/30/1997	1,075,425
9/30/1998	(119,201)
9/30/1999	513,826
9/30/2000	439,887
9/30/2001	597,334
9/30/2002	(171,522)
9/30/2003	Not calculated
9/30/2004	(532,934)
9/30/2005	(1,469,238)
9/30/2006	(157,440)
9/30/2007	177,005
9/30/2008	(702,547)
9/30/2009	(2,037,391)

The fund earnings and salary increase assumptions have considerable impact on the cost of the Plan so it is important that they are in line with the actual experience. The following table shows the actual fund earnings and salary increase rates compared to the assumed rates for the last few years.

Year Ending	Investment Return		Salary Increases	
	Actual	Assumed	Actual	Assumed
12/31/1981	11.1 %	7.0 %	11.0 %	8.0 %
12/31/1982	12.0	7.0	10.9	8.0
12/31/1983	10.4	7.0	5.1	8.0
12/31/1984	7.9	7.0	10.1	8.0
12/31/1985	16.3	7.0	8.4	8.0
12/31/1986	11.9	8.0	7.8	8.0
12/31/1987	9.0	8.0	10.1	8.0
12/31/1988	11.2	8.0	7.7	8.0
9/30/1989	12.8	8.0	3.4	6.0 (9 mo)
9/30/1990	4.7	8.0	9.6	8.0
9/30/1991	19.0	8.0	10.1	8.0
9/30/1992	12.0	8.0	12.3	8.0
9/30/1993	10.9	8.0	5.7	8.0
9/30/1994	7.6	8.0	4.3	8.0
9/30/1995	11.5	8.0	0.8	8.0
9/30/1996	10.3	8.0	4.1	8.0
9/30/1997	15.4	8.0	4.6	6.5
9/30/1998	7.7	8.5	7.8	6.5
9/30/1999	13.3	8.5	8.7	6.5
9/30/2000	12.3	8.5	6.6	6.5
9/30/2001	10.3	8.5	6.3	6.5
9/30/2002	5.2	8.5	11.6 *	6.5
9/30/2003	6.2	8.5	4.0	6.5
9/30/2004	4.9	8.25	Not available	6.5
9/30/2005	5.3	8.25	9.0	6.5
9/30/2006	7.0	8.25	3.8	6.5
9/30/2007	10.4	8.25	9.1	6.5
9/30/2008	5.6	8.25	4.9	6.5
9/30/2009	1.5	8.00	4.8	6.5
Averages	9.8 %	---	7.3 %	---

\*Most of this increase is due to the change in the definition of pensionable compensation.

The actual investment return rates shown above are based on the actuarial value of assets. The actual salary increase rates shown above are the increases received by those active members who were included in the actuarial valuations both at the beginning and the end of each year. These charts show the figures from the previous table in graphic form.

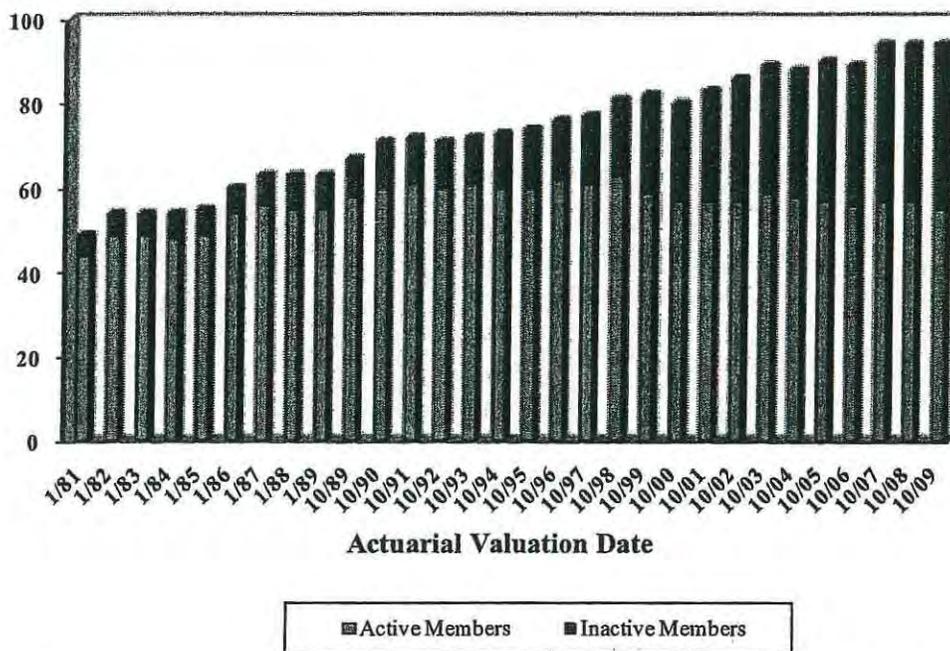


Actual (A) Compared to Expected (E) Decrements Among Active Employees													
Year Ended	Number Added During Year		Service and DROP Retirement		Disability Retirement		Death		Terminations				Active Members End of Year
	A	E	A	E	A	E	A	E	Vested	Other	Totals		
	A	E	A	E	A	E	A	E	A	A	A	E	
9/30/2007	7	6	4	5	0	0	0	0	0	2	2	2	57
9/30/2008	4	4	1	2	0	0	0	0	0	3	3	2	57
9/30/2009	0	2	1	4	0	0	0	0	0	1	1	2	55
9/30/2010				3		0		0				2	
3 Yr Totals *	11	12	6	11	0	0	0	0	0	6	6	6	

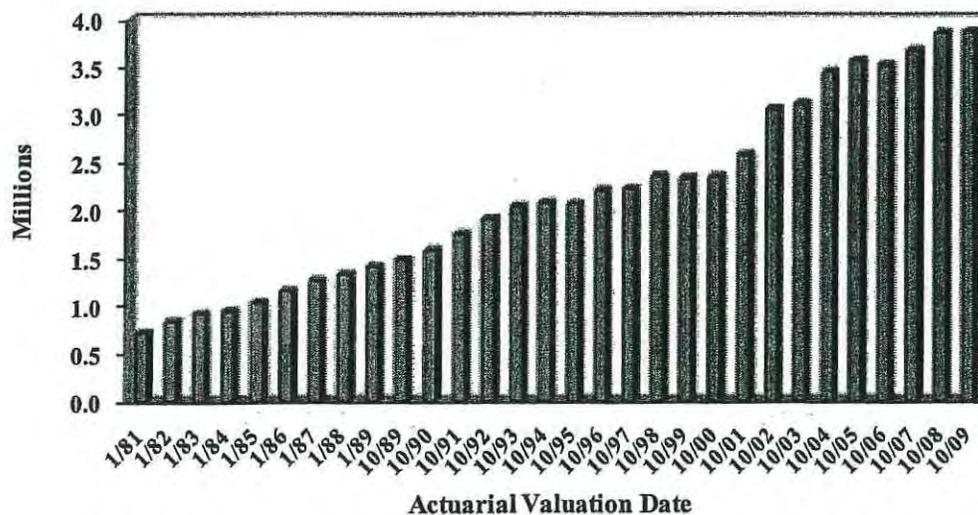
\* Totals are through current Plan Year only.

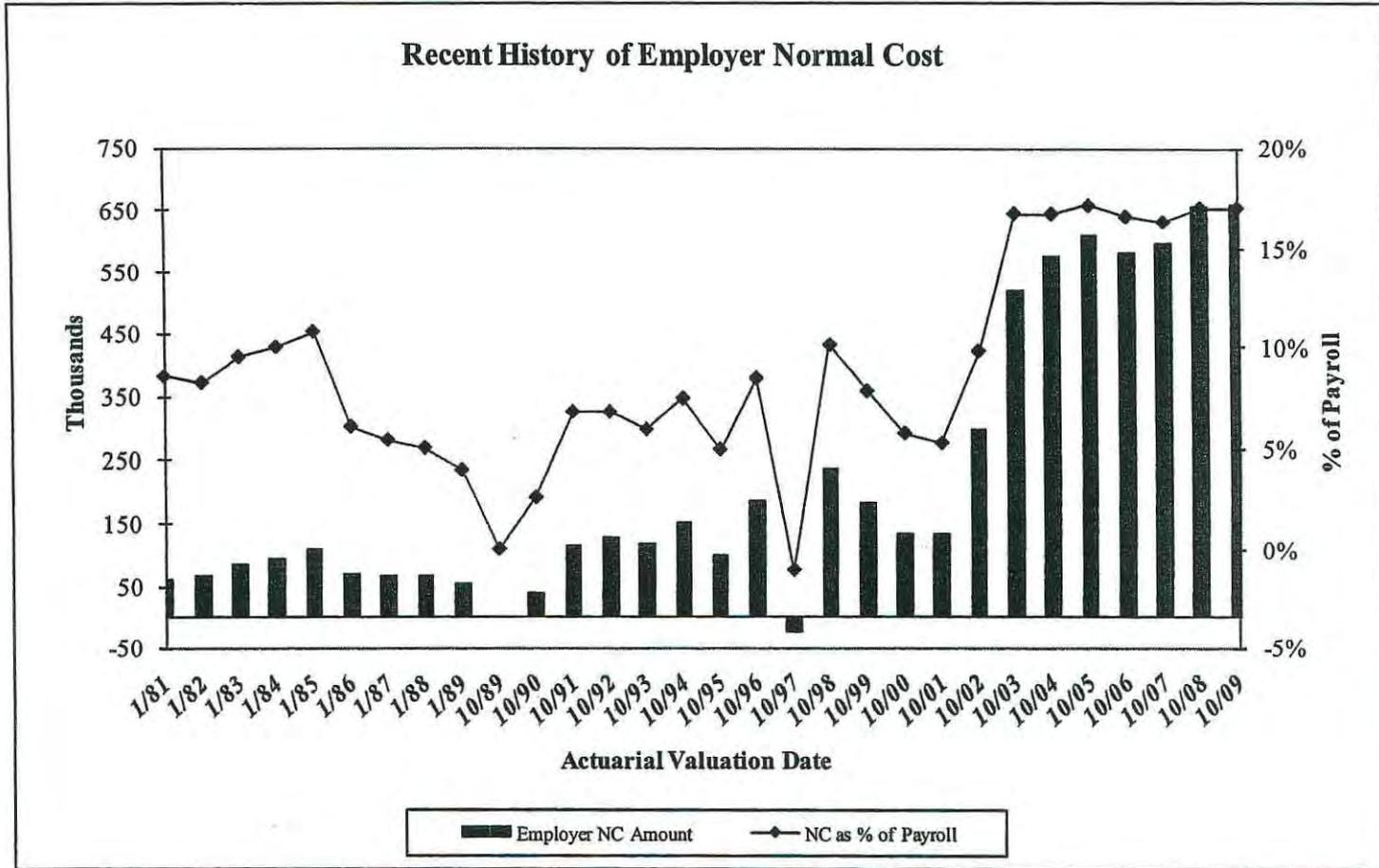
RECENT HISTORY OF VALUATION RESULTS							
Valuation Date	Number of		Covered Annual Payroll	Actuarial Value of Assets	UFAAL	Employer Normal Cost	
	Active Members	Inactive Member				Amount	% of Payroll
1/1/81	44	5	\$ 719,408	\$ 1,203,550	\$ 227,388	\$ 60,906	8.47 %
1/1/82	49	5	839,306	1,444,644	209,703	68,487	8.16
1/1/83	49	5	919,425	1,796,421	178,947	86,892	9.45
1/1/84	48	6	941,453	2,095,508	149,622	93,712	9.95
1/1/85	49	6	1,032,445	2,413,386	114,911	110,823	10.73
1/1/86	54	6	1,158,546	2,981,267	0	69,710	6.02
1/1/87	56	7	1,263,364	3,469,143	0	67,756	5.36
1/1/88	55	8	1,332,971	3,910,840	0	66,438	4.98
1/1/89	55	8	1,412,014	4,506,765	0	55,227	3.91
10/1/1989	58	9	1,485,118	5,226,127	0	0	0.00
10/1/1990	60	11	1,583,609	5,593,610	0	40,169	2.54
10/1/1991	61	11	1,746,595	6,760,599	0	117,809	6.75
10/1/1992	60	11	1,912,597	7,188,866	0	129,140	6.75
10/1/1993	61	11	2,039,604	8,079,603	0	120,266	5.90
10/1/1994	60	13	2,078,373	8,850,016	0	154,287	7.42
10/1/1995	60	14	2,067,536	10,009,422	0	101,731	4.92
10/1/1996	62	14	2,208,511	11,186,998	0	185,792	8.41
10/1/1997	61	16	2,220,744	12,986,720	0	(23,425)	(1.05)
10/1/1998	63	18	2,360,418	13,972,751	0	237,924	10.08
10/1/1999	59	23	2,337,967	15,655,723	0	182,313	7.80
10/1/2000	57	23	2,348,216	17,232,472	0	134,538	5.73
10/1/2001	57	26	2,577,973	18,686,930	0	135,388	5.25
10/1/2002	57	29	3,056,035	19,348,451	0	299,266	9.79
10/1/2003	59	30	3,114,903	22,522,788	(3,200,363)	521,729	16.75
10/1/2004	58	30	3,448,641	23,149,295	(2,154,233)	577,284	16.74
10/1/2005	57	33	3,572,227	23,994,955	(489,612)	612,232	17.14
10/1/2006	56	33	3,520,610	25,394,631	(296,397)	584,324	16.60
10/1/2007	57	37	3,673,793	27,583,499	(449,866)	600,355	16.34
10/1/2008	57	37	3,858,411	28,608,568	1,015,177	657,197	17.03
10/1/2009	55	39	3,869,093	28,530,813	3,151,208	658,798	17.03

**Recent History of Number of Members**



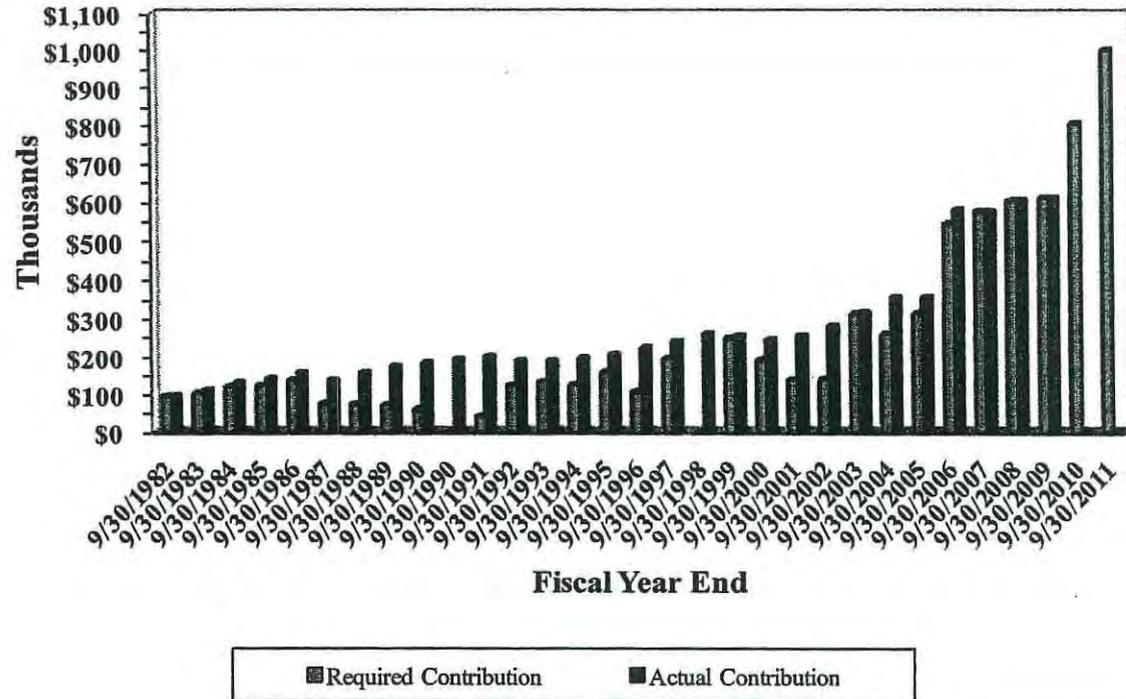
**Recent History of Covered Annual Payroll**





RECENT HISTORY OF REQUIRED AND ACTUAL CONTRIBUTIONS										
Valuation	End of Year To Which Valuation Applies	Required Contributions						Actual Contributions		
		Employer & State		Estimated State		Net Employer		Employer	State	Total
		Amount	% of Payroll	Amount	% of Payroll	Amount	% of Payroll			
1/1/1981	9/30/1982	\$ 94,726	13.17 %	\$ 53,838	7.48 %	\$ 40,888	5.68 %	\$ 40,888	\$ 55,050	\$ 95,938
1/1/1982	9/30/1983	102,769	12.24	55,050	6.56	47,719	5.69	47,720	63,194	110,914
1/1/1983	9/30/1984	120,507	13.11	63,194	6.87	57,313	6.23	57,313	75,102	132,415
1/1/1984	9/30/1985	125,417	13.32	75,102	7.98	50,315	5.34	50,315	92,708	143,023
1/1/1985	9/30/1986	140,568	13.62	92,708	8.98	47,860	4.64	47,860	112,119	159,979
1/1/1986	9/30/1987	75,287	6.50	112,119	9.68	0	0.00	0	138,693	138,693
1/1/1987	9/30/1988	73,176	5.79	138,693	10.98	0	0.00	0	160,364	160,364
1/1/1988	9/30/1989	71,753	5.38	160,364	12.03	0	0.00	0	175,170	175,170
1/1/1989	9/30/1990	59,645	4.22	175,170	12.41	0	0.00	0	185,244	185,244
10/1/1989	9/30/1990	0	0.00	185,244	12.47	0	0.00	0	193,750	193,750
10/1/1990	9/30/1991	42,119	2.66	193,750	12.23	0	0.00	0	201,820	201,820
10/1/1991	9/30/1992	123,528	7.07	201,820	11.56	0	0.00	0	190,634	190,634
10/1/1992	9/30/1993	135,409	7.08	190,634	9.97	0	0.00	0	189,655	189,655
10/1/1993	9/30/1994	126,104	6.18	189,655	9.30	0	0.00	0	197,500	197,500
10/1/1994	9/30/1995	161,777	7.78	192,156	9.25	0	0.00	0	207,280	207,280
10/1/1995	9/30/1996	106,669	5.16	207,280	10.03	0	0.00	0	225,565	225,565
10/1/1996	9/30/1997	194,811	8.82	225,565	10.21	0	0.00	0	241,325	241,325
10/1/1997	9/30/1998	(24,631)	(1.11)	241,325	10.87	0	0.00	0	263,309	263,309
10/1/1998	9/30/1999	250,173	10.60	263,309	11.16	0	0.00	0	256,876	256,876
10/1/1999	9/30/2000	191,699	8.20	256,876	10.99	0	0.00	0	247,179	247,179
10/1/2000	9/30/2001	141,464	6.02	247,179	10.53	0	0.00	0	258,151	258,151
10/1/2001	9/30/2002	142,358	5.52	258,151	10.01	0	0.00	0	283,456	283,456
10/1/2002	9/30/2003	314,672	10.30	283,456	9.28	31,216	1.02	0	319,282	319,282
10/1/2003	9/30/2004	263,328	8.45	319,282	10.25	0	0.00	0	357,945	357,945
10/1/2004	9/30/2005	316,217	9.17	357,945	10.38	0	0.00	0	358,179	358,179
10/1/2005	9/30/2006	548,686	15.36	358,179	10.03	190,507	5.33	212,243	369,697	581,940
10/1/2006	9/30/2007	578,539	16.43	369,697	10.50	208,842	5.93	220,360	358,179	578,539
10/1/2006	9/30/2008	607,358	16.43	358,179	9.69	249,179	6.74	249,179	358,179	607,358
10/1/2007	9/30/2009	614,497	15.93	358,179	9.29	256,318	6.64	343,454	271,043	614,497
10/1/2008	9/30/2010	808,241	19.95	271,043	6.69	537,198	13.26	---	---	---
10/1/2009	9/30/2011	1,003,043	24.69	271,043	6.67	732,000	18.02	---	---	---

Recent History of Required and Actual Contributions



## ACTUARIAL ASSUMPTIONS AND COST METHOD

### Valuation Methods

**Actuarial Cost Method** - Normal cost and the allocation of benefit values between service rendered before and after the valuation date were determined using an **Individual Entry-Age Actuarial Cost Method** having the following characteristics:

- (i) the annual normal cost for each individual active member, payable from the date of employment to the date of retirement, is sufficient to accumulate the value of the member's benefit at the time of retirement;
- (ii) each annual normal cost is a constant percentage of the member's year by year projected covered pay.

Actuarial gains/(losses), as they occur, reduce (increase) the Unfunded Actuarial Accrued Liability.

**Financing of Unfunded Actuarial Accrued Liabilities** - Unfunded Actuarial Accrued Liabilities (full funding credit if assets exceed liabilities) were amortized by level dollar amount.

**Actuarial Value of Assets** - The Actuarial Value of Assets phase in the difference between the expected and actual investment return at the rate of 20% per year. The Actuarial Value of Assets will be further adjusted to the extent necessary to fall within the corridor whose lower limit is 80% of the Market Value of plan assets and whose upper limit is 120% of the Market Value of plan assets. During periods when investment performance exceeds the assumed rate, Actuarial Value of Assets will tend to be less than Market Value. During periods when investment performance is less than assumed rate, Actuarial Value of Assets will tend to be greater than Market Value.

### Valuation Assumptions

*The actuarial assumptions used* in the valuation are shown in this Section.

### Economic Assumptions

**The investment return rate** assumed in the valuation is 8% per year compounded annually (net after investment expenses).

**The Wage Inflation Rate** assumed in this valuation was 4% per year. The Wage Inflation Rate is defined to be the portion of total pay increases for an individual that are due to macro economic forces including productivity, price inflation, and labor market conditions. The wage inflation rate does not include pay changes related to individual merit and seniority effects.

The assumed **real rate of return** over wage inflation is defined to be the portion of total investment return that is more than the assumed wage inflation rate. Considering other economic assumptions, the 8% investment return rate translates to an assumed real rate of return over wage inflation of 4%.

*The rate of salary increase* used for individual members is 6.50% per year. Part of the assumption is for merit and/or seniority increase, and the other 4% recognizes wage inflation, including price inflation, productivity increases, and other macroeconomic forces. This assumption is used to project a member's current salary to the salaries upon which benefits will be based.

*The payroll growth assumption* is 5.00% per year.

### Demographic Assumptions

*The mortality table* was the 1983 Group Annuity Mortality (GAM) table for males and females.

Sample Attained Ages	Probability of		Future Life	
	Dying Next Year		Expectancy (years)	
	Men	Women	Men	Women
50	0.39 %	0.16 %	29.23	34.96
55	0.61	0.25	24.87	30.28
60	0.92	0.42	20.68	25.71
65	1.56	0.71	16.73	21.33
70	2.75	1.24	13.22	17.17
75	4.46	2.40	10.20	13.42
80	7.41	4.29	7.68	10.24

This assumption is used to measure the probabilities of each benefit payment being made after retirement. For active members, the probabilities of dying before retirement were based upon the same mortality table as members dying after retirement (75% of deaths are assumed to be service-connected).

For disabled retirees, the regular mortality tables are set forward 5 years in ages to reflect impaired longevity.

*The rates of retirement* used to measure the probability of eligible members retiring during the next year were as follows:

<b>Number of Years After First Eligibility for Normal Retirement</b>	<b>Probability of Normal Retirement</b>
0	80 %
1	40
2	40
3	40
4	40
5	100

The rate of retirement is 5% for each year of eligibility for early retirement.

*Rates of separation from active membership* were as shown below (rates do not apply to members eligible to retire and do not include separation on account of death or disability). This assumption measures the probabilities of members remaining in employment.

<b>Sample Ages</b>	<b>% of Active Members Separating Within Next Year</b>
20	6.0 %
25	5.7
30	5.0
35	3.8
40	2.6
45	1.6
50	0.8
55	0.3

*Rates of disability* among active members (75% of disabilities are assumed to be service-connected).

<b>Sample Ages</b>	<b>% Becoming Disabled Within Next Year</b>
20	0.14 %
25	0.15
30	0.18
35	0.23
40	0.30
45	0.51
50	1.00
55	1.55

### Miscellaneous and Technical Assumptions

<i>Administrative &amp; Investment Expenses</i>	The investment return assumption is intended to be the return net of investment expenses. Annual administrative expenses are assumed to be equal to the average of the prior two years' expenses. Assumed administrative expenses are added to the Normal Cost.
<i>Benefit Service</i>	Exact fractional service is used to determine the amount of benefit payable.
<i>Decrement Operation</i>	Disability and mortality decrements operate during retirement eligibility.
<i>Decrement Timing</i>	Decrements of all types are assumed to occur at the beginning of the year.
<i>Eligibility Testing</i>	Eligibility for benefits is determined based upon the age nearest birthday and service nearest whole year on the date the decrement is assumed to occur.
<i>Forfeitures</i>	For vested separations from service, it is assumed that 0% of members separating will withdraw their contributions and forfeit an employer financed benefit. It was further assumed that the liability at termination is the greater of the vested deferred benefit (if any) or the member's accumulated contributions.
<i>Incidence of Contributions</i>	Employer contributions are assumed to be made at the end of each calendar quarter. Member contributions are assumed to be received continuously throughout the year based upon the computed percent of payroll shown in this report, and the actual payroll payable at the time contributions are made.
<i>Liability Load</i>	Liabilities are loaded by 0.9% to reflect the exclusion of the COLA in the definition of actuarial equivalence.
<i>Marriage Assumption</i>	100% of males and 100% of females are assumed to be married for purposes of death-in-service benefits. Male spouses are assumed to be three years older than female spouses for active member valuation purposes.
<i>Normal Form of Benefit</i>	A ten year certain and life thereafter annuity is the normal form of benefit.
<i>Pay Increase Timing</i>	Beginning of fiscal year. This is equivalent to assuming that reported pays represent amounts paid to members during the year ended on the valuation date.
<i>Service Credit Accruals</i>	It is assumed that members accrue one year of service credit per year.

## GLOSSARY

<i>Actuarial Accrued Liability (AAL)</i>	The difference between the Actuarial Present Value of Future Benefits, and the Actuarial Present Value of Future Normal Costs.
<i>Actuarial Assumptions</i>	Assumptions about future plan experience that affect costs or liabilities, such as: mortality, withdrawal, disablement, and retirement; future increases in salary; future rates of investment earnings; future investment and administrative expenses; characteristics of members not specified in the data, such as marital status; characteristics of future members; future elections made by members; and other items.
<i>Actuarial Cost Method</i>	A procedure for allocating the Actuarial Present Value of Future Benefits between the Actuarial Present Value of Future Normal Costs and the Actuarial Accrued Liability.
<i>Actuarial Equivalent</i>	Of equal Actuarial Present Value, determined as of a given date and based on a given set of Actuarial Assumptions.
<i>Actuarial Present Value (APV)</i>	The amount of funds required to provide a payment or series of payments in the future. It is determined by discounting the future payments with an assumed interest rate and with the assumed probability each payment will be made.
<i>Actuarial Present Value of Future Benefits (APVFB)</i>	The Actuarial Present Value of amounts which are expected to be paid at various future times to active members, retired members, beneficiaries receiving benefits, and inactive, nonretired members entitled to either a refund or a future retirement benefit. Expressed another way, it is the value that would have to be invested on the valuation date so that the amount invested plus investment earnings would provide sufficient assets to pay all projected benefits and expenses when due.
<i>Actuarial Valuation</i>	The determination, as of a valuation date, of the Normal Cost, Actuarial Accrued Liability, Actuarial Value of Assets, and related Actuarial Present Values for a plan. An Actuarial Valuation for a governmental retirement system typically also includes calculations of items needed for compliance with GASB No. 25, such as the Funded Ratio and the Annual Required Contribution (ARC).
<i>Actuarial Value of Assets</i>	The value of the assets as of a given date, used by the actuary for valuation purposes. This may be the market or fair value of plan assets or a smoothed value in order to reduce the year-to-year volatility of calculated results, such as the funded ratio and the actuarially required contribution (ARC).

<i>Amortization Method</i>	A method for determining the Amortization Payment. The most common methods used are level dollar and level percentage of payroll. Under the Level Dollar method, the Amortization Payment is one of a stream of payments, all equal, whose Actuarial Present Value is equal to the UAAL. Under the Level Percentage of Pay method, the Amortization Payment is one of a stream of increasing payments, whose Actuarial Present Value is equal to the UAAL. Under the Level Percentage of Pay method, the stream of payments increases at the rate at which total covered payroll of all active members is assumed to increase.
<i>Amortization Payment</i>	That portion of the plan contribution or ARC which is designed to pay interest on and to amortize the Unfunded Actuarial Accrued Liability.
<i>Amortization Period</i>	The period used in calculating the Amortization Payment.
<i>Annual Required Contribution (ARC)</i>	The employer's periodic required contributions, expressed as a dollar amount or a percentage of covered plan compensation, determined under GASB No. 25. The ARC consists of the Employer Normal Cost and Amortization Payment.
<i>Closed Amortization Period</i>	A specific number of years that is reduced by one each year, and declines to zero with the passage of time. For example if the amortization period is initially set at 30 years, it is 29 years at the end of one year, 28 years at the end of two years, etc.
<i>Employer Normal Cost</i>	The portion of the Normal Cost to be paid by the employer. This is equal to the Normal Cost less expected member contributions.
<i>Equivalent Single Amortization Period</i>	For plans that do not establish separate amortization bases (separate components of the UAAL), this is the same as the Amortization Period. For plans that do establish separate amortization bases, this is the period over which the UAAL would be amortized if all amortization bases were combined upon the current UAAL payment.
<i>Experience Gain/Loss</i>	A measure of the difference between actual experience and that expected based upon a set of Actuarial Assumptions, during the period between two actuarial valuations. To the extent that actual experience differs from that assumed, Unfunded Actuarial Accrued Liabilities emerge which may be larger or smaller than projected. Gains are due to favorable experience, e.g., the assets earn more than projected, salaries do not increase as fast as assumed, members retire later than assumed, etc. Favorable experience means actual results produce actuarial liabilities not as large as projected by the actuarial assumptions. On the other hand, losses are the result of unfavorable experience, i.e., actual results that produce Unfunded Actuarial Accrued Liabilities which are larger than projected.

<b><i>Funded Ratio</i></b>	The ratio of the Actuarial Value of Assets to the Actuarial Accrued Liability.
<b><i>GASB</i></b>	Governmental Accounting Standards Board.
<b><i>GASB No. 25 and GASB No. 27</i></b>	These are the governmental accounting standards that set the accounting rules for public retirement systems and the employers that sponsor or contribute to them. Statement No. 27 sets the accounting rules for the employers that sponsor or contribute to public retirement systems, while Statement No. 25 sets the rules for the systems themselves.
<b><i>Normal Cost</i></b>	The annual cost assigned, under the Actuarial Cost Method, to the current plan year.
<b><i>Open Amortization Period</i></b>	An open amortization period is one which is used to determine the Amortization Payment but which does not change over time. In other words, if the initial period is set as 30 years, the same 30-year period is used in determining the Amortization Period each year. In theory, if an Open Amortization Period is used to amortize the Unfunded Actuarial Accrued Liability, the UAAL will never completely disappear, but will become smaller each year, either as a dollar amount or in relation to covered payroll.
<b><i>Unfunded Actuarial Accrued Liability</i></b>	The difference between the Actuarial Accrued Liability and Actuarial Value of Assets.
<b><i>Valuation Date</i></b>	The date as of which the Actuarial Present Value of Future Benefits are determined. The benefits expected to be paid in the future are discounted to this date.

**SECTION C**  
**PENSION FUND INFORMATION**

### Statement of Plan Assets at Market Value

Item	September 30	
	2009	2008
A. Cash and Cash Equivalents (Operating Cash)	\$ 264,680	\$ 89,445
B. Receivables:		
1. Member Contributions	\$ -	\$ -
2. Employer Contributions	-	4,379
3. State Contributions	-	-
4. Investment Income and Other Receivables	111,322	112,683
5. Total Receivables	<u>\$ 111,322</u>	<u>\$ 117,062</u>
C. Investments		
1. Short Term Investments	\$ 150,901	\$ 5,759,255
2. Domestic Equities	11,919,453	9,688,135
3. International Equities	2,055,513	2,022,961
4. Domestic Fixed Income	9,305,057	7,150,871
5. International Fixed Income	-	-
6. Real Estate	-	-
7. Private Equity	-	-
8. Total Investments	<u>\$ 23,430,924</u>	<u>\$ 24,621,222</u>
D. Liabilities		
1. Benefits Payable	\$ -	\$ -
2. Accrued Expenses and Other Payables	-	-
3. Total Liabilities	<u>\$ -</u>	<u>\$ -</u>
E. Total Market Value of Assets Available for Benefits	\$ 23,806,926	\$ 24,827,729
F. Reserves		
1. State Contribution Reserve	-	-
2. DROP Accounts	(37,498)	(150,915)
3. Total Reserves	<u>\$ (37,498)</u>	<u>\$ (150,915)</u>
G. Market Value Net of Reserves	\$ 23,769,428	\$ 24,676,814
H. Allocation of Investments		
1. Short Term Investments	0.6%	23.4%
2. Domestic Equities	50.9%	39.4%
3. International Equities	8.8%	8.2%
4. Domestic Fixed Income	39.7%	29.0%
5. International Fixed Income	0.0%	0.0%
6. Real Estate	0.0%	0.0%
7. Private Equity	0.0%	0.0%
8. Total Investments	<u>100.0%</u>	<u>100.0%</u>

### Reconciliation of Plan Assets

Item	September 30	
	2009	2008
A. Market Value of Assets at Beginning of Year	\$ 24,827,729	\$ 28,916,567
B. Revenues and Expenditures		
1. Contributions		
a. Employee Contributions	\$ 112,009	\$ 109,796
b. Employer Contributions	343,454	249,179
c. State Contributions	271,043	358,179
d. Purchased Service Credit	9,892	-
e. Total	<u>\$ 736,398</u>	<u>\$ 717,154</u>
2. Investment Income		
a. Interest, Dividends, and Other Income	\$ 674,237	\$ 816,775
b. Net Realized Gains/(Losses)	(450,921)	(1,456,487)
c. Net Unrealized Gains/(Losses)	(496,397)	(2,831,142)
d. Investment Expenses	(133,216)	(152,245)
e. Net Investment Income	<u>\$ (406,297)</u>	<u>\$ (3,623,099)</u>
3. Benefits and Refunds		
a. Regular Monthly Benefits	\$ (1,161,992)	\$ (1,143,829)
b. Refunds	(3,258)	(8,488)
c. Lump Sum Benefits	-	-
d. DROP Distributions	(156,771)	-
e. Total	<u>\$ (1,322,021)</u>	<u>\$ (1,152,317)</u>
4. Administrative and Miscellaneous Expenses	\$ (28,883)	\$ (30,576)
5. Transfers	\$ -	\$ -
C. Market Value of Assets at End of Year	\$ 23,806,926	\$ 24,827,729
D. Reserves		
1. State Contribution Reserve	\$ -	\$ -
2. DROP Accounts	(37,498)	(150,915)
3. Total Reserves	<u>\$ (37,498)</u>	<u>\$ (150,915)</u>
E. Market Value Net of Reserves	\$ 23,769,428	\$ 24,676,814

## Development of Actuarial Value of Assets

Valuation Date – September 30	2008	2009	2010	2011	2012
A. Actuarial Value of Assets Beginning of Year	\$ 27,700,011	\$ 28,759,483			
B. Market Value End of Year	24,827,729	23,806,926			
C. Market Value Beginning of Year	28,916,567	24,827,729			
D. Non-Investment/Administrative Net Cash Flow	(465,739)	(614,506)			
E. Investment Income					
E1. Actual Market Total: B-C-D	(3,623,099)	(406,297)			
E2. Assumed Rate of Return	8.25%	8.00%			
E3. Assumed Amount of Return	2,366,405	1,961,638			
E4. Amount Subject to Phase-In: E1-E3	(5,989,504)	(2,367,935)			
F. Phased-In Recognition of Investment Income					
F1. Current Year: 0.2 x E4	(1,197,901)	(473,587)			
F2. First Prior Year	301,245	(1,197,901)	\$ (473,587)		
F3. Second Prior Year	(81,233)	301,245	(1,197,901)	\$ (473,587)	
F4. Third Prior Year	118,581	(81,233)	301,245	(1,197,901)	\$ (473,587)
F5. Fourth Prior Year	18,114	118,581	(81,233)	301,245	(1,197,901)
F5. Total Phase-Ins	(841,194)	(1,332,895)	(1,451,476)	(1,370,243)	(1,671,488)
G. Actuarial Value of Assets End of Year					
G1. Preliminary Actuarial Value of Assets End of Year: A+D+E3+F5	\$ 28,759,483	\$ 28,773,720			
G2. Upper Corridor Limit: 120%*B	29,793,275	28,568,311			
G3. Lower Corridor Limit: 80%*B	19,862,183	19,045,541			
G4. Actuarial Value of Assets End of Year	28,759,483	28,568,311			
G5. DROP Accounts	(150,915)	(37,498)			
G6. State Contribution Reserve	-	-			
G7. Final Actuarial Value of Assets End of Year	28,608,568	28,530,813			
H. Difference between Market and Actuarial Value of Assets	(3,931,754)	(4,761,385)			
I. Actuarial Rate of Return	5.55%	1.49%			
J. Market Value Rate of Return	-12.63%	-1.66%			
K. Ratio of Actuarial Value of Assets to Market Value	115.84%	120.00%			

The Actuarial Value of Assets recognizes assumed investment return (line E3) fully each year. Differences between actual and assumed investment income (Line E4) are phased-in over a closed 5-year period. During periods when investment performance exceeds the assumed rate, Actuarial Value of Assets will tend to be less than Market Value. During periods when investment performance is less than the assumed rate, Actuarial Value of Assets will tend to be greater than Market Value. If assumed rates are exactly realized for 5 consecutive years, Actuarial Value of Assets will become equal to Market Value.

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**Reconciliation of DROP Accounts**

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Value at beginning of year	\$	150,915
Payments credited to accounts		62,273
Investment Earnings credited		(18,919)
Withdrawals from accounts		<u>(156,771)</u>
Value at end of year		37,498

Year Ending	Investment Rate of Return	
	Market Value Basis **	Actuarial Value Basis
12/31/1978	1.6 %	N/A %
12/31/1979	8.1	N/A
12/31/1980	4.8	N/A
12/31/1981	6.7	11.1
12/31/1982	26.9	12.0
12/31/1983	6.1	10.4
12/31/1984	8.6	7.9
12/31/1985	21.2	16.3
12/31/1986	12.6	11.9
12/31/1987	3.8	9.0
12/31/1988	13.5	11.2
9/30/1989 (9 mos.)	19.4	12.8
9/30/1990	(0.4)	4.7
9/30/1991	25.8	19.0
9/30/1992	13.9	12.0
9/30/1993	8.2	10.9
9/30/1994	2.6	7.6
9/30/1995	18.3	11.5
9/30/1996	11.6	10.3
9/30/1997	22.2	15.4
9/30/1998	4.7	7.7
9/30/1999	17.4	13.3
9/30/2000	10.9	12.3
9/30/2001	2.4	10.3
9/30/2002	(5.2) *	5.2
9/30/2003	12.8 *	6.2
9/30/2004	8.7 *	4.9
9/30/2005	10.9 *	5.3
9/30/2006	6.6	7.0
9/30/2007	14.2	10.4
9/30/2008	(12.6)	5.6
9/30/2009	(1.7)	1.5
<b>Average Returns:</b>		
Last 5 Years	3.0 %	5.9 %
Last 10 Years	4.4 %	6.8 %
All Years	9.3 %	9.8 %

\* From Public Pension Professionals, Inc. report.

\*\* Net of investment-related expenses after 2001.

The above rates are based on financial information reported to the actuary. They may differ from figures that the investment consultant reports, in part because of differences in the handling of administrative and investment expenses, and in part because of differences in the handling of cash flows.

**SECTION D**  
**FINANCIAL ACCOUNTING INFORMATION**

<b>FASB NO. 35 INFORMATION</b>		
A. Valuation Date	October 1, 2009	October 1, 2008
<b>B. Actuarial Present Value of Accumulated Plan Benefits</b>		
1. Vested Benefits		
a. Members Currently Receiving Payments	\$ 15,409,961	\$ 14,002,096
b. Terminated Vested Members	130,748	120,764
c. Other Members	11,639,491	11,118,682
d. Total	<u>27,180,200</u>	<u>25,241,542</u>
2. Non-Vested Benefits	576,717	574,454
3. Total Actuarial Present Value of Accumulated Plan Benefits: 1d + 2	27,756,917	25,815,996
4. Accumulated Contributions of Active Members	1,183,621	1,133,550
<b>C. Changes in the Actuarial Present Value of Accumulated Plan Benefits</b>		
1. Total Value at Beginning of Year	25,815,996	23,159,807
2. Increase (Decrease) During the Period Attributable to:		
a. Plan Amendment and Change in Actuarial Assumptions	0	690,334
b. Latest Member Data, Benefits Accumulated and Decrease in the Discount Period	3,262,942	3,118,172
c. Benefits Paid	<u>(1,322,021)</u>	<u>(1,152,317)</u>
d. Net Increase	1,940,921	2,656,189
3. Total Value at End of Period	27,756,917	25,815,996
D. Market Value of Assets	23,769,428	24,676,814
E. Actuarial Assumptions - See page entitled Actuarial Assumptions and Methods		

**SCHEDULE OF FUNDING PROGRESS**  
(GASB Statement No. 25)

Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded AAL (UAAL) (b) - (a)	Funded Ratio (a) / (b)	Covered Payroll (c)	UAAL As % of Covered Payroll (b - a) / c
10/1/1991	\$ 6,760,599	\$ 5,631,485	\$ (1,129,114)	120 %	\$ 1,746,595	(65) %
10/1/1992	7,188,866	6,330,257	(858,609)	114	1,912,597	(45)
10/1/1993	8,079,603	6,983,836	(1,095,767)	116	2,039,604	(54)
10/1/1994	8,850,016	8,077,267	(772,749)	110	2,078,373	(37)
10/1/1995	10,009,422	8,693,367	(1,316,055)	115	2,067,536	(64)
10/1/1996	11,186,998	9,129,346	(2,057,652)	123	2,208,511	(93)
10/1/1997	12,986,720	9,748,239	(3,238,481)	133	2,220,744	(146)
10/1/1998	13,972,751	12,564,904	(1,407,847)	111	2,360,418	(60)
10/1/1999	15,655,723	13,720,801	(1,934,922)	114	2,337,967	(83)
10/1/2000	17,232,472	14,900,877	(2,331,595)	116	2,348,216	(99)
10/1/2001	18,686,930	16,231,093	(2,455,837)	115	2,577,973	(95)
10/1/2002	19,348,451	17,632,045	(1,716,406)	110	3,056,035	(56)
10/1/2003	22,522,788	19,322,425	(3,200,363)	117	3,114,903	(103)
10/1/2004	23,149,295	20,995,062	(2,154,233)	110	3,448,641	(62)
10/1/2005	23,994,955	23,505,343	(489,612)	102	3,572,227	(14)
10/1/2006	25,394,631	25,098,234	(296,397)	101	3,520,610	(8)
10/1/2007	27,583,499	27,133,633	(449,866)	102	3,673,793	(12)
10/1/2008 (b)	28,608,568	28,833,353	224,785	99	3,858,411	6
10/1/2008 (a)	28,608,568	29,623,745	1,015,177	97	3,858,411	26
10/1/2009	28,530,813	31,682,021	3,151,208	90	3,869,093	81

(a) = After changes  
(b) = Before changes

Note: Figures for 10/1/2003, 10/1/2004, and 10/1/2005 were prepared by Public Pension Professionals, Inc.

**SCHEDULE OF EMPLOYER AND STATE CONTRIBUTIONS  
(GASB Statement No. 25)**

<b>Year Ended September 30</b>	<b>Annual Required Contribution</b>	<b>Actual Contribution</b>	<b>Percentage Contributed</b>
1991	\$ 42,119	\$ 201,820	479 %
1992	123,528	190,634	154
1993	135,409	189,655	140
1994	126,104	197,500	157
1995	161,777	207,280	128
1996	106,669	225,565	211
1997	194,811	241,325	124
1998	0	263,309	N/A
1999	250,173	256,876	103
2000	191,699	247,179	129
2001	141,464	258,151	182
2002	142,358	283,456	199
2003	314,672	319,282	101
2004	263,328	357,945	136
2005	316,217	358,179	113
2006	548,686	581,940	106
2007	578,539	578,539	100
2008	607,358	607,358	100
2009	614,497	614,497	100

**ANNUAL PENSION COST AND NET PENSION OBLIGATION  
(GASB STATEMENT NO. 27)**

Employer FYE September 30	2010	2009	2008
Annual Required Contribution (ARC) *	\$ 808,241	\$ 614,497	\$ 607,358
Interest on Net Pension Obligation (NPO)	(98,245)	(101,937)	(109,546)
Adjustment to ARC	(146,097)	(148,090)	(163,165)
Annual Pension Cost (APC)	856,093	660,650	660,977
Contributions made	**	614,497	607,358
Increase (decrease) in NPO	**	46,153	53,619
NPO at beginning of year	(1,228,057)	(1,274,210)	(1,327,829)
NPO at end of year	**	(1,228,057)	(1,274,210)

\* Includes expected State contribution.

\*\* To be determined.

**THREE YEAR TREND INFORMATION**

Fiscal Year Ending	Annual Pension Cost (APC)	Actual Contribution	Percentage of APC Contributed	Net Pension Obligation
9/30/2007	\$634,414	\$578,539	91 %	(\$1,327,829)
9/30/2008	660,977	607,358	92	(1,274,210)
9/30/2009	660,650	614,497	93	(1,228,057)

**REQUIRED SUPPLEMENTARY INFORMATION**

**GASB Statement No. 25 and No. 27**

The information presented in the required supplementary schedules was determined as part of the actuarial valuations at the dates indicated. Additional information as of the latest actuarial valuation:

Valuation Date	October 1, 2009
Contribution Rates	
Employer (and State)	24.69%
Plan Members	3.00%
Actuarial Cost Method	Entry Age Normal Cost Method
Amortization Method	Level dollar, closed
Remaining Amortization Period	30 years
Asset Valuation Method	5-year smoothed market value
Actuarial Assumptions	
Investment rate of return	8.00%
Projected salary increases	6.50%
Includes inflation and other general increases at	4.00%
Cost-of-living adjustments	1.00% per year

**SECTION E**  
**MISCELLANEOUS INFORMATION**

<b>RECONCILIATION OF MEMBERSHIP DATA</b>		
	<b>From 10/1/08 To 10/1/09</b>	<b>From 10/1/07 To 10/1/08</b>
<b>A. Active Members</b>		
1. Number Included in Last Valuation	57	57
2. New Members Included in Current Valuation	0	3
3. Non-Vested Employment Terminations	(1)	(3)
4. Vested Employment Terminations	0	0
5. Service Retirements	0	(1)
6. Disability Retirements	0	0
7. Deaths	0	0
8. DROP Retirement	(1)	0
9. Other	0	1
10. Number Included in This Valuation	<u>55</u>	<u>57</u>
<b>B. Terminated Vested Members</b>		
1. Number Included in Last Valuation	1	1
2. Additions from Active Members	0	0
3. Lump Sum Payments/Refund of Contributions	0	0
4. Payments Commenced	0	0
5. Deaths	0	0
6. Other	0	0
7. Number Included in This Valuation	<u>1</u>	<u>1</u>
<b>C. DROP Plan Members</b>		
1. Number Included in Last Valuation	1	1
2. Additions from Active Members	1	0
3. Retirements	(1)	0
4. Deaths Resulting in No Further Payments	0	0
5. Other	0	0
6. Number Included in This Valuation	<u>1</u>	<u>1</u>
<b>D. Service Retirees, Disability Retirees and Beneficiaries</b>		
1. Number Included in Last Valuation	35	35
2. Additions from Active Members	0	1
3. Additions from Terminated Vested Members	0	0
4. Additions from DROP Plan	1	0
5. Deaths Resulting in No Further Payments	0	0
6. Deaths Resulting in New Survivor Benefits	0	0
7. End of Certain Period - No Further Payments	0	(1)
8. Other - Data Correction	1	0
9. Number Included in This Valuation	<u>37</u>	<u>35</u>

## ACTIVE PARTICIPANT DISTRIBUTION

Age Group	Years of Service to Valuation Date												Totals
	0-1	1-2	2-3	3-4	4-5	5-9	10-14	15-19	20-24	25-29	30-34	35 & Up	
20-24 NO.	0	2	1	1	0	0	0	0	0	0	0	0	4
TOT PAY	0	88,411	51,379	52,740	0	0	0	0	0	0	0	0	192,530
AVG PAY	0	44,206	51,379	52,740	0	0	0	0	0	0	0	0	48,133
25-29 NO.	0	1	3	2	1	1	0	0	0	0	0	0	8
TOT PAY	0	46,957	143,845	99,076	50,235	59,325	0	0	0	0	0	0	399,438
AVG PAY	0	46,957	47,948	49,538	50,235	59,325	0	0	0	0	0	0	49,930
30-34 NO.	0	0	2	1	1	5	1	0	0	0	0	0	10
TOT PAY	0	0	97,157	49,529	55,043	276,976	82,889	0	0	0	0	0	561,594
AVG PAY	0	0	48,579	49,529	55,043	55,395	82,889	0	0	0	0	0	56,159
35-39 NO.	0	0	0	0	2	0	4	0	1	0	0	0	7
TOT PAY	0	0	0	0	104,381	0	273,582	0	83,989	0	0	0	461,952
AVG PAY	0	0	0	0	52,191	0	68,396	0	83,989	0	0	0	65,993
40-44 NO.	0	0	1	0	0	2	1	3	2	0	0	0	9
TOT PAY	0	0	48,878	0	0	114,182	53,988	241,760	170,845	0	0	0	629,653
AVG PAY	0	0	48,878	0	0	57,091	53,988	80,587	85,423	0	0	0	69,961
45-49 NO.	0	0	0	0	0	0	1	4	4	3	0	0	12
TOT PAY	0	0	0	0	0	0	58,344	324,636	338,177	270,100	0	0	991,257
AVG PAY	0	0	0	0	0	0	58,344	81,159	84,544	90,033	0	0	82,605
50-54 NO.	0	0	0	0	0	0	0	1	2	2	0	0	5
TOT PAY	0	0	0	0	0	0	0	63,849	150,435	182,243	0	0	396,527
AVG PAY	0	0	0	0	0	0	0	63,849	75,218	91,122	0	0	79,305
55-59 NO.	0	0	0	0	0	0	0	0	0	0	0	0	0
TOT PAY	0	0	0	0	0	0	0	0	0	0	0	0	0
AVG PAY	0	0	0	0	0	0	0	0	0	0	0	0	0
60-64 NO.	0	0	0	0	0	0	0	0	0	0	0	0	0
TOT PAY	0	0	0	0	0	0	0	0	0	0	0	0	0
AVG PAY	0	0	0	0	0	0	0	0	0	0	0	0	0
TOT NO.	0	3	7	4	4	8	7	8	9	5	0	0	55
TOT AMT	0	135,368	341,259	201,345	209,659	450,483	468,803	630,245	743,446	452,343	0	0	3,632,951
AVG AMT	0	45,123	48,751	50,336	52,415	56,310	66,972	78,781	82,605	90,469	0	0	66,054

## INACTIVE PARTICIPANT DISTRIBUTION

Age Group	Terminated Vested		Disabled		Retired		Deceased with Beneficiary	
	Number	Total Benefits	Number	Total Benefits	Number	Total Benefits	Number	Total Benefits
Under 20	-	-	-	-	-	-	-	-
20-24	-	-	-	-	-	-	-	-
25-29	-	-	-	-	-	-	-	-
30-34	-	-	-	-	-	-	-	-
35-39	-	-	-	-	-	-	1	7,981
40-44	-	-	-	-	-	-	-	-
45-49	1	21,277	-	-	-	-	-	-
50-54	-	-	-	-	8	393,718	-	-
55-59	-	-	-	-	9	309,934	-	-
60-64	-	-	2	26,901	7	265,962	1	9,312
65-69	-	-	1	7,912	2	58,982	-	-
70-74	-	-	-	-	4	161,030	1	34,538
75-79	-	-	-	-	1	3,335	-	-
80-84	-	-	-	-	1	26,298	-	-
85-89	-	-	-	-	-	-	-	-
90-94	-	-	-	-	-	-	-	-
95-99	-	-	-	-	-	-	-	-
100 & Over	-	-	-	-	-	-	-	-
<b>Total</b>	<b>1</b>	<b>21,277</b>	<b>3</b>	<b>34,813</b>	<b>32</b>	<b>1,219,259</b>	<b>3</b>	<b>51,831</b>
<b>Average Age</b>		<b>47</b>		<b>63</b>		<b>62</b>		<b>58</b>

**SECTION F**  
**SUMMARY OF PLAN PROVISIONS**

## SUMMARY OF PLAN PROVISIONS

### A. Ordinances

The Plan was established under the Code of Ordinances for the City of Vero Beach, Florida, Chapter 58, Article II, and Division 4 and was most recently amended under Ordinance No. 07-04 passed and adopted on its second reading on February 6, 2006. The Plan is also governed by certain provisions of Chapter 185, Florida Statutes, Part VII, Chapter 112, Florida Statutes and the Internal Revenue Code.

### B. Effective Date

October 19, 1954

### C. Plan Year

October 1 through September 30

### D. Type of Plan

Qualified, governmental defined benefit retirement plan; for GASB purposes it is a single employer plan.

### E. Eligibility Requirements

All full-time police officers are eligible from date of employment.

### F. Credited Service

Service is measured as the total length of employment for which the police officer received Compensation from the City and made Member Contributions to the plan. No service is credited for any periods of employment for which the member received a refund of their contributions.

### G. Compensation

Total cash remuneration including shift differential pay, State and local incentive pay, and actual overtime pay, but excluding court overtime pay.

### H. Final Average Compensation (FAC)

The average of Compensation over the highest 5 years of employment; not including lump sum payment of unused leave.

**I. Normal Retirement**

**Eligibility:** A member may retire on the first day of the month coincident with or next following the earlier of:

- (1) age 55 and 10 years of Credited Service, or
- (2) 25 years of Credited Service regardless of age.

**Benefit:** 3.0% of FAC multiplied by years of Credited Service plus \$5.00 multiplied by years of Credited Service.

**Normal Form of Benefit:** 10 Years Certain and Life thereafter; other options are also available.

**COLA:** Each retiree and surviving beneficiary will receive a 1.0% increase in benefits on October 1<sup>st</sup> of each year.

**J. Early Retirement**

**Eligibility:** A member may elect to retire earlier than the Normal Retirement Eligibility upon attainment of age 50 and 10 years of Credited Service.

**Benefit:** The Normal Retirement Benefit is reduced by 2.5% for each year by which the Early Retirement date precedes the Normal Retirement date.

**Normal Form of Benefit:** 10 Years Certain and Life thereafter; other options are also available.

**COLA:** Each retiree and surviving beneficiary will receive a 1.0% increase in benefits on October 1<sup>st</sup> of each year.

**K. Delayed Retirement**

Same as Normal Retirement taking into account Compensation earned and service credited until the date of actual retirement.

**L. Service Connected Disability**

**Eligibility:** Any member who becomes totally and permanently disabled as a result of an act occurring in the performance of service for the City is immediately eligible for a disability benefit.

**Benefit:** Accrued Normal Retirement Benefit taking into account Compensation earned and service credited until the date of disability with a minimum equal to 50% of FAC. There will be no actuarial reduction for the period of time that the date of disability precedes the Normal Retirement date.

**Normal Form of Benefit:** 10 Years Certain and Life thereafter.

**COLA:** Each retiree and surviving beneficiary will receive a 1.0% increase in benefits on October 1<sup>st</sup> of each year.

**M. Non-Service Connected Disability**

**Eligibility:** Any member with 10 years of Credited Service who becomes totally and permanently disabled is immediately eligible for a disability benefit.

**Benefit:** Accrued Normal Retirement Benefit taking into account Compensation earned and service credited until the date of disability with a minimum equal to 50% of FAC. There will be no actuarial reduction for the period of time that the date of disability precedes the Normal Retirement date.

**Normal Form of Benefit:** 10 Years Certain and Life thereafter.

**COLA:** Each retiree and surviving beneficiary will receive a 1.0% increase in benefits on October 1<sup>st</sup> of each year.

**N. Death in the Line of Duty**

**Eligibility:** All members are eligible for survivor benefits regardless of Credited Service.

**Benefit:** Designated beneficiary receives the deceased member's accrued Normal Retirement Benefit with a minimum equal to 25% of FAC. If there is no designated beneficiary, the member's own contributions are paid to their estate.

**Normal Form of Benefit:** Single life annuity paid for the life of the beneficiary.

**COLA:** Each surviving beneficiary will receive a 1.0% increase in benefits on October 1<sup>st</sup> of each year.

### **O. Other Pre-Retirement Death**

- Eligibility:** Members are eligible for survivor benefits after the completion of 1 or more years of Credited Service.
- Benefit:** Designated beneficiary receives the deceased member's accrued Normal Retirement Benefit with a minimum equal to 25% of FAC. If there is no designated beneficiary, the member's own contributions are paid to their estate.
- Normal Form of Benefit:** Single life annuity paid for the life of the beneficiary.
- COLA:** Each surviving beneficiary will receive a 1.0% increase in benefits on October 1<sup>st</sup> of each year.

The beneficiary of a plan member with less than 1 year of Credited Service at the time of death will receive a refund of the member's accumulated contributions.

### **P. Post Retirement Death**

Benefit determined by the form of benefit elected upon retirement.

### **Q. Optional Forms**

In lieu of electing the Normal Form of benefit, the optional forms of benefits available to all retirees are a Single Life Annuity or the 50%, 66 2/3%, 75% and 100% Joint and Survivor options.

### **R. Vested Termination**

- Eligibility:** A member has earned a non-forfeitable right to Plan benefits after the completion of 10 years of Credited Service.
- Benefit:** The benefit is the member's accrued Normal Retirement Benefit as of the date of termination. Benefit begins at age 55. Alternatively, members can elect a reduced Early Retirement benefit any time after age 50.
- Normal Form of Benefit:** 10 Years Certain and Life thereafter; other options are also available.
- COLA:** Each retiree and surviving beneficiary will receive a 1.0% increase in benefits on October 1<sup>st</sup> of each year.

Members terminating employment with less than 10 years of Credited Service will receive a refund of their own accumulated contributions.

### **S. Refunds**

- Eligibility:** All members terminating employment with less than 10 years of Credited Service are eligible. Optionally, vested members (those with 10 or more years of Credited Service) may elect a refund in lieu of the vested benefits otherwise due.
- Benefit:** Refund of the member's contributions.

**T. Member Contributions**

3% of Compensation.

**U. State Contributions**

Chapter 185 Premium Tax Refunds

**V. Employer Contributions**

Any additional amount needed to fund the plan properly according to State laws.

**W. Cost of Living Increases**

Each retiree and surviving beneficiary will receive a 1.0% increase in benefits on October 1<sup>st</sup> of each year.

**X. Deferred Retirement Option Plan**

**Eligibility:** Plan members who meet one of the following criteria are eligible for the DROP:

- (1) age 55 with 10 years of Credited Service, or
- (2) 25 years of Credited Service regardless of age.

Members who meet eligibility must submit a written election to participate in the DROP.

**Benefit:** The member's Credited Service and FAC are frozen upon entry into the DROP. The monthly retirement benefit as described under Normal Retirement is calculated based upon the frozen Credited Service and FAC.

**Maximum  
DROP Period:** 60 months

**Interest  
Credited:** The member's DROP account is credited at a rate equal to the actual net rate of investment return realized by the system less administrative fees.

**Normal Form  
of Benefit:** Lump Sum

**COLA:** Each DROP participant will receive a 1.0% increase in benefits on October 1<sup>st</sup> of each year.

**Y. Other Ancillary Benefits**

There are no ancillary retirement type benefits not required by statutes but which might be deemed a City of Vero Beach Police Officers' Retirement Fund liability if continued beyond the availability of funding by the current funding source.

**Z. Changes from Previous Valuation**

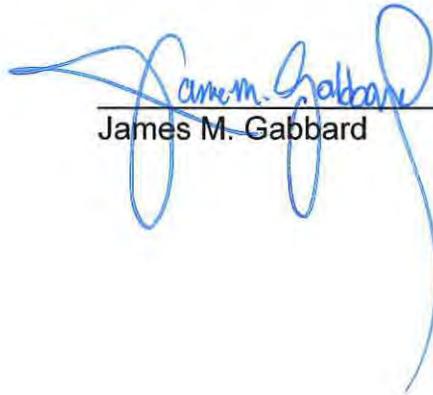
There are no changes from the previous valuation.

**COUNCIL AGENDA REPORT**  
**MEETING OF MAY 4, 2010**

**TO:** The Honorable Mayor and Members of the City Council  
**FROM:** James M. Gabbard, City Manager  
**DATE:** April 28, 2010  
**SUBJECT: CITY-OWNED GOLF COURSE PROPERTY (REVIEW OF DRAFT REQUEST FOR PROPOSALS)**

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Attached is information regarding the above-referenced item for Council's review and discussion.

  
\_\_\_\_\_  
James M. Gabbard

JMG:jav  
Attachments

xc: Monte Falls  
Tim McGarry  
Rob Slezak  
John O'Brien  
Stephen Maillet

**DEPARTMENTAL CORRESPONDENCE**

**TO:** Jim Gabbard, City Manager

**FROM:** John O'Brien, Manager of Purchasing and Warehouse Operations 

**SUBJECT: DRAFT RFP LAND LEASE AND RECREATIONAL OF FORMER 9-HOLE GOLF COURSE**

**DATE:** April 28, 2010

Jim, attached is a copy of the subject draft RFP for City Council review.

**“DRAFT”**

**CITY OF VERO BEACH, FLORIDA**

**REQUEST FOR PROPOSAL  
FOR  
LAND LEASE AND RECREATIONAL REDEVELOPMENT OF  
FORMER DODGERTOWN 9-HOLE GOLF COURSE**

**RFP NO. 210-10-JO**

Sealed bids will be received by the Manager of Purchasing, 3455 Airport West Drive, Vero Beach, Florida until 2:30 P.M., [REDACTED], 2010, and subsequently opened at that time in a meeting to be held in the T&D Conference Room for the following:

**REQUEST FOR PROPOSAL  
LAND LEASE AND RECREATIONAL REDEVELOPMENT OF  
FORMER DODGERTOWN 9-HOLE GOLF COURSE**

A pre-proposal meeting will be held on [REDACTED], , 2010 at 10:00 a.m. in the 2<sup>ND</sup> Floor, T&D Conference Room, 3455 Airport West Drive, Vero Beach, Florida 32960.

Request For Proposal Documents may be obtained from DemandStar.com, Inc. at <http://WWW.Demandstar.com>, Telephone No. (800) 711-1712.

Proposals must be sealed and plainly marked " **RFP NO. 210-10/JO LAND LEASE AND RECREATIONAL REDEVELOPMENT OF FORMER DODGERTOWN 9-HOLE GOLF COURSE** " on the outside of the envelope and addressed as follows:

**By Mail:**

City of Vero Beach  
Manager of Purchasing  
P.O. Box 1389  
Vero Beach, FL 32961-1389

**By Courier:**

City of Vero Beach  
Manager of Purchasing  
3455 Airport West Drive  
Vero Beach, FL 32960

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, 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 in excess of the threshold amount provided in s. 287.133 or CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

The City reserves the right to delay awarding of the contract for a period of sixty (60) days after Proposals are opened, to waive informalities in any bid, or reject any or all bids in whole or in part with or without cause and/or to accept the bid that, in its judgment, will serve the best interest of the City of Vero Beach, Florida. Notwithstanding any clause or statement to the contrary, or in the event of any conflict, inconsistency or need for interpretation concerning any bid or bid-related documents, the provisions of Chapter 2, Article VIII, Division 2, Section 2-351, Vero Beach Code concerning Bidding Procedures and this Invitation to Bid shall control in this order.

Issued at Vero Beach, Florida this           .th day of                   , 2010.

CITY OF VERO BEACH, FLORIDA

JAMES GABBARD  
CITY MANAGER

1. **INTRODUCTION**

The information provided herein is intended to facilitate the preparation and submission of proposals from interested and qualified Developers.

Requests for additional information or interpretation of the Request For Proposal (RFP) process may be made to John O'Brien, Manager of Purchasing (772) 978-5470, or fax (772) 770-6860. Questions regarding zoning districts, building requirements, site plans, etc., should be directed to Hank Flores, Current Planning Manager (772) 978-4550, or fax (772) 778-3856.

2. **PROPOSAL SUBMISSION DUE DATE; PROPOSED OPENING**

All forms and questionnaires contained in this informational packet must be completed and returned with the proposal. The completed proposal plus five (5) copies shall be submitted in a sealed envelope, marked "**RFP No. 210-10/JO, Land Lease and Recreational Redevelopment of Former Dodgertown 9-Hole Golf Course, , ,**" to the Manager of Purchasing, 3455 Airport West Drive, Vero Beach, Florida, by 2:30 P.M., September 18, 2007.

A. **Withdrawing the Proposal:**

Developer may withdraw a proposal without prejudice no later than the day and hour upon which proposals are due, as set forth in the RFP. Upon receipt of a written request to do so, the unopened proposal will be returned to the Developer by the Manager of Purchasing.

B. **Modifying the Proposal:**

Developer may modify a previously submitted proposal by providing the written, signed modification in a sealed envelope to the Manager of Purchasing, at the Purchasing Department, prior to the date and time upon which the proposal is due.

C. **Conflict of Interest:**

Any award of contract is subject to the provisions of Chapter 112, Florida statutes. The proposal shall disclose the name of any officer, director, or agent of the Developer who is employed by the City, as well as the name of any City employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Developer's firm or any of its divisions. Failure to disclose the above information may be cause for disqualification.

### **3. GENERAL DESCRIPTION OF PROJECT AREA**

The subject property is approximately 46 acres in size and is located at the southeastern corner of the intersection of 43<sup>rd</sup> Avenue and 26<sup>th</sup> Street. The property is partially improved with 2,850 square foot retail and 1,450 square foot stucco storage building. The building was constructed in 1997 and is currently vacant. The property is zoned ALI-MC (~41 acres) and ALI-A1 (~5 acres). A wide variety of recreational uses are permitted. It may be possible to expand the permitted uses should a proposal include uses not currently permitted, if the City determines that to be in the public interest. A copy of the ALI-MC and ALI-A1 zoning district regulations is located at the Planning and Department. A general description for the property would be portions of Tracts 4 and 5, Section 3, Township 33 South, Range 39 East.

### **4. CONTENTS OF PROPOSAL**

The City of Vero Beach is issuing this RFP to solicit proposals that offer a high-quality recreational facility which can include a golf course for long-term use of the subject property offers high visibility at a heavily traveled intersection. As such, the City seeks proposals that include high-quality site planning, architectural, landscape and urban design features. Moreover, the City seeks projects that will exceed the minimum requirements found in the development regulations. The location, site size, and zoning allow for some flexibility in site design and building use. If proposal does not require entire 46 acres, please specify areas to be excluded.

The City does not have architectural guidelines, nor does this RFP seek a particular architectural style. However, the City is very interested in the quality of the property including the recreational facility that will occupy this area for many years. Proposed structures shall have uniform architectural treatment, design, and finishes on all building elevations. The design should be sensitive to the environmental features of the site, maintaining and restoring upland native habitat where appropriate. The recreational facility must have a new irrigation system with an identified water source that can be permitted and an efficient drainage system with a storm water management plan that addresses both quality and quantity of run-off.

#### ***Submitted proposals must include the following information:***

##### **A. Proposed use for the site, including:**

- Detailed narrative of the proposed project.
- Conceptual site plan, to identify all or portions of the property to be developed.
- If proposing a golf course, provide a golf course routing plan
- Building elevations.
- Landscape plan.
- Parking plan.
- Drainage storm water management plan.
- Pedestrian and vehicular access.
- Public space and open space plan.

- Signage plan.
- Proposed mix of uses.
- Location of utilities.

***Other required information and guidance:***

- The project narrative shall express the applicant’s long-term vision for the property, detail the project scope and purpose, and address how the proposal meets the architectural, urban design, and landscape criteria contained herein.
- The conceptual site plan shall include sufficient information, dimensions and details to confirm building and use square footages as well as compliance with minimum setback, open space, flood elevation, floor area ratio, and parking space requirements.
- If proposing a golf course, provide a golf course routing plan shall depict the location of the holes, practice facilities and any other features on the golf course.
- Architectural elevations shall include sufficient details and dimensions to confirm architectural style, bulk and massing, as well as architectural features and conformance with building height restrictions. If more than one structure is proposed, sufficient detail shall be provided to evaluate the use and organization of the public spaces between buildings.
- Proposals shall include a landscape plan that exceeds minimum landscape criteria in the Landscape and Tree Protection Ordinance. Proposals are encouraged to retain existing mature trees on site. Trees may be relocated on site.
- Building(s) should be at or near minimum front setback line with parking behind.

In addition to the regulations for the ALI-MC and ALI-A1 zoning districts, some of the other important minimum development requirements can be found in the link to the Code of Ordinances on the City’s web site ([www.covb.org](http://www.covb.org)) as follows:

- Click on the **Code of Ordinances** link
- You must perform a **Search** for the following chapters since there is no direct link currently provided for these chapters:
  - Chapter 60 – Definitions (e.g. building height and floor area ratio)
  - Chapter 63 – Parking Ordinance
  - Chapter 64 – Site Plan
  - Chapter 72 – Landscape & Tree Protection
  - Chapter 73 – Flood and Drainage

**B. Financing Plan, including:**

- Provide a proposed project budget and time line. A site plan for the successful proposal must be submitted to the City Planning & Development Department for review within 120 days of the date upon which a lease agreement is executed with the City. Construction must begin within 90 days of the receipt of a building permit.
- Anticipated financing source(s).

**C. Evidence of the Developer's financial capability to undertake and satisfactorily complete the proposed project, such as:**

- Audited financial statements.
- Representations of net worth.
- The Developer should submit a sufficient amount of relevant financial and credit information to be useful in demonstrating the ability of the Developer to undertake and satisfactorily complete the project. The City recognizes that certain proprietary or confidential financial information may be withheld until such time as the information is necessary to move forward in the selection process.

**D. Resume and relevant experience, including:**

- Previous projects of a similar nature.
- Location(s) of previous projects.
- Use & character of previous projects.
- Dates of previous projects.
- Project size (S.F., units).
- Project costs and revenues.
- Percentage ownership and/or current status of Developer in the project(s).

**E. References, including:**

- A minimum of four (4) references, with current telephone numbers
- At least two of the references should be principals involved with the Developer in a similar project, or be otherwise familiar with the Developer's professional capabilities.
- At least two of the references should be financial/credit references.

These factors will help the City determine the best proposal for the subject property. The successful proposal must be designed and built substantially as presented in the RFP response. Significant deviation from the accepted conceptual design, and/or failure to proceed to plan approval, building permits and construction within the allotted time frame shall be grounds for termination of the lease agreement with the City.

## **5. LEASE REQUIREMENTS**

The City has a standard land lease agreement that applies to many properties that are leased by the City. The proposed lease agreement for this project contains standard terms and conditions, and follows the standard lease agreement format. In an effort to help facilitate a successful project, certain lease terms and conditions may be subject to negotiation between the City and the TENANT, provided that the best interest of the City is considered at all times.

### **Lease Agreement Highlights:**

- The City is seeking a long-term lease agreement only. The standard lease term is typically thirty (30) years; however, the term may be eligible for negotiation depending upon the scope and overall quality of the proposed development and the financial investment made by the TENANT. For the duration of the lease agreement, the TENANT shall be responsible for the payment of all utilities, taxes, fees, assessments, and operating and capital expenses associated with the development of the property and the continued operation of the project.
- The rental rate will be negotiated between the City and the TENANT. If a golf facility is developed, the TENANT shall offer discounted rates for youth outreach programs, special programs, Senior Citizens, City residents, persons with disabilities, and golf scholarships for youth in need.
- The lease agreement will include annual rent increases based upon any annual increase that may occur in the Consumer Price Index (CPI).
- The TENANT will be required to meet the City's comprehensive insurance and indemnification requirements pursuant to the terms contained in the lease agreement.
- The City reserves the right to require a personal guarantee from the selected TENANT.
- The TENANT may not assign, sublease, hypothecate, or transfer the lease agreement, or otherwise change or alter the agreement in any way, without the express written consent of the City.

## **6. BUILDING CONDITION**

The use of the existing building must be interconnected with the concept of the recreational facility being proposed.

## 7. PARKING RESTRICTIONS

The following is a copy of the Estoppel Certificate, which clarifies parking restrictions on 9.13 acres in the attached aerial photograph.

### ESTOPPEL CERTIFICATE

BY AND AMONG Indian River County, Florida, a political subdivision of the State of Florida (hereinafter referred to as the "County"), the City of Vero Beach, Florida, a municipal corporation (the "City"), and MiLB Vero Beach LLC, a Florida limited liability company, as a single purpose entity affiliate of the National Association of Professional Baseball Leagues, Inc, a Florida corporation (hereinafter referred to as the "MiLB").

IN RE: Parking Property Lease Agreement Entered into as November 17, 2005 by and between the Los Angeles Dodgers, LLC (the "Dodger?") and the City of Vero Beach, Florida (the "City"), hereinafter the "Parking Lease", and the real estate subject to the Parking Lease described in Exhibit "A" attached hereto, hereinafter the "Parking Property".

NOW THEREFORE, for Si 0.00 and other good and sufficient consideration, exchanged among the parties, and the receipt of which is hereby acknowledged, the parties as of the date of execution of this Estoppel Certificate ("Certificate") respectively acknowledge, state and confirm that the following statements are true and correct:

(1) The City and County represent and confirm to MiLB that there is no claim or default under the Parking Lease and that the Parking Lease remains in full force and effect.

(2) The City acknowledges that MiLB and the County concurrently have entered into a Facility Lease Agreement that includes, in part, the Parking Property, and that the City consents and agrees with the provisions of Section 6.05 thereof and will recognize MiLB as the successor to the County under the Parking Lease in all respects thereto.

(3) The parties acknowledge, ratify and confirm that the Parking Lease is and at all times shall remain subject to, subservient, and subordinate in terms and conditions of the Facility Lease Agreement between the County and MiLB and that the reference to the Facility Lease Agreement in the Parking Lease shall hereafter be deemed to refer to the Facility Lease Agreement between the County and MiLB.

(4) In the event of any conflict whatsoever among the terms and conditions of the Facility Lease Agreement between the County and MiLB and the terms and conditions of the Parking Lease, the terms and conditions of the Facility Lease Agreement between the County and MiLB shall supersede, govern over, and contral the terms and conditions of the Parking Lease.

(5) The City confirms and covenants to the County and MiLB not to do or commit to be done any act or thing which will constitute a breach or violation of any of the terms, covenants, conditions or provisions of the Facility Lease Agreement between the County and MiLB.

(6) The Parking Lease is otherwise in full force and effect, the payment of rents is

current, there are no claims, set offs, or counter claims or defenses asserted among the parties upon the concurrent execution of the Facility Lease Agreement between the County and MiLB, and in such event MiLB shall be deemed such sublessor accepting and assuming all the rights and obligations of the Dodgers and the City shall be deemed the sublessee party under the Parking Lease and agrees to recognize MiLB as the sublessor for so long as the Facility Lease Agreement between the County and MiLB, or any renewal thereof, remains in full force and effect,

(7) As an inducement to MILE to undertake the use of the Facility and cater into the Facility Lease Agreement between the County and MiLB, and accept and assume all of the rights and obligations of the Dodgers in the capacity as the sublessor under the Parking Lease, the City confirms and covenants to MiLB and the County that the definition of "Dodgers Events" in Section 1,02(e) of the Parking Lease shall be superseded and replaced with the following:

(a) "Dodgers Events" means any and all events and activities held on the premises of the Facility (including the Parking Property) for which Dodgers shall retain the use of the Parking Property for parking and uses associated with the Facility, including, without limitation baseball and non-baseball sporting events and sports related activities, attraction of Major League Baseball, playing baseball internationally, meetings, conferences, and the County's use of the Parking Property in conjunction with its use of the Facility.

If requested by any party hereto, the parties agree to further memorialize these confirmations and covenants in a separate instrument.

[Remainder of page intentionally left blank.]

IN WITNESS OF THE ABOVE, the undersigned, being a duly authorized representative of the parties, has caused this certificate to be executed.

[Seal]

INDIAN RIVER COUNTY, FLORIDA

Date: May 20, 2009

By: [Signature]  
Its: Chair

Attest:

By: Atteena Adams, D.C.  
Clerk of the Circuit Court

Approved as to Form and  
Legal Sufficiency

By: [Signature]  
Special County Attorney

[Seal]

CITY OF VERO BEACH, FLORIDA

Date: May 20, 2009

By: Sabin C. Obeere  
Its: Mayor

Attest:

Jammy K. Wood  
Clerk

MILB VERO BEACH LLC, a Florida  
limited liability company

By its Managing Member:  
NATIONAL ASSOCIATION OF  
PROFESSIONAL BASEBALL  
LEAGUES, INC.

Date: May 26, 2009

By: [Signature]  
Pat O'Connor, President and CEO

Attest:

D. Dan Coy, Secretary  
Secretary

**8. PRE-PROPOSAL MEETING**

A non-mandatory pre-proposal meeting will be held on Monday, ~~.....~~, 2010 at 10:00 a.m. in the 2<sup>ND</sup> Floor, T&D Conference Room, 3455 Airport West Drive, Vero Beach, Florida 32960. Although not required, all interested in participating in this RFP are strongly encouraged to attend this meeting.

**9. SCHEDULE**

- RFP advertised: ~~.....~~, 2010
- Pre-proposal meeting: ~~.....~~, 2010 @ 10:00 a.m.
- Proposals due: ~~.....~~, 2010 @ 2:30 p.m.

**10. ADDITIONAL INFORMATION:**

**A. How much upland native habitat is there?** *The conceptual site plan sent to DCA shows approximately 9.1 acres of native upland areas to be restored, which would include removal of invasive exotics on site.*

**B. Are there any particular planting restrictions or restrictions regarding tearing out plantings or trees?** *The project will be subject to provisions of Chapter 72, City Code, that govern landscaping and tree protection (available on-line). Trees that are to be replaced, removed, or transplanted will need to be identified. A permit is required for any tree removal. Invasive exotics are normally required to be removed as part of development approval. Sections 72.10 through 72.19 of the City Code identifies preferable trees and shrubs for planting and invasive exotics that need to be removed.*

**C. Is the retention pond lined?** *The retention pond is not lined.*

**D. Is the current irrigation system PVC or galvanized?** *Galvanized*

**E. Are there any watering restrictions that would apply to the golf course?** *According to St. Johns Water Management District golf courses are exempt. Water can be drawn from pond on golf course which is feed by the canal at the south end of the property (with proper permitting). Recommend contacting St Johns Water Management District at#321/ 984-4940 for additional questions or details.*

**F. Do we have any elevation survey plans of property?** *A 1992 survey indicates most of the elevations are around 23'.*

**G. Are there any Airport restrictions i.e.) height restrictions.** *There is a "runway protection zone - RPZ" in the northwest quadrant of the property, which restricts any building in the designated area. See attached aerial drawing.*

**H. Are the buildings on site CBS or wood frame?** *CBS*

- I. **The following data is an estimate of rounds played at Dodgertown:** *The Dodgertown Golf Course closed around 2001-2002. The last year of operations, minimal maintenance was performed due to potential commercial development. During summer months you may have as few as 40-60 rounds per day and during peak season (Jan-Mar) as many 140-180 rounds per day.*
- J. **In addition to proposing 15 and 30-year lease terms, if you have alternative rates to offer options please provide, as well.**

**CITY OF VERO BEACH, FLORIDA**

**REQUEST FOR PROPOSAL 210-10/JO  
LAND LEASE AND RECREATIONAL REDEVELOPMENT OF  
FORMER DODGERTOWN 9-HOLE GOLF COURSE**

**PROPOSED ANNUAL LEASE AMOUNT BASED ON 15 YEARS LEASE:**

\_\_\_\_\_  
Written Amount

\$

\_\_\_\_\_  
Numeric Amount

**PROPOSED ANNUAL LEASE AMOUNT BASED ON 30 YEARS LEASE:**

\_\_\_\_\_  
Written Amount

\$

\_\_\_\_\_  
Numeric Amount

**FIRM Name:** \_\_\_\_\_

Address: \_\_\_\_\_

City & State: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Name, Typed or Printed \_\_\_\_\_

Signature: \_\_\_\_\_



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

26TH STREET WALKER AVENUE BLVD.  
INDIAN RIVER FARMS WATER CONTROL DISTRICT CANAL A3  
SOUTH SECTION LINE 34-32-39  
NORTH SECTION LINE 03-33-39

UTILITY EASEMENT

AREA ENCUMBERED BY THE RPZ  
6,534 S.F. ±

AREA ENCUMBERED BY THE RPZ  
88,174 S.F. ±  
2.02 ACRES

AREA ENCUMBERED BY THE RPZ  
72,242 S.F. ±  
1.66 ACRES

TRACT 1  
SECTION 04-33-39

CITY OF VERO BEACH  
PURCHASED 11/2005  
6.13 ACRES (TOTAL)  
OR BOOK 1961, PAGE 956

INDIAN RIVER COUNTY  
PURCHASED 8/2001  
9.13 ACRES (TOTAL)  
OR BOOK 1758, PAGE 523

(PARKING PROPERTY)

HOLMAN STADIUM

PRACTICE FIELDS

66.00' DRAINAGE EASEMENT  
OR BOOK 210, PAGE 531

CITY OF VERO BEACH  
PURCHASED 11/2005  
30.87 ACRES (TOTAL)  
OR BOOK 1961, PAGE 968

50' WIDE PARCEL NOT INCLUDED

IRFWCD MAIN CANAL (300' R/W)

SCALE: 1" = 100'

LEGEND

- OR = OFFICAL RECORD
- RPZ = RUNWAY PROTECTION ZONE
- S.F. = SQUARE FEET

THIS SKETCH IS NOT A SURVEY

1	AMEND 43RD AVENUE R/W AND RPZ ENCUMBERANCE	MKF	DG	2/2007
REV. NO.	DESCRIPTION	AUTHRD BY	DRWN BY	DATE
DODGERTOWN PROPERTIES				
AERIAL VIEW		SCALE: 1" = 100'	DRWN BY: DG	DATE: 2/2005
		CHKD BY: EM	DATE: 12/2005	
CITY OF VERO BEACH DEPT. OF ENGINEERING AND PUBLIC WORKS ENGINEERING DIVISION				
CITY PROJECT NO. 2005-13-DODGERTOWN PURCHASE				SHEET 1 OF 1

COMMERCIAL LEASE AGREEMENT  
**[Land only]**

This Lease Agreement is executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF VERO BEACH, a municipal corporation organized and existing under the laws of the State of Florida, whose mailing address is P.O. Box 1389, Vero Beach, Florida 32961-1389 ("LANDLORD"); and \_\_\_\_\_, whose mailing address is \_\_\_\_\_ ("TENANT").

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LANDLORD and TENANT agree as follows:

1. LEASED PREMISES.

LANDLORD hereby demises and leases to TENANT, and TENANT hereby hires, rents, and leases from LANDLORD, real property located at the City of Vero Beach, Vero Beach, Indian River County, Florida. The Leased Premises consists of \_\_\_\_\_ square feet of land and is more particularly described in Attachment A to this Lease Agreement.

2. TERM; OPTION TO RENEW.

(a) The initial term of this Lease Agreement shall be \_\_\_\_\_ years, commencing on \_\_\_\_\_, 20\_\_, and terminating on \_\_\_\_\_, 20\_\_.

(b) TENANT shall have the option to renew this Lease Agreement for a term of \_\_\_\_\_ years at the conclusion of the initial term; provided, however, that TENANT is not in default

hereunder, and provided that TENANT shall first give written notice to LANDLORD of TENANT's intention to exercise this option no less than three (3) months, and no more than eighteen (18) months, prior to the termination of the initial term. All terms and conditions herein shall apply during the second term unless otherwise provided herein.

3. RENT; RENT ADJUSTMENT.

(a) Subject to the adjustment, escalation, and other provisions of this Lease Agreement, including Attachment B, (Effective date: May 15, 2007), as amended by SPECIAL PROVISIONS, if any herein, of this Lease Agreement, TENANT shall pay to LANDLORD, in lawful money of the United States, a total rent during the initial term of this Lease Agreement of \$\_\_\_\_\_. Pursuant to Section 8 of Attachment B of this Lease Agreement, TENANT also shall pay all legally imposed federal, state and local taxes, fees, and assessments accruing during the term of this Lease Agreement. The monthly rent shall be \$\_\_\_\_\_. Pursuant to Section 8 of Attachment B of this Lease Agreement, TENANT also shall pay all legally imposed taxes, fees, or assessments accruing for that month. This rental rate is based on \_\_\_\_\_ square feet of land at \$\_\_\_\_\_ per square foot per year. Rent shall be due on the first day of each month. Failure to pay the monthly rent in full by the tenth day of each month shall result in the assessment of a late charge of five percent (5%) of the amount then owing or \$50.00, whichever is greater.

(b) Ownership interest in all structures built, improvements made, and fixtures installed by TENANT, or at TENANT'S direction, upon the Leased Premises during the initial term or any renewal term of the Lease Agreement shall automatically revert to LANDLORD'S ownership and vest in LANDLORD at the expiration or termination of the initial term or the renewal term in which they are built, made, or installed.

(c) If TENANT exercises the option to renew, TENANT's rent shall be adjusted as set forth in Attachment B.

4. STANDARD PROVISIONS.

The standard lease provisions for Tenants, set forth in Attachment B to this Lease Agreement and entitled "Standard Lease Provisions For Tenants, (Effective date: May 15, 2007)", are incorporated into and made a part of this Lease Agreement.

5. SPECIAL PROVISIONS.

To the extent that any of the following Special Provisions are in conflict with any other provision of this Lease Agreement, the Special Provision shall govern.

(a) TENANT is required, and TENANT agrees, to construct buildings and/or other improvements upon the Leased Premises. TENANT shall submit a complete site plan application to the City of Vero Beach Planning and Development Department as set forth in Paragraph 12 of Attachment B.

(b) Prior to the Lease Agreement commencement date, TENANT shall provide security for the performance of this Lease Agreement,

in a form acceptable to LANDLORD, in the amount of \$ \_\_\_\_\_, and said amount shall immediately be forfeited by TENANT to LANDLORD in the event of a default under the terms of this Lease Agreement that is not immediately cured under the terms herein, and shall be applied as a credit to any sums due to LANDLORD upon default. If LANDLORD applies any part of the security deposit to cure any default of TENANT, TENANT shall on demand deposit with LANDLORD the amount so applied so that LANDLORD shall have the full security deposit on hand at all times during the term of this Lease Agreement. TENANT'S failure to pay LANDLORD a sufficient amount to restore the security deposit to the required amount within five (5) days after receipt of a written demand for it shall constitute a default of the Lease Agreement. It is expressly understood and agreed by the parties that the security deposit shall not be considered an advance payment of rental or a measure of LANDLORD's damages in case of default by TENANT. Said deposit shall be returned to TENANT upon the successful conclusion of the performance by TENANT of the terms of this Lease Agreement.

(c) Attached hereto, and incorporated herein as Attachment C, is a copy of the Phase I Environmental Property Assessment, dated \_\_\_\_\_, by \_\_\_\_\_. LANDLORD and TENANT accept this report as an accurate representation of the environmental condition of the property as of the commencement date of this Lease Agreement.

(d) Upon termination of the Lease Agreement, TENANT shall pay for a Phase I Environmental Assessment of the leased property. The results of this report shall be compared to the results of the Phase I Environmental Property Assessment described in paragraph (c) above, to determine whether or not the leased property was contaminated during the term of the Lease Agreement. If a Phase II Environmental Assessment is recommended by the environmental auditor, TENANT shall be responsible for any and all costs associated with the Assessment and environmental remediation pursuant to the terms of Section 19, Environmental Provisions, of Attachment B of this Lease Agreement.

(e) TENANT shall provide LANDLORD with certificates of insurance stating that the coverages, as provided by Section 10 of Attachment B of this Lease Agreement, are in force prior to the commencement date of this Lease Agreement, and for each term of coverage thereafter.

6. INTEGRATION; AMENDMENTS.

(a) This written Lease Agreement and Attachments A, B, and C contain the entire Agreement of the undertakings by and between the parties hereto relative to the leasing of the premises. No prior or present agreements, representations, statements, or promises, whether oral or written, made by any party or agent of any party hereto which is not contained herein shall be binding or valid.

(b) No provision of this written Lease Agreement or Attachments A, B, or C may be amended, extended or modified except

by written instrument executed by all parties to this Lease Agreement.

(c) The parties hereto acknowledge that they were given the opportunity to have their legal counsel review this Lease Agreement and Attachments "A", "B", and "C", and that the Lease Agreement and Attachments "A", "B", and "C" shall be construed neither against, nor in favor of, any party hereto, but rather in accordance with the fair meaning thereof.

IN WITNESS WHEREOF, we the LANDLORD and TENANT, have hereunto affixed our hands and seals.

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**LANDLORD - CITY OF VERO BEACH**  
**(This section to be completed by Landlord only)**

ATTEST: \_\_\_\_\_ LANDLORD: \_\_\_\_\_  
Sign: \_\_\_\_\_ Sign: \_\_\_\_\_  
Print: Tammy K. Vock Print: \_\_\_\_\_  
Title: City Clerk Title: Mayor  
Date of signature: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as Mayor, and attested by Tammy K. Vock, as City Clerk of the City of Vero Beach, Florida. They are both known to me and did not take an oath.

NOTARY PUBLIC:  
Sign: \_\_\_\_\_  
Print: \_\_\_\_\_  
State of Florida at Large [SEAL]  
Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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**TENANT -**  
**(This section to be completed by Tenant only)**

WITNESSED BY:

TENANT:

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of signature: \_\_\_\_\_

[AFFIX CORPORATE SEAL HERE]

[SEAL]

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_, and \_\_\_\_\_, as \_\_\_\_\_, on behalf of the company. They are personally known to me or produced \_\_\_\_\_ as identification and did/did not take an oath.

NOTARY PUBLIC:

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_  
State of Florida at Large [SEAL]  
Commission No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



**CITY MANAGEMENT**

**(This section to be completed by City Management Staff only)**

Approved as to form  
and legal sufficiency:

Approved as to technical  
requirements:

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

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

## ATTACHMENT B

### STANDARD LEASE PROVISIONS FOR TENANTS

(Effective Date – May 2007)

1. **REVERSION OF OWNERSHIP INTEREST TO LANDLORD:** Ownership interest in all structures built, improvements made, and fixtures installed by TENANT, or at TENANT'S direction, upon the Leased Premises during the initial term or any renewal term of the Lease Agreement shall automatically revert to LANDLORD'S ownership and vest in LANDLORD at the expiration or termination of the initial term or the renewal term in which they are built, made or installed.

2. **RENTAL ADJUSTMENT:**

(a) Annual Rental Adjustment: Beginning on October 1st of the year following the year in which the Lease Agreement is executed, and annually on each October 1st thereafter, including the renewal term pursuant to an option exercised under the Lease Agreement, if any, the rent shall be adjusted in accordance with the percentage change in the index known at the time the Lease Agreement is executed as the "United States Bureau of Labor Statistics Consumer Price Index (CPI) for All Urban Consumers," using the July to July report. This adjustment shall be referred to as "the CPI adjustment." If the CPI ceases to be published, the successor index shall be used. In no event shall the rental rate be less than the rental rate set for the previous year of the Lease Agreement.

(b) Option to Renew Rental Adjustment: If TENANT exercises an option to renew, if applicable, in addition to Paragraph (a) above, the portion of TENANT'S rent per year allocated to structures and improvements shall be adjusted to an amount equal to ten percent (10%) of the appraised value of all structures and improvements existing

on the Leased Premises at the commencement of the renewal term. In no event shall the rental rate be less than the rental rate set for the previous year of the Lease Agreement. This rental adjustment shall continue in force for the duration of the renewal term. The appraisal shall be performed by a state certified general real estate appraiser agreed to by LANDLORD and TENANT.

**3. ASSIGNMENT:** TENANT shall not, either directly or indirectly by any means, assign, sublease, hypothecate or transfer the Lease Agreement or any interest therein, or any portion of the Leased Premises, including any improvements thereon, without the express written consent of the LANDLORD. LANDLORD shall not unreasonably withhold consent. However, any proposed assignee, sublessee, or transferee shall meet all lease requirements for such assignment, subleases, or transfer. In no event shall LANDLORD'S granting of consent to one or more assignments, subleases, hypothecations, or transfers constitute a waiver of LANDLORD'S right to refuse consent as to subsequent assignments, subleases, hypothecations, or transfers. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law, without the express written consent of the LANDLORD. TENANT agrees that use of the Leased Premises or any portion thereof by any subtenants, suboperators, or submanagement shall not diminish in any way rents due LANDLORD from TENANT. If this Lease Agreement is assigned, or if the Leased Premises or any part thereof is sublet or occupied by anybody other than TENANT, with or without LANDLORD'S consent, LANDLORD may collect rent directly from such assignee, sub-lessee or occupant, and apply the net amount collected to the rent herein reserved. However, no such collection of rent shall be deemed a waiver of this covenant, or shall be deemed the acceptance of such assignee, sub-tenant or

occupant as, or in place of, TENANT, or a release of TENANT for obligations on the part of TENANT herein contained. Stock transfers, asset transfers, and any other ownership transfer of a tenant that changes the management or policy making individuals of the TENANT shall be considered an "indirect transfer" of the Lease, requiring the express written consent of the LANDLORD prior to any such transfer or change in ownership or management. Any assignment or sublease shall be subject to the terms of the Lease Agreement with TENANT and all attachments and amendments. Any assignment or sublease without the express written consent of the LANDLORD shall be void abinitio, and TENANT'S lease shall remain in full force and effect.

**4. ALTERATIONS:** TENANT shall not make any alterations, changes, additions, or improvements to the Leased Premises without the prior express written consent of the LANDLORD. All work shall be performed in a good and workmanlike manner and shall be made in accordance with plans and specifications approved by LANDLORD, and with all applicable laws, rules and regulations, including, without limitation, the Americans With Disabilities Act. In the event that any governmental authority directs any modification or alteration to the Leased Premises as the result of TENANT'S occupancy, TENANT shall pay for the cost of the modification or alteration. If, because of any act or omission of the TENANT, his successors or assigns, any mechanic's, material man's, laborer's, or any other lien or other order for payment of money shall be recorded against the Leased Premises, or any part thereof, or otherwise asserted against the LANDLORD, then the TENANT shall, at TENANT'S own cost and expense, cause the same to be satisfied, cancelled, and discharged of record, and further shall indemnify and hold harmless the LANDLORD from and against any and all costs,

expenses, claims, losses or damages, including reasonable attorney's fees, through trial and appeal, resulting therefrom or by reason thereof.

**5. ASSIGNMENT OF RENTS:** As additional security under the Lease Agreement, TENANT assigns, transfers, and sets over unto LANDLORD all of the rents for the Leased Premises accruing to TENANT pursuant to any assignment or sublease whether approved by LANDLORD or not; this assignment shall become operative upon any default by TENANT under the terms of the Lease Agreement and shall remain in full force and effect so long as any default continues to exist in the making of any of the payments or performance of any of the covenants of the Lease Agreement, and LANDLORD shall have the right to collect same directly from the person(s) or entity in possession.

**6. NO ABATEMENT OF RENTS:** No diminution or abatement of rent or offset shall be claimed or allowed for any reason whatsoever. If TENANT has a disagreement or claim arising from the Lease Agreement or the Leased Premises, TENANT shall make such disagreement or claim known to LANDLORD in writing, but TENANT shall continue to pay all rents, fees and applicable federal, state, and local taxes, fees, and assessments as they become due. Failure by TENANT to pay all monies as they become due may be deemed a default under the terms of the Lease Agreement at LANDLORD'S sole option.

**7. LIMITATION ON LANDLORD'S LIABILITY:**

(a) TENANT accepts the condition of the Leased Premises as is and recognizes and agrees to fully assume all risks, known and unknown, that arise or might arise incidental to, arising out of, or in any way connected with use of the Leased Premises, the Airport, and the roadways and other means of ingress and egress, and

on behalf of itself, its successors, assigns, administrators, receivers, and trustees, release and forever discharge the LANDLORD, its elected officials, officers, employees, agents, their successors, and assigns, of and from any and all liabilities, claims, demands, damages, actions, costs, or expenses of any nature, known or unknown, arising out of or in any way connected with such uses by TENANT. TENANT understands and agrees that this release includes claims based on the negligence, actions, or inaction of the LANDLORD and the other above released individuals and entities and covers any cause or condition whatsoever, including, but not limited to, bodily injury, death, and property damage or loss. LANDLORD makes no warranty of the suitability of the Leased Premises for any particular use contemplated by TENANT.

(b) LANDLORD shall not be liable to TENANT for any claim for compensation or any losses, damages or injuries sustained by TENANT resulting from failure of any water supply or sewer service, heat or electrical current, whether on the surface or underground, including, but not limited to, stability, moving, shifting, settlement, or displacement of materials by fire, water, windstorm, tornado, act or state of war, civilian commotion or riot, or any other cause beyond the control of LANDLORD.

## **8. TAXES:**

(a) In the event that taxes are legally imposed, TENANT is solely responsible for all taxes, if any, imposed under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, accruing during the term of the Lease Agreement or any renewal thereof. In the event that taxes are legally imposed, TENANT is solely responsible for all ad valorem and non-ad valorem taxes, impact fees, and assessments levied, if any, against the Leased Premises and the buildings on the Leased Premises, accruing

during the term of the Lease Agreement or any renewal thereof. TENANT shall pay all such legally imposed taxes directly to the respective taxing authority. All ad valorem and non-ad valorem taxes that are legally imposed shall be paid directly to the Indian River County tax collector's office on a quarterly basis. If applicable, TENANT shall be responsible for timely electing the quarterly tax payment program with the Indian River County tax collector's office, and shall continue participation during the term of the Lease Agreement, including renewal periods, if any. If such election is applicable, within ten (10) days after execution of the Lease Agreement, or as soon thereafter as feasible, dependent upon the Indian River County tax collector's office, TENANT shall provide LANDLORD with documentation from the Indian River County tax collector's office stating that the required election has been made. If such election is applicable, TENANT shall provide such documentation annually.

(b) TENANT acknowledges that any taxes legally imposed on the leasehold under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, if any, are imposed on TENANT, and not on LANDLORD. TENANT acknowledges that any ad valorem taxes legally imposed on the leasehold under Section 196.199, Florida Statutes (taxation of government leaseholds), any non-ad valorem taxes, impact fees and assessments, if any, are imposed on TENANT, and that the LANDLORD, as a governmental entity, is immune or exempt from such imposition.

**9. INDEMNIFICATION:** TENANT agrees to indemnify and hold harmless LANDLORD for any and all actions, claims, losses, and litigation including all costs and attorney's fees, through trial and appeal, arising out of or connected in any way with TENANT'S occupancy or use of the Leased Premises, except with respect to any

condition existing on the Leased Premises that is in LANDLORD'S sole control or arising from LANDLORD'S willful misconduct or gross negligence. TENANT further agrees to hold LANDLORD harmless for any loss, damage or destruction of any personal property, fixtures or improvements within or on the Leased Premises.

**10. INSURANCE:**

(a) **Commercial General Liability Insurance.** TENANT shall procure, maintain and pay for commercial general liability insurance providing all risks coverage which protects the LANDLORD, the LANDLORD'S elected officials, employees, officers, and agents, and TENANT, from claims arising from bodily injury, property damage, operations, premises and fire legal liability. Such insurance coverage shall have a combined single limit of not less than \$1,000,000.00. Coverage shall be provided in a form no more restrictive than the latest edition of the commercial general liability policy filed by the Insurance Services Office. TENANT's insurance shall be primary and any other insurance maintained by the City shall be in excess of and shall not contribute with TENANT'S insurance.

(b) **Property Insurance.** During the full term of the Lease Agreement, at TENANT'S sole cost and expense, TENANT shall provide, maintain, and pay for a property insurance policy providing coverage of not less than 100% of the insurable replacement value, without deduction for depreciation, for the demised premises of which any buildings are a part, including any improvements and betterments which may be insurable as part of the realty. Said property insurance shall cover the improvements and betterments from loss due to fire, windstorm, flood and any other peril included in the broadest available standard form of extended coverage. Coverage shall be in an amount sufficient to meet the co-insurance requirements of the policies, but not less

than the full insurable value thereof. Deductibles for all perils, except windstorm, shall not be greater than two (2%) percent of the full insurable replacement value, without deduction for depreciation, for the demised premises of which any buildings are a part, including any improvements and betterments which may be insurable as part of the realty. Deductibles for windstorm damages shall not exceed five (5%) percent of the full insurable replacement value, without deduction for depreciation, for the demised premises of which any buildings are a part, including any improvements and betterments which may be insurable as part of the realty. The policy shall be endorsed to make any loss payments payable jointly to the LANDLORD and TENANT for losses covered under such policies.

In the event of damage and/or destruction to the buildings, improvements, betterments and equipment, all proceeds from such policy shall be utilized by TENANT to repair and/or replace the damaged or destroyed buildings, improvements, betterments and equipment. TENANT may request consent from LANDLORD not to repair and/or replace the damaged or destroyed buildings, improvements, and equipment. LANDLORD, in its sole discretion, may either accept or reject TENANT'S request not to repair and/or replace. If the LANDLORD rejects TENANT'S request not to repair and/or replace, then TENANT must utilize all insurance proceeds to repair and/or rebuild pursuant to this paragraph. If LANDLORD consents to TENANT'S request not to repair and/or replace, then the insurance proceeds shall be prorated between the LANDLORD and the TENANT based upon the time period left in the Lease Agreement before the reversion of all structures and improvements (fixtures) to the LANDLORD (example: if LANDLORD consents to TENANT'S request not to repair

and/or replace and the lease is in the 28<sup>th</sup> year of a 30 year lease, the insurance proceeds would be dispersed 28/30<sup>th</sup> to the LANDLORD and 2/30<sup>th</sup> to the TENANT).

As soon as is reasonably possible after damage and/or destruction to the buildings, improvements, betterments and equipment, but no later than 18 months after said damage and/or destruction, TENANT shall, at the TENANT'S sole expense (using insurance proceeds available for that purpose, along with TENANT'S own funds), commence to either repair or restore the buildings, improvements, betterments and equipment as completely as possible to their condition immediately prior to the damage, or, in the alternative, replace the structures, improvements, betterments and equipment with structures approved in advance, in writing, by LANDLORD.

In the event any insurance proceeds of such policy shall remain unused after the completion of restoration or rebuilding to the LANDLORD'S satisfaction, evidenced in writing, and if the TENANT shall not be in default under the Lease Agreement, then the remaining funds shall be paid to LANDLORD for any unpaid rent and other sums due, with any remaining sum paid to the TENANT.

(c) All insurance required by this Section shall be with a company licensed to do business in the state of Florida, and be otherwise satisfactory to the LANDLORD.

(d) Recognizing the extended term of the Lease Agreement, TENANT agrees that the LANDLORD shall have the right to periodically review the adequacy of the required insurance and amend the insurance requirements of this section. Factors which may be considered include, but are not limited to, changes in generally accepted insurance industry standards and practices, changes in TENANT'S use of the premises, measurable changes in local and national economic indicators and changes in City policies and procedures.

(e) The insurance policies shall name the LANDLORD as an additional insured and shall include provision for at least thirty (30) days advance notice to LANDLORD by the insurer prior to any policy change, amendment, termination or expiration of coverage. TENANT shall cause the insurer to provide proof of the required insurance to the LANDLORD before TENANT takes possession of the Leased Premises and shall cause the insurer to continue to supply such proof to the LANDLORD for each term of coverage. TENANT'S insurance shall be primary and any other insurance maintained by the City shall be in excess of and shall not contribute with TENANT'S insurance.

(f) In the event that Tenant should fail for any reason to procure or maintain insurance coverage at the minimum amounts required herein, or at the written request of Tenant, Landlord, at Landlord's sole discretion, may secure insurance coverage at Tenant's expense, or may declare Tenant in default. Tenant shall reimburse Landlord for the cost of such insurance coverage secured by Landlord within thirty (30) days of Tenant's receipt of an invoice from Landlord for such insurance coverage. Tenant shall be responsible for the payment of any applicable deductibles set out in the insurance policy secured by Landlord.

**11. USE OF LEASED PREMISES; RESTRICTIONS ON USE:**

(a) TENANT agrees to observe and obey all laws, ordinances, rules and regulations promulgated and enforced by LANDLORD and by any other proper authority having jurisdiction over the conduct of operations at the site, and all further revisions or amendments thereto. Further, TENANT agrees that TENANT shall not occupy or use or permit or suffer the Leased Premises or any part thereof, to be occupied or used for any unlawful or illegal business or purpose, nor in such manner as to constitute a

nuisance of any kind, nor for any purpose or in any way in violation of any present or future laws, rules, requirements, orders, ordinances, regulations of the United States of America, or of the State, County, or City government, or their administrative boards or agencies.

(b) TENANT expressly agrees for TENANT and TENANT'S successors and assigns, to prevent any use of the herein described Leased Premises which would interfere with or adversely affect the operations or maintenance of the Airport, or otherwise constitute an Airport hazard.

(c) TENANT shall have the right to use the Leased Premises for any use permitted in the zoning district in which the property is located, and in conformance with an approved site plan or minor change of use application, as may be appropriate, subject to applicable laws and ordinances.

(d) LANDLORD reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property herein described, together with the right to cause in such airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from, or operating on the Airport.

(e) TENANT expressly agrees for TENANT and TENANT'S successors and assigns, that temporary structures shall not be allowed on the Leased Premises without the written permission of the City Manager and the proper permitting by the City of Vero Beach Planning Department. Any structure that is not permanently attached to a properly engineered poured concrete foundation shall be considered a temporary structure.

(f) TENANT expressly agrees for TENANT and TENANT'S successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the herein-described real property to such a height so as to comply with Federal Aviation Regulations, Part 77, as amended.

## **12. CONSTRUCTION OF IMPROVEMENTS:**

(a) Where the Special Provisions section of the Lease Agreement requires site plan application, TENANT shall submit a complete site plan application to the City of Vero Beach Planning Department within one hundred fifty (150) days of the approval of the Lease by the City of Vero Beach City Council, and shall diligently pursue site plan approval. Upon the receipt of acceptable justification from TENANT, said time limit for submission of a complete site plan to the City of Vero Beach Planning Department may be extended by LANDLORD.

(1) If the Planning and Zoning Board rejects the site plan, TENANT shall either appeal the Board's rejection to the City Council or submit an amended site plan application within thirty (30) days of notice of such rejection.

(2) If the Planning and Zoning Board approves the site plan, TENANT shall complete construction within twenty-four (24) months thereafter.

(b) Notwithstanding subsection (a) above, if TENANT fails to receive site plan approval within eighteen (18) months after the effective date of the Lease Agreement, LANDLORD may elect to terminate the Lease Agreement. If LANDLORD elects to terminate the Lease Agreement due to TENANT'S failure to obtain site plan approval:

(1) LANDLORD shall have the right to immediately reenter and take possession of the Leased Premises; and

(2) All title to and interest in any structures built and improvements made by TENANT upon the Leased Premises shall vest in LANDLORD.

(c) If the project intended for construction on the Leased Premises is a phased project, all construction and phasing shall be in accordance with the applicable laws and ordinances relating to such construction.

(d) In advance of any and all construction projects by TENANT on the Leased Premises, TENANT, at Tenant's expense, shall procure and provide LANDLORD with a copy of a Part 77 Airspace Study approved by the Federal Aviation Administration.

(e) In advance of any and all construction activity by TENANT on the Leased Premises, TENANT shall provide LANDLORD with copies of each and every permit required and granted for such development, together with a complete set of site plans and construction plans approved by the appropriate governing authority.

**13. RESPONSIBILITY FOR AND MAINTENANCE OF LEASED PREMISES:**

(a) TENANT agrees that LANDLORD shall have no responsibility for the maintenance of the Leased Premises, including any improvements thereon, and that TENANT shall, at TENANT'S own expense, keep in good order and repair, inside and out:

(1) any building on the real property herein described, and all structural attributes, including roofs, of such buildings; and

(2) all equipment located within any buildings, including, but not limited to, the air conditioning, machinery, plumbing, wiring, pipes, gas, steam, and electrical fittings, and all other equipment. TENANT further agrees, from time to time, to make renewals and replacements of such equipment so that, at all times, any building and its equipment will be in good operating condition, order, and

repair. The replacements and renewals made by TENANT shall be constructed to current building codes, modern in character and efficiency, and of a quality at least equal to the original structures, improvements, betterments, and equipment and sufficient for the same service.

(b) TENANT shall keep the Leased Premises clean, shall dispose of all debris and other waste matter which may accumulate, and shall provide metal containers with proper covers for waste within the buildings or properly placed and secured exterior dumpsters on said premises in compliance with all applicable laws and regulations.

(c) TENANT shall maintain the grounds, landscaping and parking areas in keeping with the same standards under which the City of Vero Beach maintains the Vero Beach Municipal Airport grounds, landscaping, and parking areas.

#### **14. DEFAULT:**

(a) Default in Payment of Rent. Should the TENANT fail to pay to the LANDLORD any installment of rent when due, the TENANT shall be deemed in default of the Lease Agreement and the TENANT shall either cure such default or surrender possession of the Leased Premises to the LANDLORD within three (3) days after written notice of the default is served on the TENANT.

(b) Defaults Other than Rent. Should the TENANT fail to perform or comply with any of its obligations, covenants, conditions, agreements, or assurances, other than payment of rent, the TENANT shall be deemed in default of the Lease Agreement and the TENANT shall either cure such default or surrender possession of the Leased Premises to the LANDLORD within fifteen (15) days after written notice of the default is served on the TENANT.

(c) Abandonment. Should the TENANT abandon the Leased Premises, whether such abandonment is actually known to the LANDLORD or presumed, the TENANT shall be deemed in default of the Lease Agreement. Absent actual knowledge by the LANDLORD of abandonment of the Leased Premises by the TENANT, abandonment shall be presumed when: (a) the TENANT has been absent from the Leased Premises for a period of thirty (30) consecutive days; and (b) the TENANT has not notified the LANDLORD in writing of the absence being intended; and (c) the rent is not current; and (d) ten (10) days have elapsed since service of a written notice on the TENANT of the default and the LANDLORD'S intent to retake possession.

(d) Right of Possession on Default. The LANDLORD may retake possession of the Leased Premises without judicial action upon surrender or abandonment of the Leased Premises by the TENANT. Should TENANT fail to cure a default under the Lease Agreement or in the alternative to surrender or abandon possession of the Leased Premises within the time provided, the LANDLORD shall have the right to recover possession of the Leased Premises as provided by law in an action for possession. The LANDLORD'S retaking of possession of the Leased Premises, whether by the TENANT'S surrender or abandonment of the Leased Premises, or by judicial action, shall not be deemed a waiver of any of the LANDLORD'S other claims, rights or remedies and will not terminate the Lease Agreement absent notice of termination by the LANDLORD. The LANDLORD may at any time after retaking possession or reletting terminate the Lease Agreement for the default because of which the LANDLORD reentered or relet the Leased Premises.

(e) Remedies In Addition To Repossession. In addition to recovery of possession of the Leased Premises as provided herein, the LANDLORD shall have the right, at its sole option, to exercise one or more of the following remedies:

(1) Terminate the Lease Agreement and recover from the TENANT all rents, fees, taxes and other amounts due through the date of termination together with any and all loss, expense, or damage which the LANDLORD may suffer by reason of such termination, whether for the costs of reletting or through an inability to relet the Leased Premises, or through a decrease in rent, or any other reason, including, but not limited to, attorney's fees and costs, through trial and appeal.

(2) Without terminating the Lease Agreement, declare the entire amount of the rent accelerated and to be due and payable immediately for the remainder of the full term of the Lease Agreement or the renewal term, in which event TENANT agrees to pay such sum at once, together with all arrearages, costs and expenses, including, but not limited to, attorney's fees and costs, through trial and appeal.

(3) Without terminating the Lease Agreement, relet the premises for any term at such rent and on such terms as the LANDLORD may choose during the remainder of the TENANT'S term for the account of the TENANT and recover from the TENANT at the end of the term or at the time each payment of rent comes due under the Lease Agreement, whichever the LANDLORD may choose, the difference between all the rent, costs and fees specified in the Lease Agreement and all the rent, costs and fees actually received from the reletting, together with any and all loss, expense, or damage which the LANDLORD may

suffer for the costs of reletting the Leased Premises or any other reason, together with all arrearages, costs and expenses, including, but not limited to, attorney fees and costs, through trial and appeal.

(f) No Waiver By Extension. Any extension of time to cure a default that may be granted to TENANT by LANDLORD after the aforementioned written notice is served shall not be deemed a waiver of LANDLORD'S right to retake possession without additional notice.

(g) Notices. The method for serving notices shall be as otherwise provided herein, or, if the TENANT is absent from the Leased Premises or the address designated by the TENANT for service of notices, by leaving a copy thereof at such place or by posting on the Leased Premises.

(h) LANDLORD may, as agent of the TENANT, do whatever the TENANT is obligated to do, other than payment of rents, by the provisions of the Lease Agreement, and may enter the Leased Premises, without being liable to prosecution of any claims for damages therefor, in order to accomplish this purpose. The TENANT hereby grants LANDLORD irrevocable authority and permission to enter the premises for this purpose and agrees to reimburse the LANDLORD immediately upon written demand for any expense which the LANDLORD may incur in thus affecting compliance with the Lease Agreement on behalf of the TENANT, and the TENANT further agrees that the LANDLORD shall not be liable for any damages resulting to the TENANT from such action, whether caused by the negligence of the LANDLORD or otherwise.

(i) In the event of any breach or threatened breach by the TENANT of any of the terms, covenants, agreements, provisions or conditions in the Lease Agreement, the LANDLORD shall have the right to invoke any right and remedy allowed at law or in

equity or by statute or otherwise as through reentry, summary proceedings, and other remedies not provided for in the Lease Agreement.

(j) Upon the termination of the Lease Agreement and the term created, or upon the termination of the TENANT'S right of possession, whether by lapse of time or at the option of the LANDLORD, the TENANT will at once surrender possession of the Leased Premises to the LANDLORD and remove all of its personal property (non-fixtures) from it. If possession is not immediately surrendered, the LANDLORD may obtain possession of the Leased Premises as provided by law (Section 83.05, Florida Statutes, or as that provision may be amended).

(k) Should the TENANT, at any time during the term of this Lease Agreement, suffer or permit an involuntary or voluntary petition in bankruptcy to be filed against it, or institute a proceeding under Chapters 7, 11, or 13 of the United States Bankruptcy Code, as they may be amended, the TENANT, and/or the TENANT'S successor in interest, including but not limited to the trustee assuming or assigned the Lease Agreement, shall provide adequate protection and adequate assurances of future performance of the Lease Agreement as are required by the Bankruptcy Code which will include but not be limited to the following:

(1) All monetary and non-monetary defaults existing prior to the institution of the filing of the bankruptcy petition shall be cured within forty-five (45) days of service of written demand made upon the TENANT by the LANDLORD which will include all costs and attorney's fees expended by LANDLORD to the date of the curing of the default; and

(2) An additional one month of advance rental will be required as additional security of future performance which must be paid to the

LANDLORD within forty-five (45) days of the filing of the petition in bankruptcy; and

(3) All obligations of the TENANT must be performed in accordance with the terms of the Lease Agreement.

If at any time during the pendency of the bankruptcy proceeding, the TENANT or its successor in interest fails to perform any of the monetary or non-monetary obligations required under the terms of the Lease Agreement, or fails to cure any pre-filing default, or fails to make the additional security deposit required under the adequate protection and adequate assurances of future performance clause above, the TENANT and/or its successor in interest stipulates and agrees to waive its rights to notice and hearing and to allow the LANDLORD total relief from the automatic stay under 11 U.S.C. 362 to enforce its rights under the Lease Agreement and under state law including, but not limited to, issuance and enforcement of a judgment for possession and writ of possession.

(l) General Provisions Relating to Default. Pursuit by LANDLORD of any of the foregoing remedies shall not preclude the pursuit of any of the other remedies herein provided or any other remedies provided by law. No act or thing done by the LANDLORD or its agents during the term hereby granted shall be deemed an acceptance of a surrender of said Leased Premises, and no agreement to accept a surrender of said Leased Premises shall be valid unless the same be made in writing and subscribed by the LANDLORD. The mention in the Lease Agreement of any particular remedy shall not preclude the LANDLORD from any other remedy the LANDLORD might have, either in law or in equity, nor shall the waiver of or redress for any violation of any covenant or condition in the Lease Agreement or any of the rules

and regulations set forth herein, or hereafter adopted by LANDLORD, prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The acceptance by the LANDLORD of any rent with knowledge of the breach of any covenant in the Lease Agreement, other than a breach by non-payment, shall not be deemed a waiver of such breach. Termination of the Lease Agreement by lapse of time or otherwise, prior to the ending thereof as agreed to by the parties shall not affect the LANDLORD'S right to collect rent for the period prior to the termination thereof.

**15. SURRENDER AT END OF TERM:** At the expiration or termination of the initial term or any renewal term of the Lease Agreement or earlier termination hereof, TENANT shall peaceably and quietly leave, surrender and deliver to LANDLORD the Leased Premises, together with any buildings, improvements, and fixtures, excluding any personal property of TENANT not affixed to the Leased Premises, broom clean, and in thorough repair, good order, and safe condition. TENANT shall remove all of TENANT'S unaffixed personal property from the Leased Premises upon termination. If TENANT fails to remove TENANT'S unaffixed personal property within fifteen (15) days after the date of expiration or earlier termination, such property shall be deemed to have been abandoned without notice to TENANT. LANDLORD may appropriate, sell, store, destroy, or otherwise dispose of any such abandoned property without notice to TENANT and without obligation to account therefor. Further, TENANT shall pay to LANDLORD the cost LANDLORD incurs in removing, selling, storing, destroying, and disposing of such abandoned property in excess of any value recovered for such abandoned property.

**16. HOLDOVER TENANCY:** If the TENANT remains in possession of the Leased Premises after the Lease Agreement expires or terminates for any reason:

(a) TENANT will be deemed to be occupying the Leased Premises as a TENANT from month-to-month at the sufferance of the LANDLORD. The TENANT will be subject to all of the provisions of the Lease Agreement, except that, at the LANDLORD'S discretion, the base rent will be at a monthly rate equal to twice the amount of a single monthly installment of fixed rent for the Leased Premises calculated at the then current rate in effect at the time of expiration or termination of the Lease Agreement; and

(b) TENANT shall reimburse LANDLORD for any additional damages which LANDLORD suffers by reason of TENANT'S continued occupancy; and

(c) TENANT shall indemnify LANDLORD from and against all claims made by any succeeding tenant insofar as such delay is occasioned by TENANT'S failure to surrender the Leased Premises. For purposes of this Section, "Base Rent" shall be that portion of the rent based on a square footage rate, as adjusted by the CPI.

**17. ACCORD AND SATISFACTION/WAIVER:**

(a) If the TENANT pays to LANDLORD an amount that is less than the full amount stipulated to be paid under the terms of the Lease Agreement, that payment shall be considered to be made only on account and applied to the stipulated amount due. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The LANDLORD may accept any check or payment without prejudice to the LANDLORD'S right to recover the balance due or to pursue any other available remedy.

(b) Any default in the payment of the fixed or additional rent or other charges, or any failure of LANDLORD to enforce the provisions of the Lease Agreement upon any default by TENANT, shall not be construed as creating a custom of deferring payment or as modifying in any way the terms of the Lease Agreement, or as a waiver of LANDLORD'S right to terminate the Lease Agreement as herein provided, or otherwise to enforce the provisions thereof for any subsequent default.

**18. MORTGAGING THE LEASEHOLD:** Unless specifically excluded under the Standard or Special Provisions of the Lease Agreement, and unless TENANT is in default under the terms of the Lease Agreement, TENANT shall have the right to mortgage TENANT'S interest created under the Lease Agreement, subject to all the terms and conditions of the Lease Agreement, to a Federal or State Savings and Loan Association, Bank or Trust Company, Insurance Company, Pension Fund or Trust, or similar lending institution authorized and licensed to make leasehold mortgage loans in the State of Florida. If TENANT mortgages the leasehold estate, and if the holder of the mortgage (hereinafter the "Mortgagee"), within forty-five (45) days of its execution, delivers to LANDLORD a true copy of the mortgage and all pertinent documents related thereto, together with written notice specifying the name and address of the Mortgagee and the pertinent recording data with respect to the mortgage, then, as long as any such leasehold mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to LANDLORD, the following provisions shall apply:

(a) Upon serving TENANT with any notice of default pursuant to Paragraph 14, LANDLORD shall simultaneously mail or otherwise deliver a copy of the notice of default to the Mortgagee. If TENANT fails to cure the default(s) within the time stated in the notice of default, LANDLORD shall deliver to Mortgagee an additional notice so

stating. Mortgagee shall have fifteen (15) days from the date of the additional notice to remedy or cause to have remedied the default(s) listed on the notice of default, and LANDLORD shall accept the remedy by or at the instigation of the Mortgagee as if performed by TENANT. TENANT shall cooperate fully in giving notice to the Mortgagee and otherwise assisting in correcting any default(s).

(b) LANDLORD agrees that the name of the Mortgagee may be added to the "Loss Payable Endorsement" of any insurance policies required by the Lease Agreement to be carried by TENANT on condition that the insurance proceeds are to be applied strictly in the manner specified in the Lease Agreement and any mortgage and all collateral document(s) shall so provide. Any expense resulting thereby shall be the TENANT'S responsibility.

(c) TENANT shall also have the right from time to time during the term of the Lease Agreement to place any substitute or additional mortgage on the leasehold estate created by the Lease Agreement and on TENANT'S interest in the leasehold estate; provided, however, that all such mortgages, and any and all mortgages created pursuant to this Paragraph 18, shall be subordinate to the Lease Agreement and no such mortgage(s) shall extend beyond the initial term or the option term, if any, then in effect; provided, further, that LANDLORD shall have the right to approve or deny TENANT'S request to place the additional or substitute mortgage on the leasehold estate. LANDLORD shall not unreasonably withhold such approval.

(d) No mortgage on the leasehold estate created by the Lease Agreement or on the TENANT'S interest in the leasehold estate shall be binding upon the LANDLORD in the enforcement of LANDLORD'S rights under the Lease Agreement.

**19. ENVIRONMENTAL PROVISIONS:**

(a) Subject to any limitations in federal or state law, the LANDLORD agrees that the TENANT shall have no liability for any pre-existing environmental contamination of the Leased Premises, provided the TENANT demonstrates that an event causing such environmental contamination was a pre-occupancy event as described in Paragraph (k) of this section for which TENANT is not liable hereunder. The LANDLORD will hold the TENANT harmless from all costs and expenses associated with any such pre-existing environmental contamination of the Leased Premises arising out of a pre-occupancy event which was not caused by the TENANT.

(b) Notwithstanding the foregoing, the TENANT shall be solely responsible for and indemnify LANDLORD for all costs and expenses including, but not limited to, remediation, fines, and attorney's fees through trial and appeal, that arise in any manner out of environmental contamination caused by the TENANT, the TENANT'S agents, employees, contractors, or invitees during any prior or current tenancy or occupancy of the Leased Premises or any portion thereof.

(c) The parties' responsibilities, obligations, and liabilities pursuant to this Lease Agreement shall survive the expiration or early termination of the Lease Agreement or any renewal term.

(d) Nothing in the Lease Agreement shall be deemed to be a waiver of the LANDLORD'S right to take action against responsible parties for remediation of, or payment for, environmental contamination on the Leased Premises, nor be deemed to be an assumption by the LANDLORD of the responsibility for such remediation or payment, except as may be imposed on the LANDLORD as a matter of law.

(e) The TENANT acknowledges that remediation steps taken to correct any environmental contamination may extend over a number of years and may cause

inconvenience and business interruption to the TENANT. The LANDLORD shall not be liable to the TENANT in any manner for such inconvenience and disruption.

(f) Except as properly permitted under federal, state and local laws, rules, and regulations, TENANT shall not conduct nor permit or authorize any other person or entity to engage in the generation, storage, treatment, or disposal of any hazardous materials (as defined under federal, state, and local environmental laws), on or in any location that might adversely affect or contaminate the Leased Premises. This paragraph (f) shall not apply to properly permitted storage, if any, allowed under the terms of the Lease Agreement.

(g) The TENANT shall store, utilize, and dispose of all industrial, domestic, hazardous, and solid wastes permitted under the terms of the Lease Agreement in accordance with applicable federal, state, and local laws, rules, and regulations.

(h) TENANT shall immediately provide LANDLORD verbal notice of any spill or release of hazardous materials at or from the Leased Premises. TENANT shall promptly confirm the verbal notice to LANDLORD in writing providing the details of such spill or release and the remediation taken by TENANT.

(i) TENANT shall not install or utilize any irrigation wells on the Leased Premises.

(j) In the event that any environmental condition arises on the Leased Premises or any hazardous materials prohibited by or actionable under applicable law should now or hereafter contaminate, or be located on the Leased Premises, except for pre-occupancy events as described in Paragraph (k) of this section, TENANT hereby agrees, at its expense, to immediately (1) remove said materials from the Leased Premises; (2) comply with any and all orders or directives of any federal, state, or local

agency or department relative thereof; and (3) return the Leased Premises to its pre-existing condition without any diminution in the value thereof.

(k) As used herein, "pre-occupancy event" shall mean any condition, occurrence, or event, including, but not limited to, a spill, the storage, disposal, or use of a hazardous material or waste as defined by federal, state or local law, ordinance, rule or regulation, occurring prior to the commencement date of the Lease Agreement and not caused by TENANT, whether originating on or off of the Leased Premises, whether known or unknown at the time of the commencement date of the Lease Agreement, and whether or not any plume or contamination is determined to be ongoing or continuous.

## **20. PAYMENT AND PERFORMANCE BONDS:**

(a) TENANT shall cause TENANT'S contractor to obtain and provide a payment and performance bond, in the form approved by LANDLORD, for construction of any improvements on or to the Leased Premises for which the cost of completion will exceed \$10,000.00. Such bond shall be payable in an amount equal to One Hundred Twenty-Five Percent (125%) of the estimated cost to complete the improvements and shall be underwritten by a surety acceptable to LANDLORD and authorized to do business in the State of Florida. TENANT'S contractor may substitute for a bond, a payment and performance irrevocable letter of credit, in the form approved by LANDLORD, from a bank authorized to do business in the State of Florida, and with an office located in Indian River County, Florida where such letter of credit may be drawn upon. All such bonds and letters of credit shall inure to the benefit of LANDLORD and TENANT and all other persons, companies and corporations entitled to make a claim for payment against the bond or letter of credit pursuant to the applicable provisions of Florida law. Such bond or letter of credit shall remain in effect through completion of the

improvements and all guarantee and warranty periods. No improvements on or to the Leased Premises shall commence before the required bond or letter of credit is received and approved by LANDLORD.

(b) TENANT shall cause TENANT'S contractor to provide a contractor's final affidavit upon completion of the improvements, certifying to LANDLORD and TENANT that full payment was made to all subcontractors, material men, leasing companies, and any other person, company, or corporation providing goods, materials or services for the improvements.

## **21. NOTICES:**

(a) Any notice required or permitted to be given hereunder shall be in writing and deemed to have been duly given: (i) upon delivery (personally, by courier service, or other messenger) to the address of the appropriate party; or (ii) upon receipt as evidenced by the appropriate form of the United States Postal Service after mailing by United States registered or certified mail, return receipt requested, postage prepaid to such address; or (iii) upon mailing if such registered or certified mail is refused by the recipient or returned unclaimed to the sender. Any notice of default by TENANT of the Lease Agreement shall be given pursuant to the default provision.

(b) LANDLORD designates the City Manager as its official representative with the full power to represent LANDLORD in all dealings with TENANT in connection with the Leased Premises and in administration of the Lease Agreement. LANDLORD may designate different or additional representatives from time to time by written notice to TENANT as provided herein. All notices shall be given to the LANDLORD at the address set forth below or at such other address as specified by written notice delivered to the TENANT as provided herein.

City of Vero Beach  
City Manager's Office  
P.O. Box 1389  
Vero Beach, Florida 32961-1389

All notices shall be given to the TENANT at the address of the Leased Premises or such other address as specified by written notice delivered to the LANDLORD as provided herein.

**22. REAL ESTATE COMMISSION:** LANDLORD and TENANT each covenant and warrant to the other that they have not authorized any person, firm, or corporation as a real estate agent or broker to deal on behalf of such party with respect to the Lease. TENANT agrees to indemnify and hold harmless LANDLORD from any claim for remuneration, commissions or broker's fees arising out of this transaction and Lease.

**23. ENTRY OF LANDLORD:** LANDLORD may enter the Leased Premises for any legal purpose, including, but not limited to:

- (a) To inspect or protect the Leased Premises;
- (b) To determine whether TENANT is complying with the terms of the Lease Agreement, applicable laws, orders, or regulations of any lawful authority having jurisdiction over the Leased Premises or any business conducted therein; or
- (c) To exhibit the Leased Premises to any prospective tenant when TENANT is in default of the Lease Agreement or has notified LANDLORD of intention to terminate the Lease Agreement or during the last six (6) months of the term of the Lease.

No authorized entry by LANDLORD shall constitute an eviction of TENANT or deprivation of TENANT'S rights under the Lease; nor shall such entry alter

LANDLORD'S obligations hereunder or create any right in LANDLORD adverse to TENANT'S interest hereunder.

**24. CONSTRUCTION:**

The Lease Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

**25. LITIGATION:**

LANDLORD and TENANT expressly agree that in the event suit or any other legal action arising out of or in any way connected with the Lease Agreement or use of the Leased Premises is initiated:

(a) Venue shall be in Indian River County, Florida.

(b) Trial by jury is hereby waived, on any matter whatsoever, including, without limitation, any claim for injury or damage.

(c) The prevailing party shall be awarded their costs and all reasonable attorney's fees incurred through trial and appeal.

(d) In the event any distress for rent action is brought by LANDLORD against TENANT, TENANT expressly waives all constitutional, statutory or common law requirements for a bond by LANDLORD, including the requirements of Section 83.12, Florida Statutes, or as that provision may be amended. TENANT specifically agrees that no bond shall be required of the LANDLORD in any action.

(e) In any eviction action initiated by LANDLORD, TENANT shall pay into the court registry the accrued rents as alleged in the complaint or as determined by the court pursuant to Section 83.232, Florida Statutes, or as that provision may be amended. Failure of the TENANT to pay the rents into the court registry shall be

deemed an absolute waiver of the TENANT'S defenses and shall entitle LANDLORD to an immediate default for possession without further notice or hearing thereon.

(f) TENANT shall not bring any counterclaim of any kind in any action or proceeding commenced by LANDLORD to recover possession of the Leased Premises. The parties acknowledge that any such counterclaim would be prejudicial to the rights of LANDLORD granted under the Lease Agreement. The parties stipulate that any such counterclaim shall be severed and tried separately from the action for eviction pursuant to Florida Rule of Civil Procedure 1.270(b) and other applicable law. The eviction action shall proceed pursuant to the summary procedure set forth in Chapter 51, Florida Statutes, or as that provision may be amended.

(g) TENANT shall utilize its best efforts to participate to the extent deemed necessary and directed by LANDLORD in the defense of any lawsuit brought by any person or entity challenging the validity of the Lease Agreement between the parties, the circumstances under which it was entered into, or any other such causes of action relating to the power of the parties to enter into the Lease Agreement or the procedures utilized by the parties for leasing the Leased Premises.

## **26. MISCELLANEOUS PROVISIONS:**

(a) Notwithstanding anything herein contained that may be or appear to be to the contrary, it is expressly understood and agreed that the rights granted to the TENANT under the Lease Agreement are non-exclusive and the LANDLORD herein reserves the right to grant similar privileges to another tenant or tenants on other parts of the Airport.

(b) LANDLORD reserves the right to explore, dig, drill and construct water wells of such depth and dimension as may suit its needs on any part of the Leased

Premises with the right of ingress, egress and regress for such exploring, digging, drilling and construction and for laying of pipes to transport such water at such depth and for such distance over the Leased Premises as may be deemed necessary by LANDLORD. If LANDLORD exercises this right, TENANT'S rent will be reduced, based solely on the square footage of land and/or commercial space made unavailable for TENANT'S use, at the applicable rates as described in the rent provisions of the Lease Agreement. If LANDLORD exercises this right, LANDLORD shall, to the extent possible, locate such wells in such a manner as not to disturb TENANT'S operations.

(c) TENANT expressly agrees for TENANT and TENANT'S successors and assigns, that no person, on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; that the TENANT and TENANT'S successors and assigns shall use the premises in compliance with all other requirements imposed by or pursuant to Federal Regulations, and as such regulations may be amended; that in the event of breach of any of the above nondiscrimination covenants, LANDLORD shall have the right to terminate the Lease Agreement and to retake possession pursuant to law.

(e) If TENANT is a corporation, partnership, or limited liability company, TENANT'S status shall continuously be in good standing, active, and current with the state of its incorporation or registration and the State of Florida, and TENANT shall keep

its status active and current throughout the term of the Lease Agreement and renewal. Failure of TENANT to keep its status active and current shall constitute a default.

(f) LANDLORD reserves the right to develop, improve, repair, and alter the Airport and all roadways, parking areas, terminal facilities, landing areas, and taxiways as it may deem appropriate, free from any and all liability to TENANT for TENANT'S loss of business or damages of any kind or nature whatsoever arising out of or connected to the making of such improvements, repairs, and alterations.

(g) Any construction, reconstruction, remodeling, installation of improvements, or other work done to the Leased Premises by TENANT shall be performed in compliance with the requirements of the Americans with Disabilities Act ("ADA"), at TENANT'S expense. In the event that a regulatory agency, private party, organization, or any other person or entity makes a claim under the ADA against either (or both) parties, the party whose breach (or alleged breach) of responsibility under this Lease Agreement gave rise to the claim shall, in good faith and at that party's sole cost, promptly take whatever actions are necessary to bring the Leased Premises into compliance with ADA requirements. That party shall defend, save, and hold harmless the other party from any and all expenses incurred in responding to such a claim, including without limitation the fees of attorneys and other advisors, court costs, and costs incurred for bringing the Leased Premises into compliance.

(h) The captions and paragraphs or letters appearing in this Attachment B and the Lease Agreement are inserted only as a matter of convenience and in no way affect, define, limit, construe, or describe the scope or intent of the sections or articles of this Attachment B and the Lease Agreement.

(i) This Attachment B, together with the Lease Agreement and all related attachments, agreements, resolutions, and ordinances approved by the City of Vero Beach, set forth all the promises, agreements, conditions, and understandings between LANDLORD and TENANT relative to the Leased Premises. There are no other promises, agreements, conditions, or understandings, either oral or written, between them. No subsequent alteration, amendment, change, or addition to this Lease Agreement will be binding on LANDLORD or TENANT unless in writing and signed by them and made a part of this Lease Agreement by direct reference.

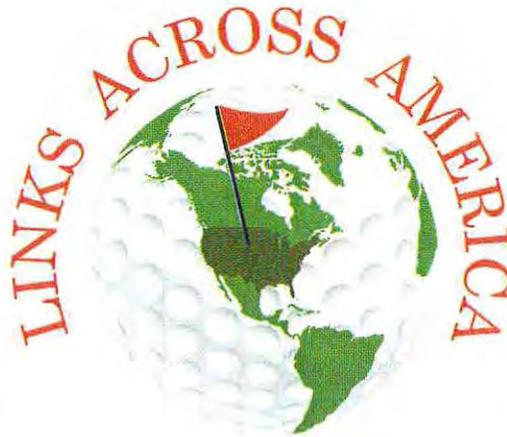
(j) The terms of this Attachment B and the Lease Agreement shall be binding on the respective successors, representatives, and assigns of the parties.

(k) The Lease Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all which together will constitute one and the same instrument.

(l) Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

# EXPANDING THE

The Wadsworth Golf Charities Foundation and its **growing list of Company Partners from the Golf industry**, that have committed to join this important endeavor, partner with park districts, YMCA's municipalities, existing golf courses, First Tee Chapters, school dis-



tricts, hospitals, & forest preserve districts **to develop "feeder short courses"** (three, six or nine-hole) **across the country to provide affordable golf** for especially youth, families, adult beginners and individuals with injuries & disabilities from all ethnic backgrounds.

## New Short Course Projects

### Dundee Township Park District

Par 3 short course with putting, chipping & pitching greens opening in the Summer 2010.

The Wadsworth Foundation wishes to recognize **The Bruce Company of Wisconsin and Lohmann Golf Design** for their significant contributions to this *Links* project.

### The First Tee of Savannah

3-hole short course with driving range, putting green & chipping green complex opening in the Summer 2010.

The Wadsworth Foundation wishes to recognize **MacCurrach Golf Construction, Paul Loague Golf Design, Synthetic Turf International, Ace Netting, Wittek Golf, Club Car, CGL of Savannah, International Paper Co. and The First Tee of Savannah** for their collaboration and contributions to make this *Links* project a reality.

### The First Tee of NW Arkansas

\* **3-hole short course in Fayetteville** with construction scheduled to begin in late spring of 2010

The Wadsworth Foundation wishes to recognize **David Whelchel from Hurdzun/Fry, who is providing the design services for this *Links* project.**

\* **9-hole short course & driving range in Bentonville** with construction to begin fall of 2010.

The Wadsworth Foundation wishes to recognize **Paul Loague Golf Design and David Whelchel from Hurdzun/Fry, who are working together to create a fantastic *Links* short course facility.**

## Projects in Operation

### Lockport Township High School

4-hole short course for youth/families of Lockport, IL.

### Akron General Hospital, Akron, OH

Challenge Golf three-hole Par 3 for the challenged.

# AME OF GOLF

## Our Growing Team of Company Partners

The following is our growing list of Links Company Partners that have committed to join our team in this endeavor. This means that when they become involved in a Links project, the team partners will contribute profit, goods or services to assist in achieving the development of the Links short courses at a significantly lower cost.

### Golf Course Contractors

Eagle View Golf, LLC – Ronald Matthews • Glase Golf , Inc. – James Glase  
Golf Creations – Jim Lohmann • Golf Works – Frank Hutchinson  
Landscapes Unlimited – Bill Kubly • Bruce Company of Wisconsin – Dave Weber  
Mid-America Golf & Landscape – Rick Boylan • NMP Golf Construction Corp. – Yves Brousseau  
Wadsworth Golf Construction – Tom Shapland • MacCurrach Golf Construction

### Golf Course Architects

Dye Designs Group – O'Brien McGarey • Art Hills/Steve Forrest • Paul Loague Golf Design  
Lohmann Golf Designs • Greg Martin Golf Design • Weibring/Wolfard Golf Design.  
Hurdzan-Fry - Dave Whelchel • Mungeam Cornish Golf Design – Tim Gerrish  
Ed Gerlach • Thomas E. Clark • Jemsek Golf Design

### Golf Industry Partners

Club Car • John Deere Golf • Fore Reservations • Golf Visions Management Company  
Synthetic Turf International • Sprung Instant Structures – Small Clubhouse Structures  
Dan Nicholas – Clubhouse Design • Golf Core • Wittek Golf • Signature Bridge  
CGL of Savannah – Golf Management • Thompson, Dyke & Associates – Recreation/Sports Complex Design  
Eagle Sign & Design • Schoppe Design Associates, Inc. – Land Planning & Recreational Complexes  
Davey Tree Company • Ace Golf Netting

For further details contact Leon McNair at [leonm@wadsworthgolf.com](mailto:leonm@wadsworthgolf.com)





## **Expanding the Game of Golf**

by

Creating a team of Company Partners from the Golf Industry to develop “feeder short courses” (three, six or nine hole) across the country that provide affordable golf for youth, families, adult beginners and individuals with injuries and disabilities from all ethnic backgrounds.

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- 10 Reasons Why To Revive The Short Courses

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- October 2009- Article in Golf Course Industry

# Expanding the Game of Golf

Creating a team of Company Partners from the Golf Industry to develop “feeder short golf courses” (three, six or nine-hole) across the country that will provide affordable golf for youth, families, adult beginners and individuals with injuries and disabilities from all ethnic backgrounds.



Given the premise that golf is a good and powerful teacher for individuals, especially children, the concept is to build short courses (three, six or nine hole) that will provide affordable access across the country.

To bring about the new venues and make these feeder short courses a reality, the Wadsworth Golf Charities Foundation would partner with communities, park districts, YMCA's, developers, existing golf courses that have the land, hospitals, forest preserve districts or school districts that can donate the land and operate the facility. In addition, a team of Company Partners from the golf course construction and golf facility industry is being established, who will whenever possible contribute profit, goods or services to create the short courses at a significantly lower cost. In addition to a financial contribution, the Wadsworth Foundation would work with the ownership group to secure Funding Partners that are interested in becoming a title sponsor for the *Links Across America* course or be the major donor and have it named after their Company or Family.

In conjunction with the *Links Across America* initiative a “Links” Guidebook has been developed. The “Links” Guidebook serves as a resource document provided to potential owners, Company Partners, Corporate or Foundation Funders and associates in the Golf Industry. The “Links” Guidebook consists of design and operating templates, information on the Company Partners, opportunities for Corporate/Foundation Funders, round projections, budgets and financial pro formas, marketing and promotional ideas and other materials to assist and enable “Links Across America” short courses to achieve many positive results while graduating future golfers to the next level of regulation courses.

The need for this type of facility is being reconfirmed by the positive responses the Wadsworth Foundation has received from park districts, municipalities, YMCA's and First Tee Chapters across the country. In 2009, plans provide for construction to begin on the first two short courses, with a goal thereafter of two short courses per year. For further details: contact Leon McNair at [leonm@wadsworthgolf.com](mailto:leonm@wadsworthgolf.com)





To make these short courses a reality and become successful.....

**FIRST** -The Wadsworth Foundation partners with communities, park districts, forest preserve districts, YMCA's, First Tee Chapters, existing golf courses that have land or school districts that have the means to secure or donate the land for the *Links* short courses and driving range facilities.

**SECOND** – **OUR TEAM OF Company Partners**, which consists of golf course architects, golf course builders and company suppliers from the Golf Industry – *are committed to whenever possible contributing profit, goods or services to create the short courses at a significantly lower cost.*

**THIRD** – The Wadsworth Foundation must make sure all the Team Partners receive **RECOGNITION** for their efforts and involvement in *Links*.

- Recognition for their involvement in a new *Links* facility.
- At least once a year, recognize all the *Links* Company Partners in a national trade publication. See *GolfInc.*, Jan. 2010

**FOURTH** – to provide assistance in the operational costs of the “feeder short course facilities”, the *Links* team of Company Suppliers from the Golf Industry provide savings in course equipment, range equipment, computer tee time & POS software, clubhouse design, budgets and financial pro-formas.

**FINALLY** – the Wadsworth Golf Charities Foundation will a make a significant contribution to each short course project.





## **The Need** For *Expanding the Game of Golf*

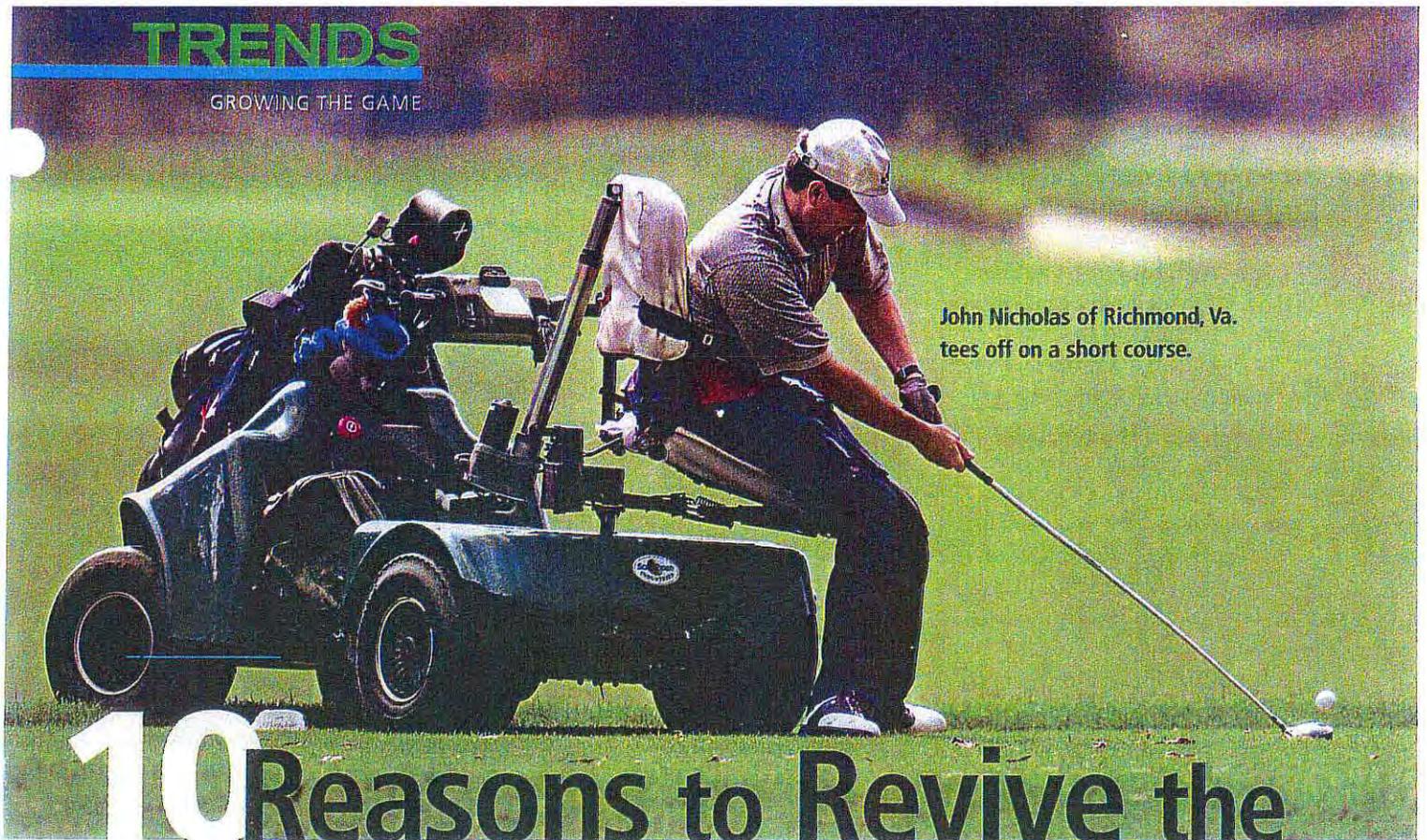
- Young people, families, adult beginners and individuals with challenges are **losing places to play.**
- For the **third straight year (2006 – 2008)** golf course closures nationwide **have outpaced openings.**
- If you're a golf course owner – you might see this as a positive. **But, if we're concerned about the growth of the game and why rounds are shrinking – we need to take a closer look at the courses that are closing.**
- In the past five years (2004 – 2008), the NGF has reported there have been 530 golf course closures and of this total – **200 were short courses, the stand alone 9-hole, par 3's and executives. These are the value courses (value = 18 hole green fees under \$25) where we learn to play the game.** If these “value feeder courses” were averaging 16,000 rounds annually, **this equates to a collective loss of 3,200,000 rounds of golf.** Where did these golfers go?? How many left the game??
- According to the National Golf Foundation, in 2005 there were 3.8 m juniors that played at least one (1) round of golf. **By 2008 that number has dropped to 2.9 m!!! In the last three years we've lost 900,000 young golfers from the ages of 6 thru 17.**

# Why Is It Important??

- Every year we have thousands of Junior golf programs, First Tee programs, grow the game & Play Golf America programs going on throughout the country.
- Even though we agree that introduction & instruction on how to play the golf is extremely important for people of all ages, the fact remains –  
To turn things around & begin to grow the game, we've got to do everything possible to provide affordable access so that youth, families, adult beginners and individuals with challenges can play the game on a frequent basis.

What are the reasons why the potential owners of a Links short course (park districts, municipalities, First Tee Chapters, YMCA's, and forest preserve districts) feel it's important to provide access to play the game of golf??

- they realize that golf courses are and will always be an important classroom, especially for young people.
- they understand playing golf can enhance lives.
- they believe the Links short course type of facility can benefit their community and whenever possible, include the *Links* short course within a communities cultural, recreational/sports complex.
- they are learning golf can play a significant role in assisting individuals with disabilities and injuries.
- they realize in our society today, there is not a better sport than golf that teaches the lessons by which we are to live life. What game other than golf, where there is no violence, the setting is peaceful and friendly, is more suited to teach the principles that can effectively guide us all the way through life and they can be learned by people of all ages, especially children – **provided they have the opportunity to learn and play the game.**



John Nicholas of Richmond, Va. tees off on a short course.

# 10 Reasons to Revive the Affordable Short Course

More players, more rounds, more respect: things every golf course in America needs.

By Jennifer Paire

**T**he Wadsworth Golf Charities Foundation of Middleton, Ohio, is working with courses, vendors, municipalities and other organizations to develop Links Across America, a short course feeder program intended to build players and rounds over the next few decades. With a goal to have two courses nearing completion in 2009, and two a year for the 10 years after, there is a lot of work to do.

What started as an idea last spring is gaining momentum and interest.

"I became enthralled with the idea from the get-go," says Leon McNair, president of the Wadsworth Foundation. "We know golf is a good and powerful teacher. If we can get youth playing more frequently, we will enhance their life and we'll be able to enhance the community and in the end maybe we can have a positive impact on helping to grow the game."

McNair is interested in creating more than an introduction — he hopes the courses will become a life-long love for players young and old and that it will result in millions of rounds played over the next 20 years (and these are conservative numbers).

Check out the top 10 reasons why Links is a good idea:

**10. Potential players would buy it:** Short courses attract new players and families. Links Across America is designed to encourage would-be players to try golf without fear of embarrassment or great expense. Frank Jemsek, owner of Cog Hill Golf & Country Club in Lemont, Ill., has polled players during his "No Embarrassment" beginners programs. He was shocked to learn that they liked the short courses, many of which were going out of business. He gives short course operators passes for

Cog Hill to encourage players to check out one of Cog Hill's four regulation courses.

**9. Existing courses aren't threatened by it:**

The program is designed to develop a love of golf, and those who love it will likely find a larger course to play. While golf clubs across the country are working with youngsters and offering evening programs for families, these are not necessarily pushing overall rounds. Links Across America is designed to feed existing courses for the long haul.

"Some of the short courses play huge numbers of rounds," says Jemsek. "I think a course like that would help the market in the area."

**8. Communities will feel the effects of it:**

A key first step of the Links program is to establish joint partnerships with a community, hospital, park district, school district, existing golf course or foundation that can provide land and a sustainment plan to create multipurpose golf links—a 9-hole par 3 or a 3- to 6-hole short course. Sports entertainment complexes are another venue that could host a course.

**7. Youngsters already like it:** Given a proper introduction, kids take to golf. Button Hole's 9-hole Par 3 course in Providence, R.I., is an emerald in the inner city. It was built on top of what was once a junk-filled gravel pit. Through its school program and regular play, the course reaches 1,700 kids a year.

**6. Families could participate more easily:**

Other programs such as The First Tee have also encouraged younger players. Sherry Dircks, head golf professional at the First Tee of Augusta, says the course is used as outreach for disabled players and is open to the general public. The most a family of four would pay would be \$24.

**5. Disabled players love options:** John Nicholas of Fairfax, Va., took up golf after a spinal cord injury and is an advocate for accessible golf. He believes that golf is the only sport in which he can compete on the same playing ground with anyone. According to Nicholas, Links Across America "looks spot on."

"I always say that golf is the ultimate sport of inclusion," Nicholas says. "The biggest challenges that disabled people face when

entering the work force are self esteem and public perception. These can both be improved by playing golf."

**4. Industry vendors are game:** A committed group of companies in the golf course construction and facility industry is key to the success of Links, McNair says. Several are stepping up to provide services at cost or for free to assist the movement.

"We won't have a market if we don't have it grow," says Harry Ipema, owner of Fore Reservations, Inc. in Burr Ridge, Ill., which provides software and marketing tools to increase rounds and revenue. "We are willing to help because we believe in the game and we want this thing to grow."

Ipema believes enough to offer software and hardware at cost as Links gets off the ground.

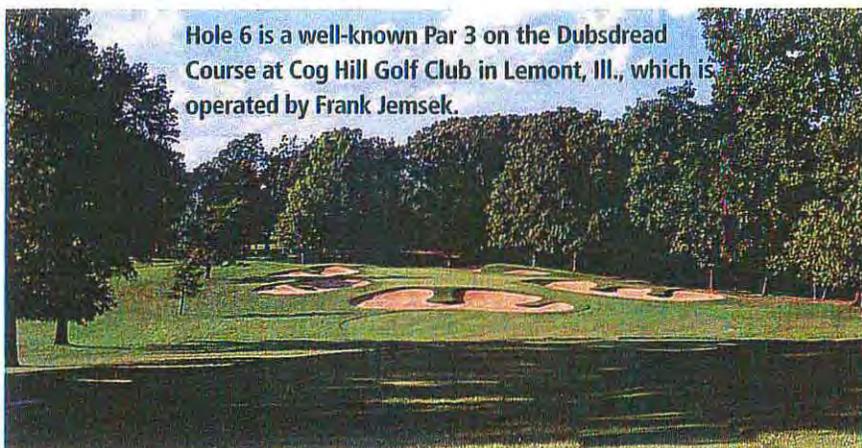
**3. It's affordable:** McNair says rounds will be inexpensive at Links facilities—no more than the cost of a movie ticket. "It's not intended to be a money generator but an interest generator."

**2. It's a land use plan:** While those involved feel that obtaining land for the program will be the greatest challenge, it could be an opportunity for municipalities, courses, corporations or individuals to donate land. McNair is working with several such groups now, and the goal is to get the first couple close to completion in 2009, most likely in the Chicagoland area.

**1. Showing the world what they are missing:** If everyone knew how great golf is, wouldn't they be playing, too? ■



Leon McNair, president of the Wadsworth Foundation, is the driving force behind Links Across America.



Hole 6 is a well-known Par 3 on the Dubsread Course at Cog Hill Golf Club in Lemont, Ill., which is operated by Frank Jemsek.



## **Our Growing Team of Company Partners**

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Mid-America Golf & Landscape – Rick Boylan / NMP Golf Construction Corp. – Yves Brousseau  
/ Wadsworth Golf Construction – Tom Shapland / MacCurrach Golf Construction

### **GOLF COURSE ARCHITECTS**

Dye Designs Group – O'Brien McGarey / Art Hills/Steve Forrest / Paul Loague Golf Design  
Lohmann Golf Designs / Greg Martin Golf Design / Weibring/Wolfard Golf Design  
Hurdzan-Fry - Dave Whelchel / Mungeam Cornish Golf Design – Tim Gerrish  
Ed Gerlach / Thomas E. Clark / Jemsek Golf Design

### **GOLF INDUSTRY PARTNERS**

Club Car / John Deere Golf / Fore Reservations / Golf Visions Management Company  
Synthetic Turf International / Sprung Instant Structures – Small Clubhouse Structures  
Dan Nicholas – Clubhouse Design / Golf Core / Wittek Golf / Signature Bridge  
CGL of Savannah – Golf Management / Thompson, Dyke & Associates – Recreation/Sports  
Complex Design / Eagle Sign & Design / Schoppe Design Associates, Inc. – Land Planning &  
Recreational Complexes / Davey Tree Company / Ace Golf Netting

For further details contact Leon McNair at [leonm@wadsworthgolf.com](mailto:leonm@wadsworthgolf.com)



# Expanding the Game of Golf



The Wadsworth Golf Charities Foundation and its **growing list of Company Partners from the Golf industry**, that have committed to join this important endeavor, partner with park districts, YMCA's municipalities, existing golf courses, First Tee Chapters, school districts, hospitals, & forest preserve districts to **develop "feeder short courses"** (three, six or nine-hole) **across the country to provide affordable golf** for especially youth, families, adult beginners and individuals with injuries & disabilities from all ethnic backgrounds.

## NEW SHORT COURSE PROJECTS

### Dundee Township Park District

Par 3 short course with putting, chipping & pitching greens opening in the Summer 2010.  
The Wadsworth Foundation wishes to recognize **The Bruce Company of Wisconsin and Lohmann Golf Design** for their significant contributions to this *Links* project.

### The First Tee of Savannah

3-hole short course with driving range, putting green & chipping green complex opening in the Summer 2010.  
The Wadsworth Foundation wishes to recognize **MacCurrach Golf Construction, Paul Loague Golf Design, Synthetic Turf International, Ace Netting, Wittek Golf, Club Car, CGL of Savannah, International Paper Co. and The First Tee of Savannah** for their collaboration and contributions to make this *Links* project a reality.

### The First Tee of NW Arkansas

- \* **3-hole short course in Fayetteville** with construction scheduled to begin in late spring of 2010  
The Wadsworth Foundation wishes to recognize **David Welchel from Hurdzun/Fry**, who is providing the design services for this *Links* project.
- \* **9-hole short course & driving range in Bentonville** with construction to begin fall of 2010.  
The Wadsworth Foundation wishes to recognize **Paul Loague Golf Design and David Welchel from Hurdzun/Fry**, who are working together to create a fantastic *Links* short course facility.

## PROJECTS IN OPERATION

- Lockport Township High School  
4-hole short course for youth/families of Lockport, IL.
- Akron General Hospital, Akron, OH  
Challenge Golf three-hole Par 3 for the challenged.





## **Projects in Discussion / Planning Stage**

- **The First Tee of Northeast Wisconsin at Green Bay in conjunction with the Brown County Forest Preserve District.**

*Nine hole short course and driving range facility.*

- **YMCA Camp Independence in conjunction with Dr. David McLone from Children's Memorial Hospital**

*3-hole short course with synthetic greens and tees for young people with challenges.*

- **The new Practice / Learning Center in Justice, Illinois**

*In conjunction with the existing driving range - create in phases a short game practice area with a three to nine-hole short course.*

- **Upper Macungie Township, Breinigsville, PA**

*Developing a nine-hole par 3 short course.*





# Dundee Township Park District

21 North Washington Street • Carpentersville, Illinois 60110 • 847-551-4300  
847-551-4302 - Fax

September 11, 2009

Mr. Brent Wadsworth  
Chairman  
Wadsworth Golf Charities Foundation  
13941 Van Dyke Road  
Plainfield, IL 60544

Dear Mr. Wadsworth,

On behalf of the Dundee Township Park District Board of Commissioners, the Randall Oaks Golf Club staff and the residents of Dundee Township, I want to thank you and the other members of the Wadsworth Golf Charities Foundation for the Links Across America grant. We are extremely excited about this opportunity and it is our goal to exceed your expectations regarding the success of this project.

Construction is underway, and the staff is currently in the process of planning programming for the course, as well educating our affiliated organizations that provide services to people with disabilities as well as at risk youth about this unique facility. We share the vision of bringing golf to as many people as possible and our hope is to make this Links Across America course a regional resource.

Thank you for your investment. It has been a pleasure working with Leon and I look forward to meeting you in the future.

Sincerely,

Tom Mammoser  
Executive Director  
Dundee Township Park District

Board President  
Boys and Girls Club of Dundee Township

Board Member  
Northern Illinois Special Recreation Association





# GOLF COURSE INDUSTRY

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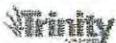
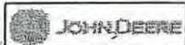
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## First Links Across America project to open in 2010

10/20/2009



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SAVE TO MY GCM

Making golf accessible for non-traditional players is the primary goal of the first-ever Links Across America project, a universally accessible short course and golf practice facility scheduled to open here next summer.

The Links Across America initiative creates new and affordable short courses (from 3 to 9 holes) to provide golfing opportunities to young people, families and adult beginners of all ethnic backgrounds, in addition to individuals with disabilities or injuries.

The Wadsworth Golf Charities Foundation (WGCF), philanthropic arm of Wadsworth Golf Construction, funded development of The Links Learning Center at Randall Oaks here in Dundee Township, Ill. Lohmann Golf Designs (LGD) was the course designer and The Bruce Co. the course builder. Following the Links Across America model, both donated large portions of their services to the project's realization. Construction is complete and grow-in will continue through a summer 2010 grand opening.

"Links Across America took the lead on this, supplying funding and organizational expertise," explained Todd Quitno, senior project architect for Marengo, Ill.-based LGD. "We donated a portion of our design services and schematic drawings, and we discounted the construction drawings. We were happy to be involved because of our long history at Randall Oaks. But this is our way, the company's way, to give something back to these long-time clients and the game."

"The Links Across America project will give us four holes plus a short-game practice area that is accessible to people with disabilities, and we are committed to making this a truly accessible facility," explained Randall Oaks superintendent Mike Sprouse. "We brought people in from disability groups during construction to make sure everything was accessible. We are creating a chance for people who might never get involved with the game to finally have that opportunity."

Dundee Township is a member of the Northern Illinois Special Recreation Association (NISRA), whose 13 member agencies and townships direct individuals with special needs into recreational programs and other activities, according to Tom Mammoser, executive director of the Dundee Township Park District. Golfers with disabilities are one such special needs group.

Randall Oaks expects other non-traditional groups to use the new facility. The township has a longstanding relationship with the local Boys' and Girls' clubs, which have a combined membership of 1,100 based out of nearby Carpentersville. "We see the Links course as a way to tie in with those clubs and expose the kids to golf," Mammoser said. "The clubs are 60 percent Hispanic and 26 percent African-American. The Links Course will expose those youngsters to the game, as well, in a comfortable environment that is strong on teaching."

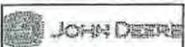
NISRA has worked closely with groups like Revelation Golf, a local association that has worked with cancer patients and wounded veterans of the Iraq and Afghanistan wars. "Golf is a sport that benefits them physically and emotionally,"

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Mammoser said. "The golf industry is changing and becoming more focused on non-traditional customers."

The facility's design, thanks to LGD, is fancifully non-traditional in its own right. Quitno and his colleagues created a short-game area that includes an 8,500-square-foot putting green, a bunker complex and chipping areas. "Nothing unique about that, but within those components we did create special areas where you can teach 8-10 people," Quitno explained. "The 4-hole routing has no tees. It's all fairway, so they can create the routing any way they want — they can set it up for little kids, so they never have to play over bunkers; or for more advanced players where all the approaches are forced carries. You can turn it around and play it backwards, and you can play to the chipping green to form a 5th hole.

"As a practice area, it's pretty amazing what you can do out there in terms of options. In fact, this area used to be the driving range but we didn't eliminate its use as a driving range. It's not full-length but when it's cleared of kids, it can double as a fine teaching range for young players."

Mammoser sees tremendous potential for the new Randall Oaks facility to help grow the game in general. For example, about 70 percent of the children in Dundee play soccer and a majority plays basketball and baseball. Only 14 percent play golf.

"Our goal is to make golf a more typical activity, like soccer, and get that participation rate up to 25, 30 percent or more," Mammoser said. "At Randall Oaks we can help people move along a learning path in golf from the Links Course to the Acorn Course [a 3-hole, par-3 routing] to the 18-hole championship course. They can do it at their own pace and not be intimidated by existing players on the 18-hole course before they are ready to play alongside them. We have a facility correctly sized for new players that can help them learn a lifetime sport like golf.

"It will also give the experienced golfer another place to come practice. This was a win-win for everyone. We could not have moved forward with the project without the Wadsworth Charitable Foundation. We were delighted to receive their grant to develop this facility."

Links Across America is an ambitious program with national aspirations. In addition to Randall Oaks, the organization has projects in planning or under discussion in Georgia, Arkansas and Wisconsin.

But The Links Learning Center at Randall Oaks is the first facility built under Links Across America auspices. "It has been a learning experience," said LGD's Quitno, whose company drew up a master plan roughly 25 years ago for Randall Oaks, and has overseen some type of construction project almost annually at the suburban Chicago course ever since. "Many of the things we learn here should help with the construction process at future Links Across America facilities."

The interest and willingness of golf companies to collaborate on similar projects has been phenomenal, according to Links Across America spokesman Leon McNair. LGD is among 10 architects that have offered to donate and/or significantly discount their services. Nine course builders have done the same.

"Lohmann Golf Designs and the Bruce Co. understand the need for and believe in what we are doing," McNair said. "Companies like John Deere, Club Car, Fore Reservations Systems and Wittek Golf have offered to get involved at very low prices. They all want to help provide affordable playing opportunities for youngsters, families and those with disabilities."

Sprouse said he is honored to be part of a project with such positive and potentially long-reaching effects: "It is exciting to be committed to the philosophy of inclusion. We look forward to helping other facilities build similar projects."

*Tuesday, October 20, 2009*

Post your comments on this story on the Golf Course Industry Message Board



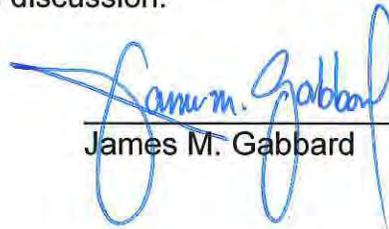


**COUNCIL AGENDA REPORT**  
**MEETING OF MAY 4, 2010**

**TO:** The Honorable Mayor and Members of the City Council  
**FROM:** James M. Gabbard, City Manager  
**DATE:** April 28, 2010  
**SUBJECT: COUNTY COMMISSION LETTER REQUESTING JOINT MEETING**

---

Attached is a letter from Indian River County Commission Chairman Peter O'Bryan requesting a joint workshop meeting on the electric system franchise. This item is being placed on the Council's agenda for discussion.

  
James M. Gabbard

JMG:jav  
Attachments

xc: John Lee

N:\AGENDA\CITYMANAGER\2010\COUNTY COMMISSION REQUEST FOR JOINT MTG.DOC

**BOARD OF COUNTY COMMISSIONERS**

**Peter D. O'Bryan**  
**Chairman**  
**District 4**

**Bob Solari**  
**Vice Chairman**  
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**Wesley S. Davis**  
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**Joseph E. Flescher**  
**District 2**

**Gary C. Wheeler**  
**District 3**

April 14, 2010

Hon. Kevin Sawnick, Mayor  
City of Vero Beach  
Post Office Box 1389  
Vero Beach, Florida 32961-1389

**RE: Request for Joint Workshop Meeting on Electric System Franchise**

Dear Mayor Sawnick:

As you know, Indian River County Resolution 87-12 granted a 30 year franchise to the City of Vero Beach to operate an electric system in certain unincorporated areas of the County. The franchise will terminate on March 5, 2017 unless notices to renew are given by March 5, 2012. To ensure that both parties have an opportunity to fully analyze all renewal issues, the Board of County Commissioners would like to begin the discussions now.

Specifically, at the April 13, 2010 Board of County Commissioners' meeting, Glenn Heran and Dr. Stephen Faherty presented an economic model which suggested that the best alternative for City and County residents would be for the City to sell the electric system. In the interest of hearing all sides of the issue, the Board voted to extend an invitation to the City to present its own economic model and preferred option.

Therefore, the Board would like to suggest a workshop at a mutually convenient time in the near future where the City would present its economic model and preferred option and entertain questions from the Board. Then Mr. Heran and Dr. Faherty would present their model and entertain questions from the Board and the City. Once both models are reviewed, the workshop would be opened for public discussion.

**Building A**  
**1801 27<sup>th</sup> Street**  
**Vero Beach, FL 32960-3388**  
**Telephone: 772-226-1490 FAX: 772-770-5334**

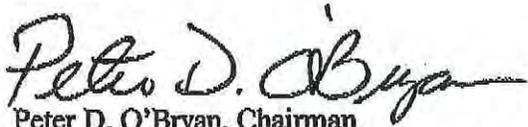
*Hon. Kevin Sawnick, Mayor  
City of Vero Beach*

*April 14, 2010  
Page Two*

Please advise if the City accepts the Board's invitation, so our staffs can begin coordinating the details. We look forward to hearing from you soon.

By copy of this letter, we are also inviting the Town of Indian River Shores to participate in the workshop.

Sincerely,



Peter D. O'Bryan, Chairman  
Indian River County Board of Commissioners

cc: Mr. James M. Gabbard, Manager  
City of Vero Beach  
P.O. Box 1389  
Vero Beach, FL 32961-1389

Hon. E. William Kenyon, Mayor  
Town of Indian River Shores  
6001 N Hwy. A-1-A  
Indian River Shores, FL 32963-1014

Mr. Robert J. Bradshaw, Manager  
Town of Indian River Shores  
6001 N Hwy. A-1-A  
Indian River Shores, FL 32963-1014

**COUNCIL AGENDA REPORT**  
**MEETING OF MAY 4, 2010**

**TO:** The Honorable Mayor and Members of the City Council

**FROM:** James M. Gabbard, City Manager

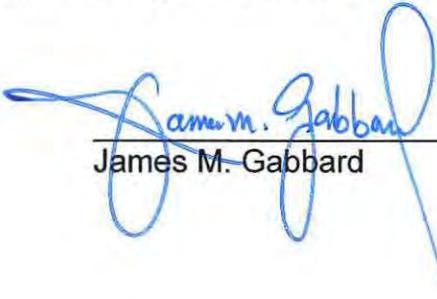
**DATE:** April 28, 2010

**SUBJECT: CONSULTANTS COMPETITIVE NEGOTIATION ACT COMMITTEE  
REPORT (ROB BOLTON)**

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Attached is a memorandum from Rob Bolton, dated April 28, 2010, which provides background information and a recommendation on the Request for Qualifications – Consultants Competitive Negotiation Act Committee – City of Vero Beach, Town of Indian River Shores and Indian River County.

**It is the recommendation of the City Manager's Office that Council approve scheduling another joint meeting with Indian River County, Indian River Shores, and the City of Vero Beach to discuss scope and cost sharing.**

  
\_\_\_\_\_  
James M. Gabbard

JMG:jav  
Attachments

xc: Rob Bolton  
Monte Falls  
Stephen Maillet



## DEPARTMENTAL CORRESPONDENCE

TO: James M. Gabbard, City Manager  
DEPT: City Manager

FROM: Robert J. Bolton, PE, Director *RJB*  
DEPT: Water and Sewer

DATE: April 28, 2010

RE: **Request for Qualifications (RFQ)  
Consultants Competitive Negotiation Act Committee  
City of Vero Beach, Town of Indian River Shores and  
Indian River County**

### Background:

On October 15, 2009 a joint meeting was held with Indian River County (IRC), City of Vero Beach (COVB), Town of Indian River Shores (IRS) and the City of Fellsmere (COF) to discuss countywide water and sewer infrastructure. In a unanimous vote IRC, IRS and COVB agreed to participate in the process of obtaining an independent consultant to investigate the consolidation, cooperation or partnership, and that a Consultants Competitive Negotiation Act (CCNA) Committee be appointed consisting of two members each from IRC, IRS and COVB, and that the Committee bring back a recommendation for a consultant with a scope of work and a price.

An RFQ was prepared by the CCNA Committee, approved by City Council on November 17, 2009 and advertised by the County. Five consulting firms submitted proposals and all were interviewed on February 25, 2010. On March 16, 2010 City Council adopted the following ranking:

1. GAI, Orlando
2. PBS&J, Orlando
3. Carollo, Winter Park
4. Wade Trim, Tampa
5. Keith and Schnars, Port St. Lucie

On April 15, 2009 the CCNA Committee met with GAI and discussed a Phase 1 Scope of Work. GAI has provided a draft scope that accomplishes the following:

James M. Gabbard, City Manager  
March 5, 2010

1. Collect and review technical data, major agreements, financial information, and conduct one-on-one interviews with the political entities and associated staff to determine the "will" of the three entities.
2. Provide an "Overview Analysis" of the systems including their facilities, legal obligations/requirements, financial/rate review and administrative structure/organization.
3. Provide an evaluation/analysis of the IRS and IRC franchises with the City.
4. Identify Major Scenarios for consideration (i.e. Status Quo, Interlocal Agreements with modifications to current agreements, Consolidation of Operations, Partial Consolidation, etc.)
5. Prepare a Sustainability Review (i.e. long term water supply, disposal of effluent from wastewater plant, funding, stable rate structure, optimization opportunities, etc.)

I have reviewed this scope and feel that a meeting with council to further discuss the details is appropriate at this time.

Recommendation:

- Place this item on the May 4, 2010 City Council agenda for discussion;
- Pending discussion by City Council, schedule another joint meeting with the Board of County Commissioners, Town of Indian River Shores and City of Vero Beach to discuss scope and cost sharing.

Funding:

Funding will be discussed at or after the joint meeting.

Attachment

Cc: Charles Vitunac, City Attorney  
Steve Maillet, Finance Director  
Monte Falls, Public Works Director

C:\My Documents\IDRAFT - CCNA Progress Letter\_JGabbard\_March 5 2010.docx



April 20, 2010  
GAI Project # A091410.00

Joint Negotiating Committee  
C/o Sherri Philo (COVB) and  
C/o Purchasing Manager  
Indian River County  
1800 27<sup>th</sup> St., Bldg B  
Vero Beach, FL 32960

Via Email & US Mail

**Re: RFQ #2010020  
Phase 1 Scope of Services, Schedule, Costs  
For Negotiating Committee Consideration**

Gentlemen:

Attached find the Phase 1 Scope of Services, Schedule and Costs for the three party joint investigation of the options for future utility management within Indian River County, City of Vero Beach and the Town of Indian River Shores.

We have addressed each entity's desire to discuss the issues one-on-one with the GAI team for every elected official and three designated staff members covering administration/engineering, finance, and legal aspects. We also, as requested, included a task for the recommendation for the entities to consider from the Phase 1 efforts concerning the two franchise agreements.

As requested, we have also included a comparative evaluation of the general approaches for future utility management and will provide an initial approach recommendation with detailed activities to follow in subsequent phases. This general overview will be presented with the opportunities to be derived and the major requirements for implementation. The analysis will be comparative for approach decision making purposes with the next comparatively most favorable option delineated.

The GAI team will prepare memoranda throughout the process and request review and comment from the working group designees. The proposed five memoranda will be incorporated with an executive summary into a draft report. This draft report will be reviewed with the working group and comments received.

The GAI team will then issue a final report with ten (10) copies and one electronic copy on a CD to each entity. GAI proposes a joint workshop of the three entities for discussion and direction purposes.

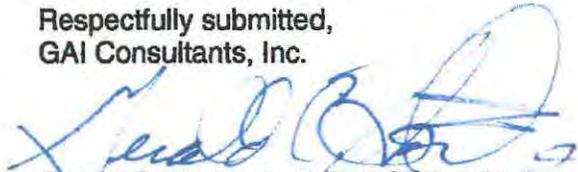
The Phase 1 activity is scheduled to be accomplished in the June 2010 to September 2010 period and Phase 2 activities are anticipated to be accomplished in the October 2010 to January 2011 period.

We look forward to providing the technical, management consulting, financial and legal expertise which is jointly desired from our professional team.

If you have any questions or comments concerning the attached, please do not hesitate to call us.

We have assumed that the working group has an agreement as to which the parties agree and to which the attachments would be exhibits.

Respectfully submitted,  
GAI Consultants, Inc.



Gerald C. Hartman, P.E., BCEE, ASA  
Vice President

**Attachments**

To be distributed by Sherri Philo as agreed.

**cc:**

- Tara Hollis, CPA, GAI
- John Hermann, PE, GAI
- File

## EXHIBIT "A"

### Proposal for Study for Optimization of Water and Wastewater Utility Services for Indian River County, the City of Vero Beach and the Town of Indian River Shores

#### Scope of Services

#### I. PROJECT OVERVIEW

Indian River County (IRC), the City of Vero Beach (COVB), and the Town of Indian River Shores (IRS) would be considering optimization of their water and wastewater utility services.

IRC and COVB each operate independent water and sewer utility systems. The Town of Indian River Shores (IRS) is served by a franchise agreement with the COVB. The COVB also serves a portion of IRC through a franchise agreement. IRC serves approximately 42,000 water customers and 25,000 sewer customers. The COVB serves 12,000 water customers and 9,000 sewer customers (including the two franchise areas).

The purpose of this study is to:

- Provide recommendations addressing the two franchise agreements
- Determine the most efficient scenario that will allow economies of scale to either lower or stabilize long-term rates.
- Define the steps/actions needed including financial and capital improvement requirements needed to meet the objectives of the selected scenario

To complete this study, GAI recommends a multi-phased work plan consisting of:

- Phase 1 – Initial Investigation
- Phase 2 – Detailed Assessment of Preferred Scenario
- Phase 3 – Implementation

The Phase 1 scope, schedule and compensation is delineated herein. Following the consideration of the Phase 1 Overview Analysis Recommendation and related options, the Phase 2 program will be identified for consideration by the entities.

#### II. SCOPE OF SERVICES

The following specific tasks are included in the scope:

##### Phase 1 – Initial Investigation

##### 1. Data Collection

##### 1.1. Technical Data

GAI will gather technical data from Indian River County, the Town of Indian River Shores and the City of Vero Beach in relation to the water and wastewater utilities including:

- Facility information (size/capacity, type, age, system schematics)
- Inspection/technical reports
- Disinfectant residual and requirements for water blending
- Master plans, comprehensive plans, capital improvement elements
- Level of service
- Permits and regulatory reports
- Capital Improvement Plans (CIP)

## 1.2. Major Agreements

GAI will gather major agreements in relation to the water and wastewater utilities from including:

- Indian River County
  - Major service agreements
  - Franchise Agreement
    - South Island/ Moorings
  - Other large agreements
    - Interconnection
    - Wholesale
    - Other
- Vero Beach
  - Major service agreements
  - Franchise Agreements
    - Indian River Shores
    - South Island/ Moorings
  - Other large agreements
    - Interconnection
    - Wholesale
    - Other
- Indian River Shores
  - Franchise agreement
  - Major service agreements
  - Other large agreements

## 1.3. Financial

GAI will gather financial information in relation to the water and wastewater utilities from including:

- Water/wastewater ordinances and resolutions
- Audits
- Revenue Statements
- Comprehensive Annual Financial Reports
- Bond issues
- Asset documents
- Rate studies and financial plans
- Comprehensive plans capital improvement elements

#### 1.4. Interviews with Stakeholders

GAI will perform one-on-one interviews with elected officials and senior staff from Indian River County, the Town of Indian River Shores and the City of Vero Beach.

The GAI team will conduct these interviews in the City of Vero Beach City Hall, Indian River County Complex, and at the Town Hall of Indian River Shores. GAI has assumed that these interviews will be conducted over five (5) consecutive days and completed within the week. These interviews will be conducted by Mr. Gerald C. Hartman, PE, BCEE, ASA and Mr. Thomas Cloud, Esquire.

The GAI team will prepare two (2) standard questionnaires regarding the objectives and desires of the entities (one each for the decision makers and utility staff) and will explore issues that are pertinent and meaningful for each of the entities. GAI has assumed that the persons to be interviewed will consist of elected officials (commissioners and mayor) (approximately 20 persons) and staff members representing technical, management, financial and legal areas (9 persons as designated).

The GAI team will prepare a summary memo regarding the interviews. Based on the interviews, GAI will develop an analysis of the desired objectives for the study with consensus and non-consensus positions on the issues. GAI will make recommendations regarding subsequent steps.

## 2. Overview Analysis

The GAI team will provide a short description memorandum of the utilities and an overview analysis of the each of the utilities for IRC, COVB and IRS.

The review will include the following elements:

### 2.1. Facilities

- Existing facilities including:
  - Capacities and ability to expand
  - Needs versus location of infrastructure
  - Redundancies
  - Interconnects
- Permits and permit obligations
- Opportunities
- Synergies of Capital Improvement Plans (CIPs)

### 2.2. Legal Overview

- Agreements
- Applicable regulations

### 2.3. Financial/Rate Review

- Summary of rates and charges
- Financial obligations
- Financial strengths of utilities

### 2.4. Administrative Structure/Organization

- Administration
- Support
- Maintenance
- Operations

## 3. Evaluation/Analysis of Town of Indian River Shores and County Franchises with City of Vero Beach

The GAI team will review the two (2) franchise agreements. GAI will summarize the terms of the agreements. For each of the two (2) franchise agreements, GAI will identify up to three (3) alternative options to the agreements including:

- Continuation/ extension of the current agreement
- Assumption of ownership and maintenance of the franchised areas by the franchising entity with inter-local agreements
- Transfer operations to a consolidated entity
- Transfer ownership and operations to a consolidated entity

The GAI team will identify the advantages, disadvantages, comparative level costs/rates associated with each option.

The GAI team will summarize the results of the review in a memorandum.

Based on the evaluation, the GAI team will recommend action items.

## 4. Identification of Major Scenarios for Further Investigation

The GAI team will identify major scenarios for future considerations. Scenarios to be considered include:

- Status Quo/ Continue As-is
- Interlocal agreements with modification of existing and potential additional agreements
- Consolidation for operations or for ownership and operations
- Partial Consolidation with interlocal agreements

The GAI team will prepare a memorandum that identifies each scenario, the major features and elements as they would apply to IRC, COVB and IRS. GAI will identify the advantages and disadvantages of each of the structures and present comparative rates and CIPs previously identified primarily by each entity.

Phase 2 will expand on the detailed activities necessary for the comparatively most favorable option and refine the option to a level that franchise decisions and/or other related approach decisions can be considered by the appropriate entity.

## **5. Sustainability**

The GAI team will review sustainability issues that may impact the long term needs and cost that may affect the utilities. Sustainability issues to be identified (listed) will include those that affect the ability of the utilities to:

- Provide long term water supply
- Dispose of residuals and effluent from wastewater treatment
- Fund long term capital improvements
- Maintain a stable rate structure
- Optimization opportunities

The GAI team will identify these issues in a memorandum including current and future needs. Future needs will be as defined by sources such as Regional Water Supply Plans, Facility Plans and other information presented by the various entities. The memorandum will identify the specific issues individually for IRC, COVB and IRS and as combined for all three (3) entities.

## **6. Report**

### **6.1. Draft Report**

The five (5) memoranda will be integrated into a draft report with 6 copies plus 3 CDs provided (two copies plus one CD for each entity), which will include the following:

- Five (5) memoranda
- Recommendation
- Action items to pursue
- Executive Summary

### **6.2. Draft Report Meeting**

The GAI team will review the draft report with the committee, receive comments and answer questions.

### **6.3. Final Report**

The GAI team will incorporate the comments received, prepare and deliver ten (10) final reports (total of 30) to each entity plus an electronic copy on a CD.

#### 6.4. Joint Workshop Final Presentation

The Committee will advertise and organize a joint workshop for the three (3) entities where the GAI team will present and discuss the final report. Following this meeting, if there is a consensus or other situation based upon the discussion, then the GAI team will prepare the responsive Phase 2 or other assignment scope/schedule/costs for respective entity consideration.

### III. ADDITIONAL SERVICES

GAI, at the option of the entities, can also perform the following additional tasks:

- Detailed analysis of alternative operating structures
- Review of management/organization structure
- Appraisal of utilities, hearing, purchase and sale agreements, documentation and closing services
- Development of a detailed capital improvement plan (CIP) to meet the objectives of the selected operating scenario
- Hydraulic modeling in support of developing the CIP
- Master facility planning
- Permitting
- Detailed optimization activities as prioritized
- Grant/loan activities
- Funding/financial reports
- Other associated services

### IV. DELIVERABLES

- Request for information
- Interview questions
- 5 consecutive days for local interviews
- Summary of entity interviews memorandum
- Overview analysis memorandum
- Major Scenario identification memorandum
- Franchise memorandum
- Sustainability memorandum
- Draft report and review meeting
- Final report distribution
- Presentation of results and interlocal workshop (one meeting)

The memorandums will be consolidated into a report with an executive summary as a final product of this Phase.

All final reports/studies/plans/documents will be provided on a CD in an applicable format to include .pdf, .doc, .dwg and .jpg formats.

**V. PROJECT SCHEDULE**

The project schedule for this Phase is shown on Exhibit "B."

**VI. FEE**

The fee for this phase is shown on Exhibit "C."

**VII. AGREEMENT**

To be provided by negotiating committee.

**EXHIBIT C - Proposal for Study for Optimization of Water and Wastewater Utility Services for Indian River County, the City of Vero Beach and the Town of Indian River Shores**

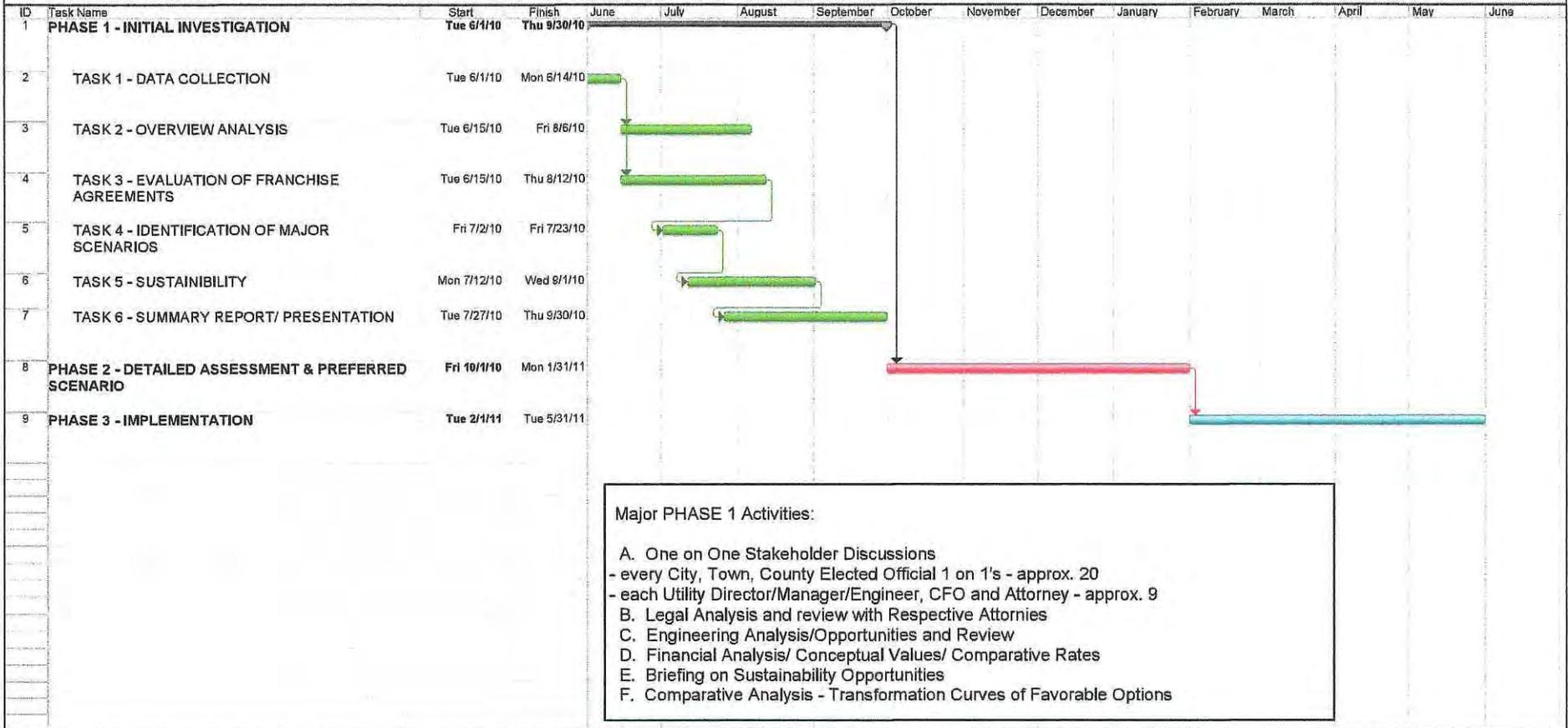


EXHIBIT B

Proposal for Study for Optimization of Water and Wastewater Utility Services for Indian River County, the City of Vero Beach and the Town of Indian River Shores		POSITION	Principal Engineer	Senior Consultant	Certified Public Accountant	Senior Professional Eng	Prof. Engineer/Production Mgr./Sr. Contr. Mgr./ P.D.	Engineering /Fundmg Specialist	Financ Analyst, M.A.S./M. P.A.	Project Support	HOURS/ TASK	FEF/ TASK	DIRECT COSTS/ SUBCONSULTANTS	W. F. McCall	Gray Robinson	TOTAL COST
TASK		RATE	\$ 220.00	\$ 200.00	\$ 180.00	\$ 150.00	\$ 135.00	\$ 105.00	\$ 90.00	\$ 65.00						
<b>1</b>	<b>DATA COLLECTION</b>															
1.1	TECHNICAL DATA			4				4		4	12	\$ 3,480.00	\$ 11,150	\$ 11,150		\$ 12,630
1.2	MAJOR AGREEMENTS									2	2	\$ 120.00	\$ 7,000		\$ 2,000	\$ 2,130
1.3	FINANCIAL				4					2	10	\$ 3,220.00				\$ 3,220
1.4	INTERVIEW WITH STAKEHOLDERS		40	4						2	48	\$ 9,720.00	\$ 12,000		\$ 12,000	\$ 24,720
	TASK 1 LABOR FEE	\$ 12,610.00	\$ 8,800.00	\$ 1,600.00	\$ 720.00	\$ 0	\$ 0	\$ 840.00	\$ 0	\$ 650.00		\$ 12,610.00	\$ 25,150	\$ 11,150	\$ 14,000	\$ 37,760
	TASK 1 HOURS	70	40	8	4	0	0	8	0	10	70					
<b>2</b>	<b>OVERVIEW ANALYSIS</b>															
2.1	FACILITIES		1	16		40		16			73	\$ 11,100.00	\$ 12,030	\$ 12,030		\$ 23,130
2.2	LEGAL		1							1	1	\$ 220.00	\$ 7,000		\$ 7,000	\$ 7,220
2.3	FINANCIAL RATE REVIEW		1		16		24	24			65	\$ 8,860.00				\$ 8,860
2.4	ADMINISTRATIVE STRUCTURE/ORGANIZATION		1		4		40				45	\$ 6,340.00				\$ 6,340
	TASK 2 LABOR FEE	\$ 26,520.00	\$ 880.00	\$ 3,200.00	\$ 3,600.00	\$ 6,000.00	\$ 8,640.00	\$ 4,200.00	\$ 0	\$ 0	184	\$ 26,520.00	\$ 19,030	\$ 12,030	\$ 7,000	\$ 45,550
	TASK 2 HOURS	184	4	16	20	40	64	40	0	0	184					
<b>3</b>	<b>EVALUATION OF FRANCHISE AGREEMENTS</b>															
	TASK 3 LABOR FEE	\$ 14,260.00	\$ 880.00	\$ 1,600.00	\$ 7,200.00	\$ 0	\$ 4,320.00	\$ 0	\$ 0	\$ 260.00		\$ 14,260.00	\$ 3,000	\$ 1,000	\$ 2,000	\$ 17,260
	TASK 3 HOURS	64	4	8	40	0	32	0	0	4	68					
<b>4</b>	<b>IDENTIFICATION OF MAJOR SCENARIOS</b>															
	TASK 4 LABOR FEE	\$ 18,020.00	\$ 2,640.00	\$ 4,800.00	\$ 4,320.00	\$ 6,000.00	\$ 0	\$ 0	\$ 0	\$ 260.00		\$ 18,020.00	\$ 3,000	\$ 1,000	\$ 1,000	\$ 20,020
	TASK 4 HOURS	104	12	24	24	40	0	0	0	4	104					
<b>5</b>	<b>SUSTAINABILITY</b>															
	TASK 5 LABOR FEE	\$ 22,280.00	\$ 1,760.00	\$ 4,800.00	\$ 4,320.00	\$ 6,000.00	\$ 5,400.00	\$ 0	\$ 0	\$ 0	136	\$ 22,280.00	\$ 3,000	\$ 2,000	\$ 1,000	\$ 25,280
	TASK 5 HOURS	126	8	24	24	40	40	0	0	0	136					
<b>6</b>	<b>SUMMARY REPORT/ PRESENTATION</b>															
6.1	DRAFT REPORT		4	12	8					8	32	\$ 5,240.00				\$ 5,240
6.2	DRAFT REPORT MEETING		4	4	4			12			24	\$ 3,660.00				\$ 3,660
6.3	FINAL REPORT		4	4	4			12			24	\$ 3,660.00				\$ 3,660
6.4	JOINT WORKSHOP FINAL PRESENTATION		6	6	6					8	26	\$ 4,120.00	\$ 2,000	\$ 1,000	\$ 1,000	\$ 6,120
	TASK 6 LABOR FEE	\$ 16,680.00	\$ 3,960.00	\$ 5,200.00	\$ 3,860.00	\$ 0	\$ 0	\$ 2,520.00	\$ 0	\$ 1,040.00	106	\$ 16,680.00	\$ 2,000	\$ 1,000	\$ 1,000	\$ 18,680
	TASK 6 HOURS	106	18	26	22	0	0	24	0	16	106					
	REIMBURSIBLE EXPENSES												\$ 5,383.00			\$ 5,383
	TOTAL PROJECT LABOR FEE	\$ 110,370	\$ 16,920	\$ 21,200	\$ 24,120	\$ 18,000	\$ 16,360	\$ 7,560	\$ 0	\$ 2,210	688	\$ 110,370	\$ 59,563	\$ 28,180	\$ 26,000	\$ 169,933
	TOTAL PROJECT HOURS	688	88	106	134	120	136	72	0	34	688					

FOR PHASE 1				
	COST/ UNIT	UNITS	COST	
Binders	1.00	38.00		\$38.00
Blueprint \$1.95	1.95	400.00		\$780.00
Copies BW 11" x 17"	0.08	800.00		\$64.00
Copies BW 24" x 36"	2.20	800.00		\$1,760.00
Copies BW 8.5" x 11"	0.06	3000.00		\$180.00
Color Copies 11" x 17"	0.20	50.00		\$10.00
Color Copies 8.5" x 11"	0.15	200.00		\$30.00
Travel per mile (current I.R.S. rate)	0.50 (200 miles/ trip)	14.00		\$7.00
Hotel (5 nights/ 2 rooms) & meals	400	4		\$1,600.00
<b>TOTAL</b>				<b>\$5,383.00</b>

EXHIBIT B

TASK	PROPOSITION	PROFESSIONAL RATES									HOURS/TASK	FEE/TASK	DIRECT COSTS/SUBCONSULTANTS	W. F. McCain	Gray Robinson	TOTAL COST
		Principal Engineer	Senior Consultant	Certified Public Accountant	Senior Professional Engr	Prof. Engineer/Production Mgr./Sr. Constr. Mgr./Ph.D.	Engineering/Funding Specialist	Finance Analyst/M.B.A./M.P.A.	Project Support	135.00						
1	DATA COLLECTION															
1.1	TECHNICAL DATA		4					4			4	12	\$ 1,480.00	\$ 11,150	\$ 11,150	\$ 12,630
1.2	MAJOR AGREEMENTS									2	2	\$ 130.00	\$ 2,000	\$ 2,000	\$ 2,130	
1.3	FINANCIAL			4				4		2	10	\$ 1,270.00	\$ 1,270	\$ 1,270	\$ 1,270	
1.4	INTERVIEW WITH STAKEHOLDERS	40	4							2	46	\$ 9,730.00	\$ 12,000	\$ 12,000	\$ 21,730	
	TASK 1 LABOR FEE	\$ 12,610.00	\$ 8,800.00	\$ 1,600.00	\$ 720.00	\$ 0	\$ 0	\$ 840.00	\$ 0	\$ 650.00	70	\$ 12,610.00	\$ 25,150	\$ 11,150	\$ 14,000	\$ 37,760
	TASK 1 HOURS	70	40	8	4	0	0	8	0	10						
2	OVERVIEW ANALYSIS															
2.1	FACILITIES		1	16			40				16	73	\$ 11,100.00	\$ 12,030	\$ 12,030	\$ 23,130
2.2	LEGAL		1								1	\$ 220.00	\$ 7,000	\$ 7,000	\$ 7,220	
2.3	FINANCIAL/RATE REVIEW		1		16			24	24		65	\$ 8,860.00	\$ 8,860	\$ 8,860	\$ 8,860	
2.4	ADMINISTRATIVE STRUCTURE/ORGANIZATION		1		4			40			45	\$ 6,340.00	\$ 6,340	\$ 6,340	\$ 6,340	
	TASK 2 LABOR FEE	\$ 26,520.00	\$ 880.00	\$ 3,200.00	\$ 3,600.00	\$ 6,000.00	\$ 8,640.00	\$ 4,200.00	\$ 0	\$ 0	184	\$ 26,520.00	\$ 19,030	\$ 12,030	\$ 7,000	\$ 45,550
	TASK 2 HOURS	184	4	16	20	40	64	40	0	0						
3	EVALUATION OF FRANCHISE AGREEMENTS															
	TASK 3 LABOR FEE	\$ 14,260.00	\$ 880.00	\$ 1,600.00	\$ 7,200.00	\$ 0	\$ 4,320.00	\$ 0	\$ 0	\$ 260.00	88	\$ 14,260.00	\$ 3,000	\$ 1,000	\$ 2,000	\$ 17,260
	TASK 3 HOURS	88	4	8	40	0	32	0	0	4						
4	IDENTIFICATION OF MAJOR SCENARIOS															
	TASK 4 LABOR FEE	\$ 18,020.00	\$ 2,640.00	\$ 4,800.00	\$ 4,320.00	\$ 6,000.00	\$ 0	\$ 0	\$ 0	\$ 260.00	104	\$ 18,020.00	\$ 2,000	\$ 1,000	\$ 1,000	\$ 20,020
	TASK 4 HOURS	104	12	24	24	40	0	0	0	4						
5	SUSTAINABILITY															
	TASK 5 LABOR FEE	\$ 22,280.00	\$ 1,760.00	\$ 4,800.00	\$ 4,320.00	\$ 6,000.00	\$ 5,400.00	\$ 0	\$ 0	\$ 0	136	\$ 22,280.00	\$ 3,000	\$ 2,000	\$ 1,000	\$ 25,280
	TASK 5 HOURS	136	8	24	24	40	40	0	0	0						
6	SUMMARY REPORT/ PRESENTATION															
6.1	DRAFT REPORT		4	12	8					8	32	\$ 5,240.00	\$ 5,240	\$ 5,240	\$ 5,240	
6.2	DRAFT REPORT MEETING		4	4	4			12			24	\$ 3,660.00	\$ 3,660	\$ 3,660	\$ 3,660	
6.3	FINAL REPORT		4	4	4			12			24	\$ 3,660.00	\$ 3,660	\$ 3,660	\$ 3,660	
6.2	JOINT WORKSHOP FINAL PRESENTATION		5	6	6					8	26	\$ 4,120.00	\$ 2,000	\$ 1,000	\$ 1,000	\$ 6,120
	TASK 6 LABOR FEE	\$ 16,680.00	\$ 3,960.00	\$ 5,200.00	\$ 3,960.00	\$ 0	\$ 0	\$ 2,520.00	\$ 0	\$ 1,040.00	106	\$ 16,680.00	\$ 2,000	\$ 1,000	\$ 1,000	\$ 18,680
	TASK 6 HOURS	106	18	26	22	0	0	24	0	16						
	REIMBURSIBLE EXPENSES												\$5,383.00			\$ 5,383
	TOTAL PROJECT LABOR FEE	\$ 110,370	\$ 18,920	\$ 21,200	\$ 24,120	\$ 18,000	\$ 18,360	\$ 7,560	\$ 0	\$ 2,210	688	\$ 110,370	\$ 59,563	\$ 28,180	\$ 26,000	\$ 169,933
	TOTAL PROJECT HOURS	688	86	106	134	120	136	72	0	34						

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Color Copies 11" x 17"	0.20		50.00	\$10.00
Color Copies 8.5" x 11"	0.15		200.00	\$30.00
Travel per mile (current I.R.S. rate)	0.50 (200 miles/trip)	14.00	2800.00	\$1,400.00
Hotel (5 nights/2 rooms) & meals	400		4	\$1,600.00
TOTAL				\$5,383.00

**CONSULTANTS COMPETITIVE NEGOTIATION ACT  
COMMITTEE MINUTES**

**Thursday, April 15, 2010 – 9:00 a.m.**

**City Hall, City Manager's Conference Room, Vero Beach, Florida**

**PRESENT:** Tom Cadden, Chairman, Indian River Shores; Rob Bolton, Water & Sewer Director, City of Vero Beach; Monte Falls, Public Work's Director, City of Vero Beach; Jason Brown, Budget Director, Indian River County; Eric Olson, Utilities Director, Indian River County and Richard Jefferson, Building Official Indian River Shores **Also Present:** Charlie Vitunac, City Attorney, City of Vero Beach and Sherri Philo, Deputy City Clerk, City of Vero Beach

**1. CALL TO ORDER**

The Chairman called today's meeting to order at 9:15 a.m.

**2. APPROVAL OF MINUTES**

**A) March 18, 2010**

**Mr. Falls made a motion to approve the minutes of the March 8, 2010 Consultants Competitive Negotiation Act Committee (CCNAC) meeting. Mr. Brown seconded the motion and it passed unanimously.**

**3. DISCUSSION OF SCOPE OF WORK WITH GAI CONSULTANTS, INC.**

Mr. Gerald C. Hartman, Vice President of GAI Consultants, Inc., and Mr. John Hermann, Senior Engineering Manager/Environmental Department Manager of GAI Consultants, Inc., were present for today's meeting.

Mr. Cadden asked Mr. Hartman if they had a written proposal on how to begin or would they rather have the Committee member's opinion first.

Mr. Hartman said that they were under the impression that the Committee members wanted to discuss the scope.

Mr. Cadden said that was correct.

Mr. Hartman said that they would like to know what the Committee wanted them to focus on and what they want for a scope. He said in their proposal they laid out what they were going to do and if that is acceptable they would move forward.

Mr. Cadden said one thing that he wrote during the Committees' first meeting was "to determine if a combined system would be more cost effective, would require less capital, and meet the current future needs of the County."

Mr. Olson said the County has their infrastructure and their financial analysis on a disc that they could turn over to GAI Consultants, Inc.

Mr. Hartman asked that Indian River County, the City of Vero Beach and the Town of Indian River Shores submit their information to them. He felt that the objective of Mr. Cadden was to have them come back with a quick early output of, is it more cost effective and better for all customers on an overall rate and charge basis to have a combined system (not looking at the actual structure of the combined system or how it would be financed). He said that they would provide an optimization analysis that gets into the policies and procedures of the utilities and how they treat customers, etc. When they talk about combining, they are talking about purchasing the three systems, would they all be dedicated, etc. There is a difference in value, financial structure, debt verses asset ratio, etc. He said in order to do this appropriately, they have to look at fairness to the owners, fairness to the customers, and then a long term operating program.

Mr. Cadden said one thing that impressed him with their presentation was that they wanted to receive information directly from the owners (Indian River County, the City of Vero Beach and Indian River Shores). He strongly recommended that this be number one on their list. He felt that it was imperative that they interview each of the political entities involved, as well as staff. This should be the very first step and then they could find out if in fact they want to move forward with this process.

Mr. Hartman agreed that they should start by talking with each entity to find the stakeholder issues. He said that if any two parties disagree on how the assets get put into a new organization then there would not be a deal. He said it must be cooperative.

Mr. Falls said it sounded to him like Mr. Hartman's approach would be to determine from the assets and owners what is the best way to combine them, but not to determine what is the best way to run them. They would determine an overall package and then how it would be managed, whether it is a Utility Authority, the County, or the City.

Mr. Hartman said that it also could be an Interlocal Agreement.

Mr. Olson agreed that it was essential that GAI, Inc. sit down with both the Elected Officials and staff. He said the aspect of determining if consolidation under a single entity is extremely complex and extensive and they would have to have a solid will on everyone's part. He said there are other aspects that are a little easier. One would be the second item on the RFP, which is partial consolidation and that should be part of their discussions with each entity.

Mr. Hartman said they could go a long way and get a lot of efficiencies derived without creating a new entity. He noted that there is a startup cost in creating a new entity, but there is a long term efficiency that may outweigh that cost. They could take baby steps in doing that. If it is their focus to start off slow and look at the opportunities and optimize then they should not dissolve this Committee.

Mr. Olson felt that there was a timeline in making some sort of decision. He did not want to think that they would be studying this for the next 10 years. He would like to process the two franchise areas to have some sort of sense of the financial impact. He would like to know the financial impact by spring.

Mr. Hartman thought that the function of this Committee was to look at utility issues as a cooperative committee.

Mr. Bolton explained that the function of the Committee was to hire a consultant, come back with a price and take it to the entities. He thought that what Mr. Hartman was trying to say was that if they were going take baby steps, he would recommend that they maintain the Committee so that every six months or so they could evaluate how they were doing, if they were reaching their goals, etc.

Mr. Hartman said that was correct.

Mr. Olson felt that they could do a cursory review by late spring.

Mr. Hartman said the first task would be to speak with each entity.

Mr. Bolton said a lot of the discussion with the public officials would be an educational process. He felt that Mr. Hartman would be able to explain the different scenarios to the officials.

Mr. Falls said the two franchise agreements were time critical issues. They were going to come up with a decision regardless of what this Committee does or doesn't do. He said that in the discussions with each entity, Mr. Hartman would know if there is any will to do anything other than address those issues. He felt that they needed to be cognizant of what service levels are provided now and what would be provided in the future. He asked would they look at cut/on, cut/off policies, boil water notices, etc., so they would have some sort of a metric to compare.

Mr. Hartman said typically if there is a will to go to a Utility Authority, there are discussions on levels of service. He said that no one wants to create an entity with a service level that would go down.

Mr. Cadden said that once they receive the information from each entity, he hoped that they could discuss and educate the public officials that they looked at the physical properties and if there are duplications, operations that could be stopped, started, etc. and if they want to go one step further they could optimize.

Mr. Brown said that task one would be to look at the two franchise areas and task two would be to look at the overall regionalization, consolidation, etc.

Mr. Bolton said that they would speak with each entity first and then bring back to the Committee their recommendations on where they think they are going to go.

Mr. Hartman said that they would get the data from each entity, and then get the issue analysis done. He said that they could go to a separation on a City limit basis, they could go to regionalization, etc., which would depend on the will of the parties. He said that they would bring back a modest Phase I to the Committee in a fairly quick timeline.

Mr. Bolton suggested that Mr. Hartman explain in a cover letter to each entity, what they are going to do in the language that the public could read and understand where they were going with this process.

Mr. Cadden said that the Town Council of Indian River Shores would be meeting one week from today. He asked would the Committee need to meet to discuss the proposal prior to it going before their public officials.

Mr. Bolton asked that they submit the proposal to the City Clerk's office and they would forward it to each member of the Committee. If there is something in the proposal that they don't like then they could meet to discuss it.

Mr. Hartman said that they would e-mail the proposal to the City Clerk's office on April 20, 2010.

The Committee agreed that they would meet on April 22, 2010 at 9:00 a.m. in the City Hall, Council Chambers, if necessary.

**4. ADJOURNMENT**

Today's meeting adjourned at 10:02 a.m.

/sp

**MEMORANDUM**

**TO:** Mayor Kevin Sawnick and City Councilmembers

**FROM:** Karl Zimmermann, Chairman  
Vero Beach Tree and Beautification Commission

**DATE:** April 27, 2010

**SUBJECT:** Funding

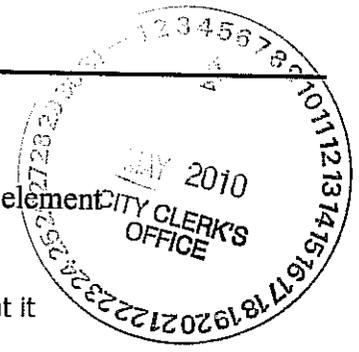
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The Vero Beach Tree and Beautification Commission would like permission from the Vero Beach City Council to expend funds from the Tree and Beautification account in the amount of up to \$413.00 to purchase 59 acrylic "City of Vero Beach Dedicatory Tree" plaques. These plaques will be attached to the posts of the existing dedicatory trees in City Parks.

KZ/rh

Vock, Tammy

From: kevin sawnick [sawnickkev@gmail.com]  
Sent: Tuesday, May 04, 2010 7:52 PM  
To: Vock, Tammy  
Subject: Vero Beach Vision for other county mayors



From Vero Beach Vision Plan: Overall Vision Statement followed by economic Goal element

To what does Vero Beach aspire in the future? In many ways the community desires to be what it always has been and remains today, but with all the advantages and conveniences of the future.

Envision a place where the best of "old Florida" is nurtured. A place that is filled with community pride, but not boastful or arrogant. That pride is reflected in well-kept private property and public land. That pride is embodied in the manner in which people treat one another and work together to address problems and issues. That pride embraces a respect for the natural environment and the unique history of the community.

Envision a place that is different from any other place in Florida. A place where spring training is a family event. A place that is made up of a variety of neighborhoods. A place that you can "fall in love" with on your first visit and, ultimately, make it your home. A place where the expectations and standards for quality and excellence are clearly stated in public policies, private actions, and community decisions.

Envision a community that values its location. A community where tree canopies are preserved and enhanced. A community that uses but does not exploit its natural beauty or geographic location. A community that both recreates in and respects sensitive environmental areas. A community that does not succumb to trends, but establishes its own image based on its vision for the future.

Economic :

**Goal**

Create a diversity of good employment opportunities in Vero Beach for the benefit of workers, to support younger residents in their desire to remain in Vero Beach, and to create a more stable and sustainable tax base.

Honorable City Council Members  
City of Vero Beach, Florida  
1053 20<sup>th</sup> Place  
Vero Beach, Fl 32960

April 14, 2010

MJ Wicker  
1036 29<sup>th</sup> St.  
Vero Beach, Fl 32960  
(772)713-7754

Dear City Council Members,

After several weeks of exploring the possibilities of opening the nine hole golf course located at the corner of 43<sup>rd</sup> Ave and 26<sup>th</sup> Street referred to as The Dodgertown Golf Club, my associates and I have reach a point where we would like to ask for a letter of intent from the City of Vero Beach.

The letter would explain the desires of the City concerning the property regarding items such as:

- 1) **Lease, rent, term of the lease, insurance/liability requirements, property tax requirements, and "our renewal options"**. As potential operators of the golf course and the business pertaining there to, we would ask for an initial 30 year lease with an option to renew. In addition, we would ask to have some type of clause regarding our sole ability to transfer the lease. The transfer clause would note that the property "use" would not change and in fact would be required to continue to be operated in it's original intended use, that of a golf course. Also, the lease would contain a buy out clause so as to protect our investment should the city decide to take control of the golf course property for any unknown reason.
- 2) **Improvements to the property** would consist of improving many different facets regarding the club house, parking lot and the course itself. It would go without saying that the tee boxes, fairways and greens would require much improvement. We also wish to improve the clubhouse with the addition of a snack bar, shelving etc...and increased decking for outdoor seating. We would want to have the support of the city in making the clubhouse a "**center piece**" that would offer the same gratuities and comforts as other surrounding country clubs and county golf courses. In addition, we would like to put a call out to the city and general public for their help in acquiring any historical pictures, memorabilia and other items of interest related to the history of the Dodgertown course. It is the desire of all who are involved in this venture to make the clubhouse a memorial to the history of Dodgertown and it's patrons so that the community and its visitors will have the opportunity to know the importance of, and the effect that the great Dodger organization had here in our wonderful city.
- 3) **Inspection of the irrigation system, well, pump(s), along with the AC unit** at the clubhouse, so as all parties would be aware of their initial condition and operating abilities. We are aware that the irrigation lines are probably in need of replacement. We are not asking that the irrigation lines be intact and in good working condition as we expect to have to repair the

irrigation lines. However, it will be important to see that the pump is working and to what extent.

Obviously, the operation of the irrigation system will be critical in getting the course up and running and knowing the original condition of these systems will be important to both parties prior to entering into a lease agreement. According to the site property maintenance crew we are under the impression that the pump and well are shared with Holman Stadium. In fact, they have indicated that the stadium irrigation is maintained using this well and pump. This is good news, but it would be important to open the stations up to the course and see where the water is possibly going on the course. According to some past employees of the Dodgertown course, only the tee boxes and greens were receiving water through the system. None the less, it is understandable regarding the necessity in knowing the working condition of these systems.

4) **The name, "Dodgertown Golf Club"**, would be a wonderful asset in keeping with tradition and upholding the history of this terrific course and it's legacy in Vero Beach. We would ask the city to assist us in any negotiations necessary in continuing to call the course by it's original name.

These items are a beginning and could quite possibly lead to the reopening of, "The Dodgertown Golf Club". That just sounds good doesn't it?

In the initial stage of this venture, much information has been collected. A representative of the city has indicated that the city would, in fact, lease the property mentioned and referred to as the, "Dodgertown Golf Club" for "**a dollar a month**". He jokingly stated, "where are you going to rent a golf course for a dollar a month". He also added that such a lease would only be available to an entity with the sole interest of putting the course back into its original intended use, that being a public golf course.

There was some question as to a lease that the city has with the county regarding the approximately nine acres adjacent to Holman Stadium. According to the information found in the files at city hall regarding the golf course, there is a "Parking Property Lease Agreement" dated November 17, 2005 between the LOS ANGELES DODGERS and the CITY OF VERO BEACH that indicates that the rent being paid by the CITY OF VERO BEACH is "one dollar per year"and that this agreement shall expire on November 30, 2045. This leaves approximately 35 years left on this lease.

While aware that the property is now owned and controlled by Indian River County, according to the, "THIRD AMENDMENT TO FACILITY LEASE AGREEMENT", dated February 19, 2008. On pages 8 and 9 of that amendment, item (f) states that the county shall assume all of the rights and obligations of the Dodgers under the Parking Property Lease and the City shall be entitled to continue to occupy and use the Parking Property in accordance with the terms and conditions thereof until the Parking Property Lease expires or is terminated which, according to the original lease is November 30, 2045.

As this information was all that was available at City Hall according to the city clerk's office, we may not be aware of another agreement or amendment to the lease that may exist and state

otherwise.

This is mentioned only because there was commentary indicating that there is a 20 year lease between Indian River County and the City Of Vero Beach involving this parking area which is the approximately nine acres adjacent to Holman Stadium. This area is used for overflow parking due to events at Holman Stadium. It was believed that there was approximately 18 years left on this lease according to the city official. However, there was no information in the files at the Vero Beach City Clerk's office to verify the 20 year lease. Please see enclosed copies of the information collected. As mentioned in item #1, we were asking for a initial 30 year lease and this request would require negotiating with the county too, if in fact, there is such a lease in tact for the 20 years. Some clarity to this possible 20 year lease would be helpful.

Closing, it is important to indicate that this course shall be virtually a family run business with the purpose of not only providing a more affordable recreational option to the surrounding community, but to also reach out to the city and county residents in a way that the Dodgers did by providing opportunities to learn and play the game of golf to all people of all ages. As mentioned before, the clubhouse will be used to not only facilitate the course, but to also inform and offer entertainment and knowledge as a historical memorial to the Dodgers. The possibility of other activities at the course are being explored as well. It will be important to seek and have the City's and County's involvement and most importantly, their support in putting this unique and special asset of our community back into operation.

With the utmost respect,

MJ Wicker

**Presentation to City Council  
By Dr. Stephen J. Faherty, Sr.  
April 20, 2010  
9:30 am**

**At the City Council Meeting on April 20, 2010, I made a number of comments and received a number of inaccurate statements from the City Council to which I could not respond.**

**It was stated that the City eliminated the Municipal surcharge. This is not quite accurate. The City did eliminate the Municipal Surcharge under §25-9.0525 (Municipal Surcharge on Customers Outside Municipal Limits) under which it collected a 10% surcharge totalling about \$3,000,000 annually from County customers. However, according to the City's Rate and Service consultants in August 2009, the \$3,000,000 previously collected by the City under this statute from the County customers was now added by the City to its Base Service (meter) Rate not as a cost related factor, but as an additional revenue generation factor. Thus, the surcharge was eliminated in name only, BUT not as a rate charge to electric customers. In addition, the September 2009 City Council approved the new rates, but did not advise City customers and voters that the 39% of the customers in the City would now pay about \$1,200,000 in additional electric costs (of the \$3,000,000 that used to be paid solely by County customers). Outside City customers still pay about \$1,800,000 of the \$3,000,000 they previously paid in the**

**tax, but now pay it in a higher electric rate, not a separate tax.**

**It was stated that bids would have to be solicited from multiple bidders if the City wanted to sell its electric utility. I believe the City Attorney has said a number of times that the City could solicit a bid from, and sell to, one bidder, i.e., go sole source in the sale of the electric utility.**

**It was stated that the City's participation with the FL Public Service Commission (PSC) was voluntary. Please refer to FL Statutes §366.04, Public Service Commission Jurisdiction, and the multiple references to PSC jurisdiction over municipal utilities relating to reporting, approval of rate structure, municipal surcharge changes, territorial agreements, etc.**

**It was stated inaccurately that the customer numbers I referred to and that the City's auditors cited on p. 132 of their 2009 audit report and the City reported to the PSC were incorrect. They were numbers from Auditor and City submitted reports and if incorrect should be revised by the auditors and/or the City.**

**Other misstatements such as Studies versus conversations, Correspondence versus conversations, comparing COVB and FPL reliability and underground wiring on a system wide basis when FPL has about half of its system in rural areas all put a spin on facts and erode public confidence in the City Council and City Administration.**

**Rock Tonkel mentioned at the last meeting that there is a different environment at the City Council meetings versus the County Board and the Shores Town Council**

meetings. After having given numerous presentations to State, County, City and Town governments, as well as various organizations, I would have to agree. There is a responsibility of those in public positions to be civil and accurate in their statements so as not to mislead the public regardless of personal beliefs or personal dislikes. This responsibility encourages openness, transparency, and differing opinions which are beneficial for the public good. However, inaccurate, misleading, and caustic comments and a similar environment are counter productive for the public good.

The City really missed an opportunity to have the volunteered knowledge and experience of David Gregg and John Little by refusing to allow them assist the City they once worked for.

It was recently reported in the Press Journal that Mr. Bolton was going to recommend to the City Council that the approach of having the tri-jurisdiction WSI consultant perform all of Phase I at a cost of nearly \$170,000 be followed. Today's Press Journal states that the Shores and City favor just getting the political opinions of the elected and appointed officials.

It seems that after getting the data, the opinions of the elected officials would have to be obtained to determine the direction to take. The fact that the three jurisdictions established the Commission in October 2009 should be taken at face value that the jurisdictions are open to change. The County and City both have cost and rate data but they are not compared on the same basis and one government does not trust the other. An

**independent analysis and comparison of the data using the same factors is necessary in order to determine comparability of costs and rates.**

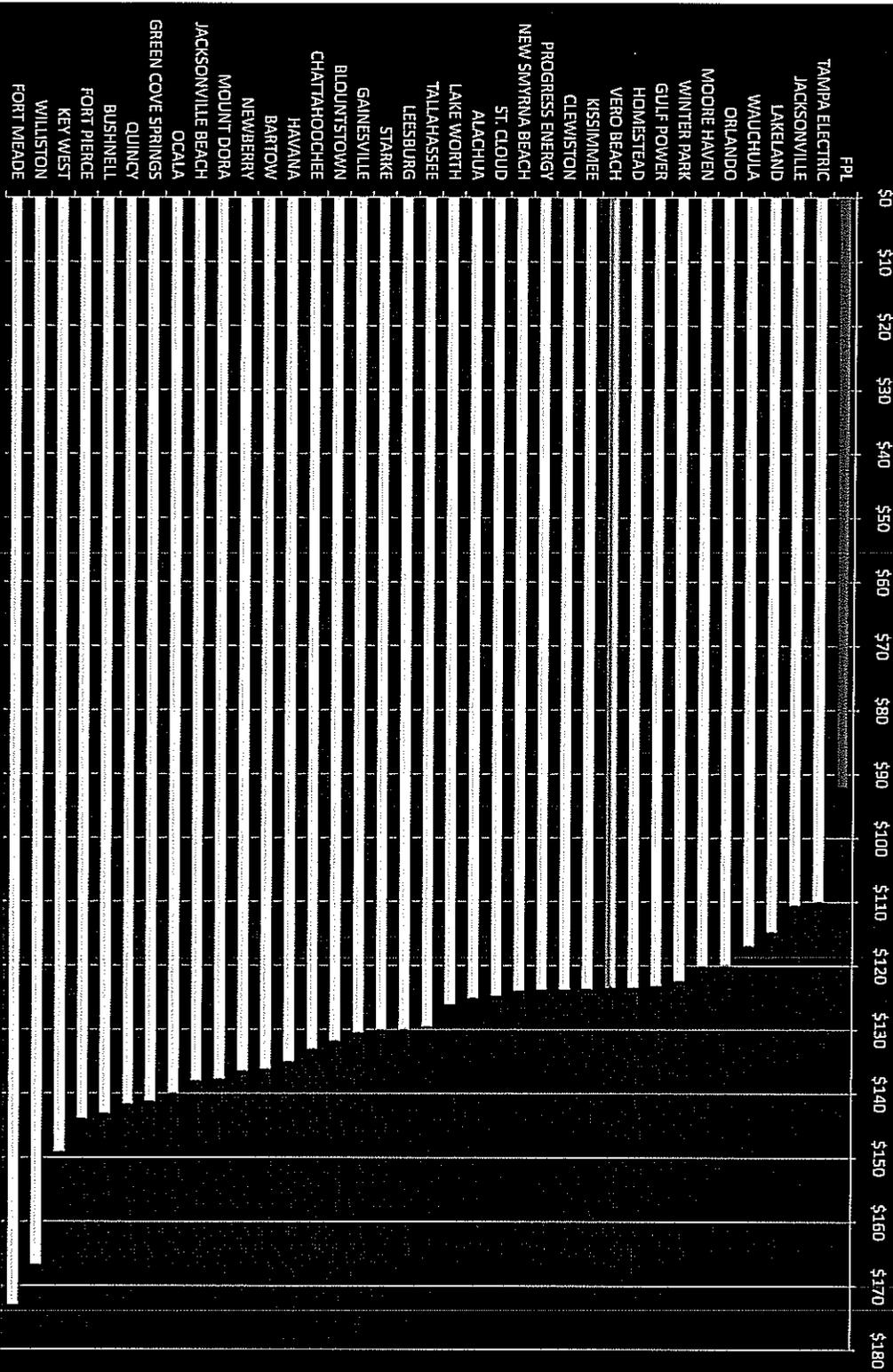
**This is similar to the approach on the electric utility where we were assured from 2006 – 2009 that the City's new electric supplier would provide rates equal to FPL. It was only when the City rate study was completed in the late summer of 2009 that the disparity in rates between FPL and the City was confirmed.**

**Thank You.**

**Comparison of Residential Electric Rates****Information provided by Florida Municipal Electric Association, Inc.****MARCH 2010**

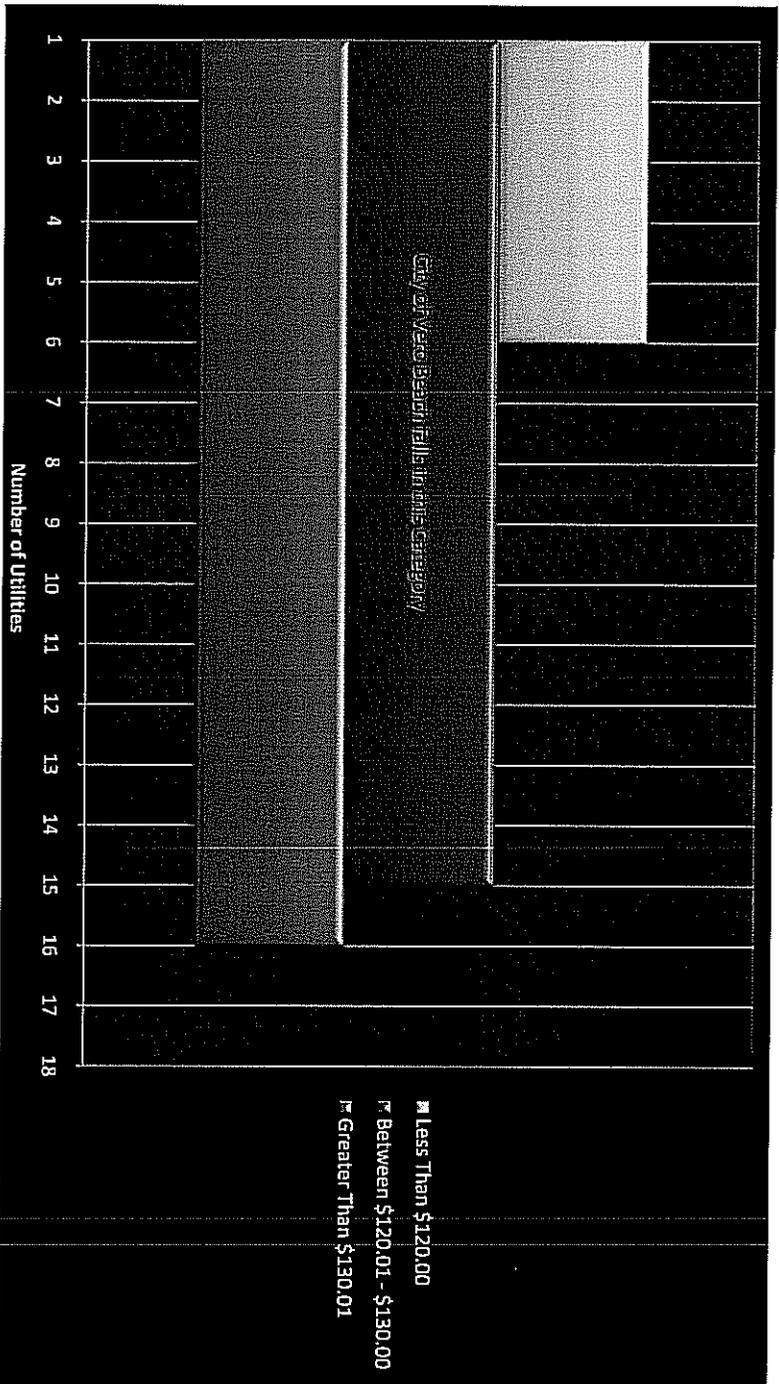
<b>Municipal-Owned Utilities and Investor-Owned Utilities</b>		<b>Total Cost Based on 1,000 KWH</b>	
1	FPL	\$	92.08
2	TAMPA ELECTRIC	\$	109.91
3	JACKSONVILLE	\$	110.46
4	LAKELAND	\$	114.59
5	WAUCHULA	\$	116.85
6	ORLANDO	\$	119.82
7	MOORE HAVEN	\$	120.00
8	WINTER PARK	\$	122.26
9	GULF POWER	\$	123.02
10	HOMESTEAD	\$	123.30
11	<b>VERO BEACH</b>	\$	<b>123.45</b>
12	KISSIMMEE	\$	123.53
13	CLEWISTON	\$	123.71
14	PROGRESS ENERGY	\$	123.73
15	NEW SMYRNA BEACH	\$	123.80
16	ST. CLOUD	\$	124.61
17	ALACHUA	\$	125.00
18	LAKE WORTH	\$	126.00
19	TALLAHASSEE	\$	129.50
20	LEESBURG	\$	129.83
21	STARKE	\$	129.85
22	GAINESVILLE	\$	130.45
23	BLOUNTSTOWN	\$	131.71
24	CHATTAHOOCHEE	\$	132.95
25	HAVANA	\$	134.94
26	BARTOW	\$	136.06
27	NEWBERRY	\$	136.36
28	MOUNT DORA	\$	137.72
29	JACKSONVILLE BEACH	\$	137.91
30	OCALA	\$	139.84
31	GREEN COVE SPRINGS	\$	141.16
32	QUINCY	\$	141.55
33	BUSHNELL	\$	143.05
34	FORT PIERCE	\$	143.84
35	KEY WEST	\$	149.00
36	WILLISTON	\$	166.64
37	FORT MEADE	\$	172.86

Total Cost Based  
on 1,000 KWH



- TAMPA ELECTRIC
- JACKSONVILLE
- LAKELAND
- WAUCHULA
- ORLANDO
- MODRE HAVEN
- WINTER PARK
- GULF POWER
- HOMESTEAD
- VERO BEACH
- KISSIMEE
- CLEWISTON
- PROGRESS ENERGY
- NEW SMYRNA BEACH
- ST. CLOUD
- ALACHUA
- LAKE WORTH
- TALLAHASSEE
- LEESBURG
- STARKE
- GAINESVILLE
- BLOUNTSTOWN
- CHATTAHOCHEE
- HAVANA
- BARTOW
- NEWBERRY

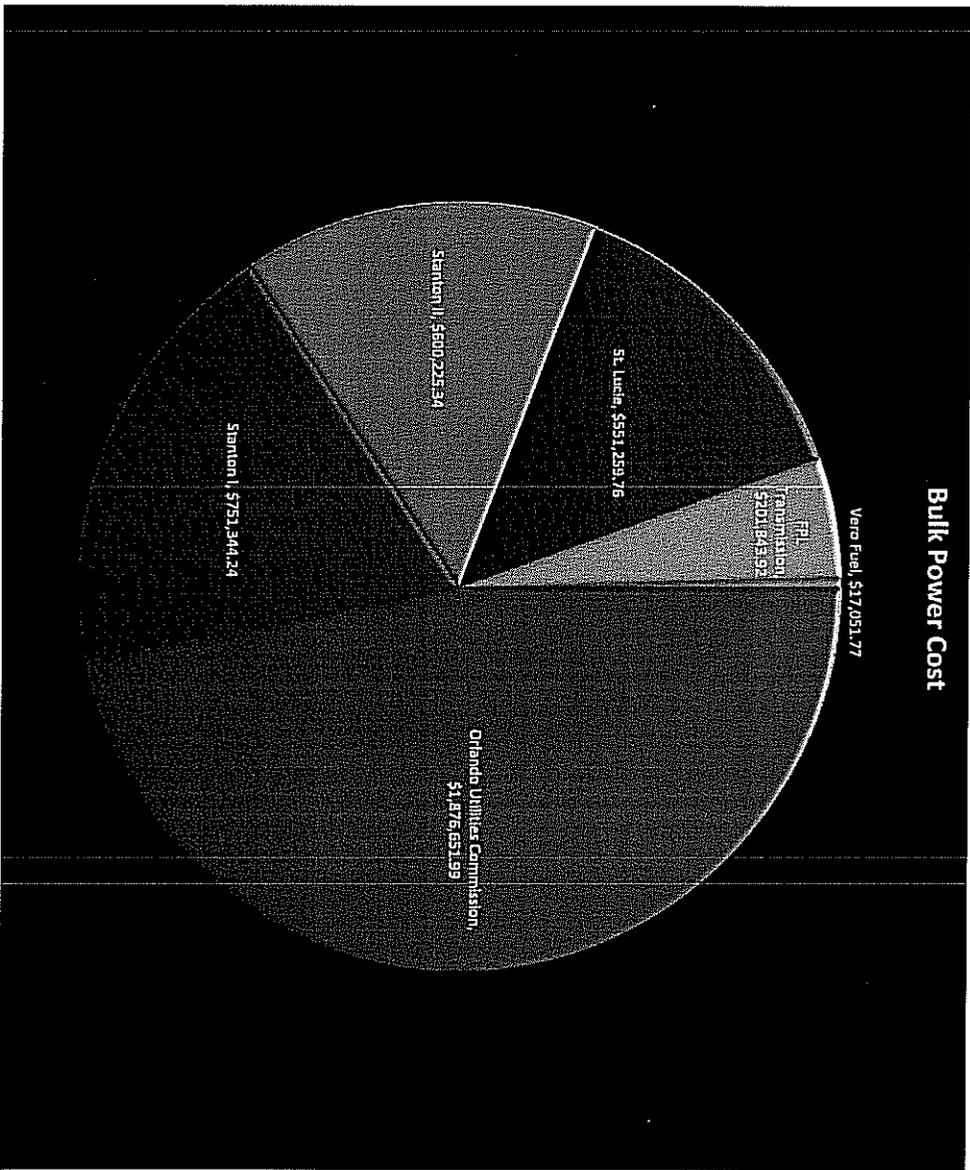
### Comparison of the Number of Utilities Per Cost Category



Greater Than \$130.01	16
Between \$120.01 - \$130.00	15
Less Than \$120.00	6

**Bulk Power Cost**  
**Month: 06/10**

Station	Cost	Rate
Stanton I	5800221.34	10.00
Stanton II	791344.24	10.00
St. Lucia	551259.76	10.00
Verde Fuel	17051.77	10.00
Orlando Utilities Commission	1876651.99	10.00
<b>Total Cost</b>	<b>13068429.10</b>	<b>10.00</b>



Meetings, Seminars and Events Attended:  
Submitted by Councilmember Ken Daige  
5-4-2010

4-26-2010 Annual Junior Staff Volunteer Dinner  
Sponsored by the City of Vero Beach Recreation Department  
The Vero Beach Lion's Club and  
The Treasure Coast Pilot Club.

Honorees are:

Matt Woodson

Savannah Rath

Courtney Vose

Jessica Richardson

Brooks Maxwell

And the Tot Spot of Vero Beach, Inc.

5-3-2010 Attended the Special Call Consultants Competitive Negotiation  
Act Committee Meeting.

# Vero Beach Police

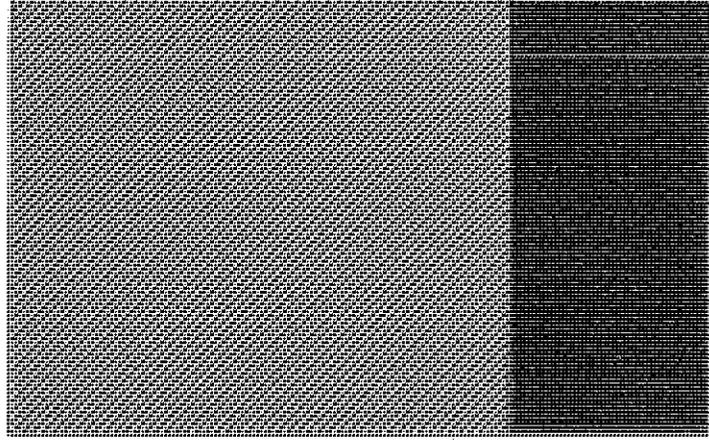
10/1/2009 Valuation Results

# Funding Equation

**Money In**

**Money Out**

=



**Exp**

**Bft**

**Inv**

**Conts**

# Required Contributions

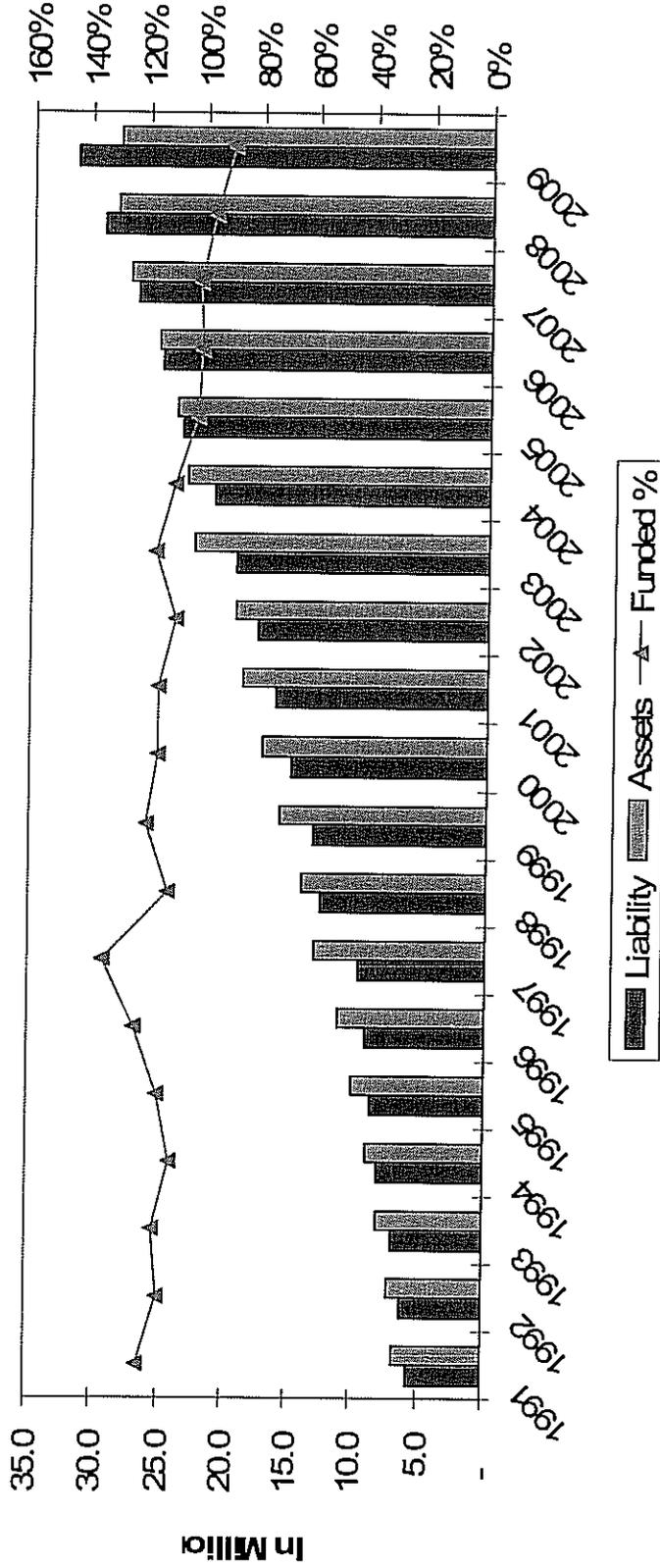
	For FYE 9/30/11 Based on 10/1/2009 Valuation	For FYE 9/30/10 Based on 10/1/2008 Valuation	Increase (Decrease)
Required Employer/State Contribution As % of Covered Payroll	\$ 1,003,043 24.69 %	\$ 808,241 19.95 %	\$ 194,802 4.74 %
Estimated State Contribution As % of Covered Payroll	\$ 271,043 6.67 %	\$ 271,043 * 6.69 %	\$ 0 (0.02) %
Required Employer Contribution As % of Covered Payroll	\$ 732,000 18.02 %	\$ 537,198 13.26 %	\$ 194,802 4.76 %

# Change in Minimum Funding

Contribution rate last year	13.26 %
Amortization payment on UAAL	0.20
Change in normal cost rate	0.07
Actuarial experience	4.54
Change in investment return assumption	0.00
Change in administrative expense	(0.07)
Change in State revenue	<u>0.02</u>
Contribution rate this year	18.02

# Funded Status

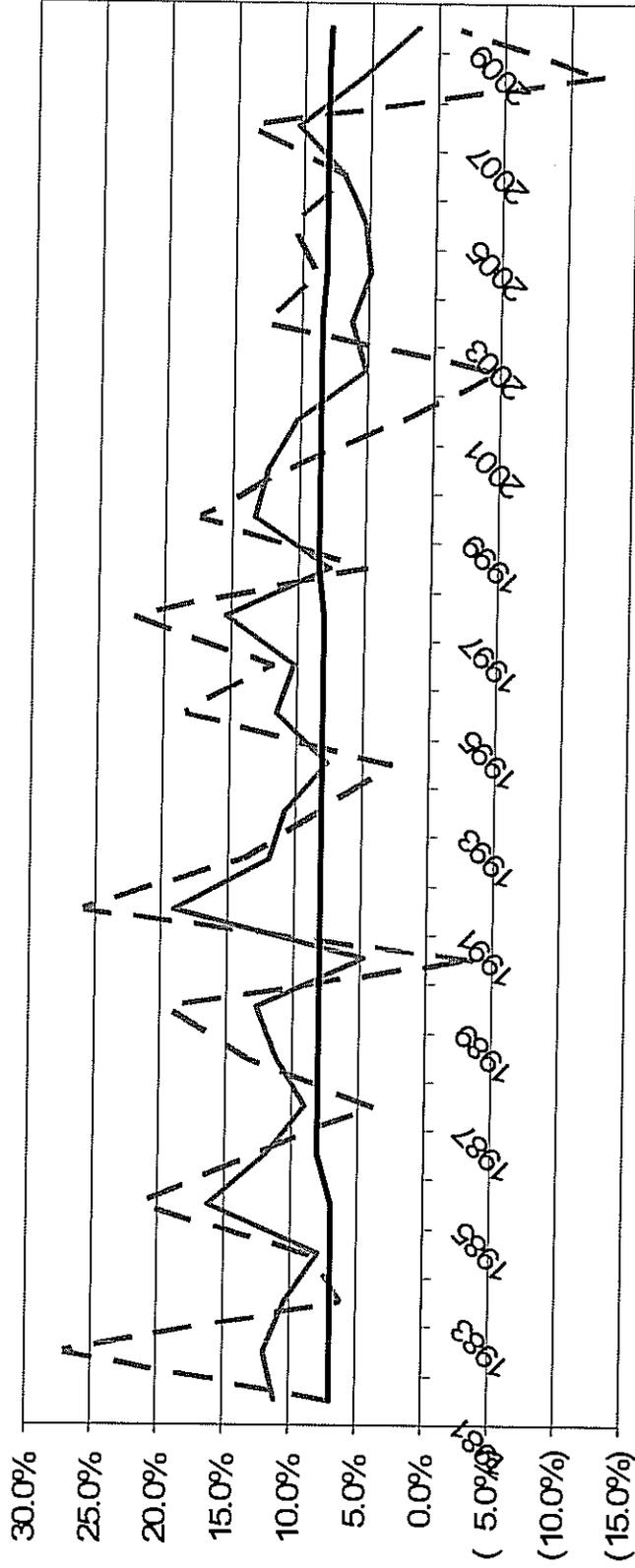
Historical Funded Percentage



Year	Funded %
2006	101%
2007	102%
2008	99%
2008	97%
2009	90%

# Investment Returns

Historic Investment Return



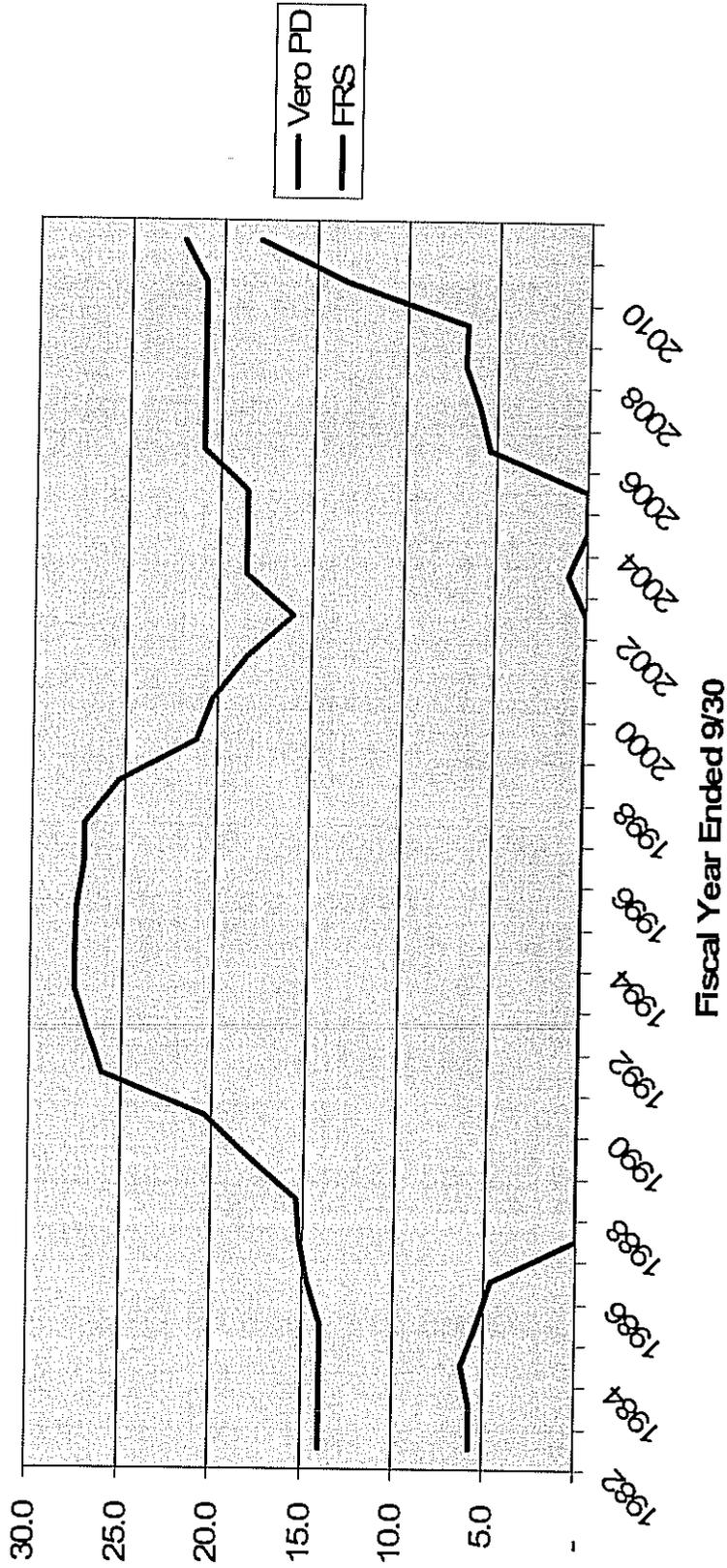
--- Market    — Actuarial    — Assumed

**Average Returns:**

Last 5 Years	3.0 %	5.9 %
Last 10 Years	4.4 %	6.8 %
All Years	9.3 %	9.8 %

# Change to Minimum Funding

Employer Contribution Rate



# Business

PAGE B 6 • SATURDAY, APRIL 24

## LOCAL FLORIDA

### FPL reports clean power generation record

Florida Power & Light Co. said Friday that its power generation fleet delivered 35 percent cleaner power than the industry average in 2009 — a record in clean generation for the utility.

FPL's power plants produced 845 pounds of carbon dioxide emissions per megawatt hour of electricity compared with the industry average of 1,297 pounds per megawatt, according to U.S. Department of Energy data.

FPL has been upgrading its fleet of fossil fuel plants to state-of-the-art combined cycle natural gas units that are more fuel efficient and have lower emissions. Nearly 90 percent of FPL's generation now comes from low-emissions natural gas units and emissions-free nuclear units.

Earlier this month, FPL's Space Coast Next Generation Solar Energy Center opened near NASA's Kennedy Space Center. This is the second of three large-scale solar facilities in Florida that the company has completed. The plants will generate 110 megawatts of clean energy with zero emissions.

## TREASURE COAST

### Have a new business?

Do you know about it? Advertise in this section to reach new business.



April 30, 2010

Mr. James Gabbard, City Manager  
City of Vero Beach  
1053 20th Place  
Vero Beach, FL 32960

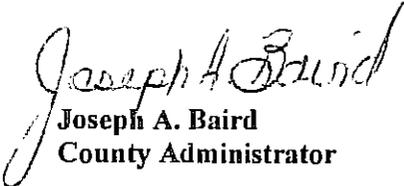
Dear Mr. Gabbard:

As you present the elements of a request for proposals to reestablish use of the City's acreage formerly known as Dodgertown Golf Course, please disclose the following to the City Council and any interested parties:

- The City's original purchase of the subject property did not include a substantial portion of the area comprising 3 holes of the "Dodgertown" golf course.
- On November 17, 2005, the County authorized a sublease of 9.127 acres to the City subject to the terms of the Parking Property Lease Agreement between the City and the Dodgers ("Parking Lease"). On May 9, 2009 the City, County, and MiLB executed an Estoppel Certificate affecting the terms and conditions of the Parking Lease.
- The Parking Lease and Estoppel Certificate still allow the City to operate a golf facility, however, any golf course operation would be subject to the parking rights retained by the County and currently leased to MiLB of Vero Beach, LLC ("MiLB"). Additionally, the 9.127 acres leased by the City appears to exclude a portion of the first hole which is owned by the County subject only to the rights of MiLB under the terms of MiLB's Facility Lease Agreement with the County. Any proposal to provide alternative parking facilities will require approval by the Board of County Commissioners.

It is apparent that any request for proposals advanced by the City to reestablish a nine hole golf facility will impact the County's property rights noted above. If you would like to address the Board of County Commissioners on the matter, please contact my office to be placed on a future agenda.

Sincerely,

  
Joseph A. Baird  
County Administrator

**OFFICE OF THE COUNTY ADMINISTRATOR  
INDIAN RIVER COUNTY**

1801 27<sup>th</sup> Street, Vero Beach, FL 32960-3388  
PHONE: 772-226-1408 - FAX: 772-978-1822



**SUBJECT TO CHANGE**

**AGENDA**

**CITY MANAGER'S OFFICE**

**MAY 4, 2010**

**Consent Agenda**

- 2D)1. Regular City Council Minutes – April 20, 2010
- 2D)2. 18<sup>th</sup> Street Paving, Drainage and Sidewalk Improvements – Community Development Block Grant (CDBG) Project – Recommendation of Final Acceptance, and Approval of the Final Change Order and Final Payment
- 2D)3. Police Department Exercise Equipment Purchase
- 2D)4. Settlement Agreement – Linda Tyner

**City Manager's Matters**

- 7A) Director of Electric Utilities – Update on Utility Issues
- 7B) Police Department Pension Review
- 7C) City-owned Golf Course Property (Review of Draft Request For Proposals)
- 7D) County Commission Letter Requesting Joint Meeting
- 7E) Consultants Competitive Negotiation Act Committee Report (Rob Bolton)

Proposal for Study for Optimization of Water and Wastewater Utility Services for Indian River County, the City of Vero Beach and the Town of Indian River Shores	POSITION	Principal Engineer	Senior Consultant	Certified Public Accountant	Senior Professional Engr	Prof. Engineer/Production Mgr./Sr. Constr. Mgr./PhD.	Engineering/Funding Specialist	Finance Analyst/M.B.A./M.P.A.	Project Support	HOURS/TASK	FEE/TASK	DIRECT COSTS/SUBCONSULTANTS	W. F. McCain	Gray Robinson	TOTAL COST	
		RATE	\$ 220.00	\$ 200.00	\$ 180.00	\$ 150.00	\$ 135.00	\$ 105.00	\$ 90.00	\$ 65.00						
<b>PHASE 1A - DATA COLLECTION/ INTERVIEWS</b>																
1	DATA COLLECTION															
	1.1 TECHNICAL DATA		4				4		4	12	\$ 1,480.00	\$ 11,150	\$ 11,150		\$ 12,630	
	1.2 MAJOR AGREEMENTS								2	2	\$ 130.00	\$ 2,000		\$ 2,000	\$ 2,130	
	1.3 FINANCIAL			4			4		2	10	\$ 1,270.00				\$ 1,270	
	1.4 INTERVIEW WITH STAKEHOLDERS	40	4						2	46	\$ 9,730.00	\$ 12,000		\$ 12,000	\$ 21,730	
	PHASE 1A, TASK 1 LABOR FEE	\$ 12,610.00	\$ 8,800.00	\$ 1,600.00	\$ 720.00	\$ -	\$ -	\$ 840.00	\$ -	\$ 650.00		\$ 12,610.00	\$ 25,150	\$ 11,150	\$ 14,000	\$ 37,760
	PHASE 1A, TASK 1 HOURS	70	40	8	4	0	0	8	0	10	70					
	REIMBURSIBLE EXPENSES											\$2,180.00			\$ 2,180	
	TOTAL PHASE 1A FEE	\$ 8,800.00	\$ 1,600.00	\$ 720.00	\$ -	\$ -	\$ 840.00	\$ -	\$ 650.00		\$ 12,610	\$ 27,330	\$ 11,150	\$ 14,000	\$ 39,940	
	TOTAL PHASE 1A HOURS	40	8	4	0	0	8	0	10	70						
<b>PHASE 1B- INITIAL ANALYSIS</b>																
1	OVERVIEW ANALYSIS															
	1.1 FACILITIES	1	16		40		16			73	\$ 11,100.00	\$ 12,030	\$ 12,030		\$ 23,130	
	1.2 LEGAL	1								1	\$ 220.00	\$ 7,000		\$ 7,000	\$ 7,220	
	1.3 FINANCIAL/RATE REVIEW	1		16		24	24			65	\$ 8,860.00				\$ 8,860	
	1.4 ADMINISTRATIVE STRUCTURE/ORGANIZATION	1		4		40				45	\$ 6,340.00				\$ 6,340	
	TASK 1 LABOR FEE	\$ 26,520.00	\$ 880.00	\$ 3,200.00	\$ 3,600.00	\$ 6,000.00	\$ 8,640.00	\$ 4,200.00	\$ -	\$ -	\$ 26,520.00	\$ 19,030	\$ 12,030	\$ 7,000	\$ 45,550	
	TASK 1 HOURS	184	4	16	20	40	64	40	0	0	184					
2	EVALUATION OF FRANCHISE AGREEMENTS		4	8	40		32			4	\$ 14,260.00	\$ 3,000	\$ 1,000	\$ 2,000	\$ 17,260	
	TASK 2 LABOR FEE	\$ 14,260.00	\$ 880.00	\$ 1,600.00	\$ 7,200.00	\$ -	\$ 4,320.00	\$ -	\$ -	\$ 260.00	\$ 14,260.00	\$ 3,000	\$ 1,000	\$ 2,000	\$ 17,260	
	TASK 2 HOURS	88	4	8	40	0	32	0	0	4	88					
3	IDENTIFICATION OF MAJOR SCENARIOS		12	24	24	40				4	\$ 18,020.00	\$ 2,000	\$ 1,000	\$ 1,000	\$ 20,020	
	TASK 3 LABOR FEE	\$ 18,020.00	\$ 2,640.00	\$ 4,800.00	\$ 4,320.00	\$ 6,000.00	\$ -	\$ -	\$ -	\$ 260.00	\$ 18,020.00	\$ 2,000	\$ 1,000	\$ 1,000	\$ 20,020	
	TASK 3 HOURS	104	12	24	24	40	0	0	0	4	104					
4	SUSTAINABILITY		8	24	24	40	40				\$ 22,280.00	\$ 3,000	\$ 2,000	\$ 1,000	\$ 25,280	
	TASK 4 LABOR FEE	\$ 22,280.00	\$ 1,760.00	\$ 4,800.00	\$ 4,320.00	\$ 6,000.00	\$ 5,400.00	\$ -	\$ -	\$ -	\$ 22,280.00	\$ 3,000	\$ 2,000	\$ 1,000	\$ 25,280	
	TASK 4 HOURS	136	8	24	24	40	40	0	0	0	136					
5	SUMMARY REPORT/ PRESENTATION															
	5.1 DRAFT REPORT	4	12	8					8	32	\$ 5,240.00				\$ 5,240	
	5.2 DRAFT REPORT MEETING	4	4	4				12		24	\$ 3,660.00				\$ 3,660	
	5.3 FINAL REPORT	4	4	4				12		24	\$ 3,660.00				\$ 3,660	
	5.4 JOINT WORKSHOP FINAL PRESENTATION	6	6	6					8	26	\$ 4,120.00	\$ 2,000	\$ 1,000	\$ 1,000	\$ 6,120	
	TASK 5 LABOR FEE	\$ 16,680.00	\$ 3,960.00	\$ 5,200.00	\$ 3,960.00	\$ -	\$ -	\$ 2,520.00	\$ -	\$ 1,040.00	\$ 16,680.00	\$ 2,000	\$ 1,000	\$ 1,000	\$ 18,680	
	TASK 5 HOURS	106	18	26	22	0	0	24	0	16	106					
	REIMBURSIBLE EXPENSES											\$3,203.00			\$ 3,203	
	TOTAL PHASE 1B FEE	\$ 97,760	\$ 10,120	\$ 19,600	\$ 23,400	\$ 18,000	\$ 18,360	\$ 6,720	\$ -	\$ 1,560	\$ 97,760	\$ 32,233	\$ 17,030	\$ 12,000	\$ 129,993	
	TOTAL PHASE 1B HOURS	618	46	98	130	120	136	64	0	24	618					
	TOTAL PHASE 1 FEE	\$ 18,920.00	\$ 21,200.00	\$ 24,120.00	\$ 18,000.00	\$ 18,360.00	\$ 7,560.00	\$ -	\$ 2,210.00		\$ 110,370.00	\$ 59,563	\$ 28,180	\$ 26,000	\$ 169,933	
	TOTAL PHASE 1 HOURS	86	106	134	120	136	72	0	34	688						

REIMBURSIBLE EXPENSES	COST/ UNIT	FOR PHASE 1A		FOR PHASE 1B	
		UNITS	COST	UNITS	COST
Binders	1.00		\$0.00	18.00	\$18.00
Blueprint \$1.95	1.95		\$0.00	400.00	\$780.00
Copies BW 11" x 17"	0.09		\$0.00	500.00	\$45.00
Copies BW 24" x 36"	2.20		\$0.00	600.00	\$1,320.00
Copies BW 8.5" x 11"	0.06	3000.00	\$180.00		\$0.00
Color Copies 11" x 17"	0.20		\$0.00	50.00	\$10.00
Color Copies 8.5" x 11"	0.15		\$0.00	200.00	\$30.00
Travel per mile (current I.R.S. rate)	0.50 (200 miles/ trip)	800.00	\$400.00	2000.00	\$1,000.00
Hotel (5 nights/ 2 rooms) & meals	400	4	\$1,600.00		\$0.00
<b>TOTAL</b>			<b>\$2,180.00</b>		<b>\$3,203.00</b>