

CITY OF VERO BEACH, FLORIDA
JUNE 15, 2010 6:00 P.M.
REGULAR CITY COUNCIL MEETING
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

A G E N D A

1. CALL TO ORDER

- A. Roll Call
- B. Invocation – Pastor Jim Gallagher/Calvary Chapel of Vero Beach
- C. Pledge of Allegiance

2. PRELIMINARY MATTERS

- A. Agenda Additions, Deletions, and Adoption
- B. Proclamations
 - 1. Korean War Veterans Day – June 25, 2010
- C. Public Comment
- D. Adoption of Consent Agenda
 - 1. Regular City Council Minutes – June 1, 2010
 - 2. Regular City Council Minutes – May 18, 2010
 - 3. Monthly Capital Projects Status Reports
 - 4. SR A1A Landscape Median – Recommendation of Acceptance and Final Payment

(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, requested by Vero Property Investment, LLC, to amend the Comprehensive Plan Future Land Use Map by changing the Land Use Designation from C, Commercial (up to 15 dwelling units/acre) to RH, Residential High (up to 15 dwelling units/acre) for the property generally located East of the Northeast corner of the Intersection of 21st Street (US Highway 1) and 10th Avenue, including all of the replat of Henning's

Subdivision that lies North of 21st Street (US Highway 1) and a portion of Block 1, Citrus Park, containing 1.76 acres, more or less; and providing for an effective date.

- B) An Ordinance of the City of Vero Beach, Florida, requested by Vero Property Investment, LLC, to amend the Official Zoning Map by changing the Zoning Designation from C-1, Highway Oriented Commercial to RM-10/12, Medium and High Density Multiple-Family Residential District for the property generally located East of the Northeast Corner of the Intersection of 21st Street (US Highway 1) and 10th Avenue, including all of the replat of Henning's Subdivision that lies North of 21st Street (US Highway 1) and a portion of Block 1, Citrus Park, containing 1.76 acres, more of less; and providing for an effective date.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) A Resolution authorizing the City of Vero Beach, Florida, to enter into a Joint Participation Agreement with the State of Florida, Department of Transportation, for Obstructions Removal (FDOT#420769-1-94-01)
- B) A Resolution of the City of Vero Beach, Florida, repealing the Rate Increases for Fiscal Year 2010, 2011, 2012, and 2013 Water and Sewer as described in Attachment "A" and "B" of Resolution 2009-31; providing for an effective date.
- C) A Resolution of the City of Vero Beach, Florida, authorizing the City Manager to execute a Time Extension to the Local Agency Program Agreement dated 5/02/2005 with the State of Florida Department of Transportation relative to the State Road A1A Landscaping Enhancement Project; and providing for an Effective Date.

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

- A) An Ordinance of the City of Vero Beach, Florida, amending Chapter 76, Historic Preservation, of the City of Vero Beach Code by revising or Creating New Definitions in Section 76.02; creating new Article VI, and Ad Valorem Tax Exemptions for Improvements to Historic Properties pursuant to Sections 196.1997 and 196.1998, Florida Statutes; providing for authorization; providing for eligibility and procedures for obtaining exemptions; providing for revocation of Tax Exemption; providing for conflict and severability; and providing for an effective date.

6. CITY CLERK'S MATTERS

- A) Reappointments to Commission/Boards

7. CITY MANAGER'S MATTERS

- A) Award of RFP No. 170-10/PJW – Unit 5 Heat Recovery Steam Generator Superheater Retrofit
- B) Award of Bid No. 230/10/JV – 19th Street Culvert Replacement at 20th Avenue Lateral E Canal
- C) Dixon Downey Donation for Riverside Park
- D) Discussion of CCNA Committee Meetings (Rob Bolton)
- E) Discussion of Procedures for Processing Change of Use Applications and New Local Business Tax Applications
- F) Discussion of Meeting with FP&L – John Lee

8. CITY ATTORNEY'S MATTERS

9. CITY COUNCIL MATTERS

A. Old Business

- 1. Another reconsideration of date for presentation by Dr. Faherty and Glenn Heran – Requested by Brian Heady
- 2. Still Waiting for written answers from City Manager – Requested by Brian Heady
- 3. Missing report from City Manager requested by Councilmember Daige – Request from Brian Heady
- 4. November Elections – Requested by Brian Heady
- 5. Debate on Sale of Electric – Requested by Brian Heady
- 6. 8/12/08 to be played and discussion to follow – Requested by Brian Heady
- 7. Update on a Federal Lawsuit – Requested by Brian Heady
- 8. Honest Services Fraud – Requested by Brian Heady
- 9. Golf Course – Requested by Brian Heady
- 10) City Manager to give update on Original Town – Requested by Ken Daige

B. New Business

- 1. Request for Funding from the Tree and Beautification Commission
- 2. Utilize the social networking site Twitter to update public regarding events, meetings – Requested by Mayor Sawnick
- 3. Request an area on City website so public can give input on upcoming budget – Requested by Mayor Sawnick

4. Discuss Shark Fishing Ordinance – Requested by Ken Daige

5. Water and Sewer Issues – Requested by 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

1. FPL, Lakeland, and public business in the public eye

2. Liars, Cheats and Thieves

3. Bad Information=bad decisions

4. Correspondence

E. Councilmember Ken Daige's Matters

1. Correspondence
2. Committee Reports
3. Comments

1. Meeting with FP&L – June 3, 2010

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.

COUNCIL AGENDA REPORT
MEETING JUNE 15, 2010

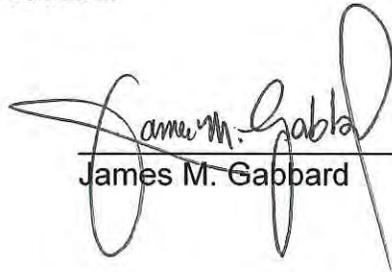
TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: June 8, 2010

SUBJECT: MONTHLY CAPITAL PROJECTS' STATUS REPORTS

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



James M. Gabbard

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Attachments

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

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CAPITAL PROJECTS REPORT – AIRPORT

FAA PAPI Test Project

FAA personnel have completed their flight tests of new LED-technology PAPI systems provided by 4 different commercial vendors. The tests were performed by FAA technical personnel and flight test aircrews. FAA is now conducting a comprehensive evaluation of the technical data and flight test results and will contact the Airport with further information later this year.

Obstruction Removal

On April 6, 2010, the Airport presented to City Council the results of the FAA-required Obstruction Survey (Phase 1). The Airport received approval from City Council to proceed to more detailed plans and specifications under Phase 2 of the project (Obstruction Removal), which will be presented to City Council in late 2010 for further action.

ARFF Vehicle

The new Airport Rescue and Fire Fighting vehicle was delivered on April 14th. Fire fighters completed 4 days of training on the new vehicle, which is now having the airport-required radios installed for use on the airfield. Final payment has been made to the manufacturer, and the project will be closed out this month.

Rehabilitate Runway 11L/29R and Taxiway F

Notice to Procure materials and equipment for the project and Notice to Proceed with the installation of a new Airfield Lighting Control Monitoring System were issued June 1, 2010. Permitting is under way for the project and construction will begin when permitting is complete.

Airport Operations Facility

Funding is anticipated in October 2010. An architectural/engineering contract will be recommended to City Council in the fall of 2010, pending receipt of the grant.

Rehabilitate Sections Runway 11R/29L and Taxiway C

Staff will submit a grant request to FAA in mid July 2010. Pending receipt of federal and state funding, this project should be underway by late 2010 or early 2011.

Updated 03 JUN 2010

SR A1A LANDSCAPE IMPROVEMENTS FROM TULIP LANE TO PAINTED BUNTING LANE

Prepared By:
CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS
Contractor: H&D Construction Co., Inc.

PROJECT NO. 2002-12

For Period: 6/29/09 through 6/8/10

NOTES:

Median construction and landscaping are complete.

Punchlist and final clean-up complete.

Contractor has declared bankruptcy. We are working with the surety to close out the project.

Final pay request has been sent to surety for approval.

*Contract time was temporarily stopped while waiting for FDOT approval of requested modifications.

THE FOLLOWING IS A SUMMARY OF COSTS TO DATE:		THE FOLLOWING IS SUMMARY OF PROGRESS TO DATE:	
ORIGINAL CONTRACT AMOUNT	\$254,609.87	CONTRACT DATE:	06/15/09
CHANGE ORDERS TO DATE (TOTAL)	\$67,155.37	NOTICE TO PROCEED:	06/29/09
ADJUSTED CONTRACT AMOUNT TO DATE	\$321,765.24	TIME OF COMPLETION	90 Days
TOTAL COST OF WORK PERFORMED TO DATE	\$323,989.54	CONTRACT DAY:	264
% OF WORK COMPLETE	100.69%	% OF CONTRACT TIME COMPLETE:	293.33%



13-Apr-10
Completed new landscaped median section



13-Apr-10
New median sections showing brick paver detail

Bay Drive and River Drive Bridge Replacements

Prepared By:

PROJECT NO. 2005-24

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

Contractor: Misener Marine Construction, Inc.

For Period: 11/24/09 through 6/8/10

NOTES:

Northeast and southeast end bent caps for River Drive bridge are complete and deck slabs are in place.

All water utility relocation is complete.

All traffic has been diverted to new bridge sections.

Bay Drive bridge demolition is complete. New piles and end bent caps are in place and deck slabs are set. Barrier wall is 90% complete.

Traffic on River Drive has been transferred to the new bridge section.

River Drive bridge demolition is complete. Structural piles are in and sheet piles are on schedule for completion June 12th.

THE FOLLOWING IS A SUMMARY OF COSTS TO DATE:		THE FOLLOWING IS SUMMARY OF PROGRESS TO DATE:	
ORIGINAL CONTRACT AMOUNT	\$1,699,671.30	CONTRACT DATE:	09/18/09
CHANGE ORDERS TO DATE (TOTAL)	(\$48,059.50)	NOTICE TO PROCEED:	11/24/09
ADJUSTED CONTRACT AMOUNT TO DATE	\$1,651,611.80	TIME OF COMPLETION	90 Days
TOTAL COST OF WORK PERFORMED TO DATE	\$1,273,508.38	CONTRACT DAY:	179
% OF WORK COMPLETE	77.11%	% OF CONTRACT TIME COMPLETE:	198.89%



01-Jun-10

Bay Drive barrier wall in progress



04-Jun-10

River Drive structural piles set

Royal Palm Sidewalk Construction

Prepared By:

PROJECT NO. 2007-02

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

Constructed by COVB Staff

For Period: 2/15/10 through 6/8/10

NOTES:

Total length of sidewalk for this project is 7,640 linear feet. Approximately 6,080 lf has been constructed

Sidewalk has been completed on the south side of Royal Palm Boulevard.

Sidewalk on the north side of Royal Palm Place was started at the east end near the limits of the FDOT Royal Palms/Indian River Boulevard intersection construction and is complete up to Country Club Drive.

Work will progress westward towards US 1.

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

ORIGINAL BUDGET AMOUNT	\$334,873.60	Percent of Work Complete	80%



04-Jun-10

New sidewalk looking eastward on Royal Palm Place



04-Jun-10

Looking eastward from Country Club Drive

Humiston Park Stormwater System Improvements

Prepared By:

PROJECT NO. 2008-08

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

Contractor: Sunshine Land Design, Inc.

For Period: 1/04/10 through 6/8/10

NOTES:

Gravity outfall pipe has been grouted and abandoned.

Beach outfall has been 100% demolished and removed. The new outfall has been fully constructed

Pump station is 50% complete. The pump is installed in the lift station.

Electric controller for the pump is being installed.

THE FOLLOWING IS A SUMMARY OF COSTS TO DATE:		THE FOLLOWING IS SUMMARY OF PROGRESS TO DATE:	
ORIGINAL CONTRACT AMOUNT	\$310,144.49	CONTRACT DATE:	12/18/09
CHANGE ORDERS TO DATE (TOTAL)		NOTICE TO PROCEED:	01/04/10
ADJUSTED CONTRACT AMOUNT TO DATE	\$310,144.49	TIME OF COMPLETION	45 Days
TOTAL COST OF WORK PERFORMED TO DATE	\$240,208.20	CONTRACT DAY:	129
% OF WORK COMPLETE	77.45%	% OF CONTRACT TIME COMPLETE:	143.33%



20-May-10
New pump installed with two existing pumps



20-May-10
Concrete cover with access panel installed over pump vault

**Florida Department of Transportation
Indian River Boulevard & Royal Palms Intersection**

Prepared By:
CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS
Contractor: Community Asphalt Corp.

FDOT Project No. 403596-2-52.01
For Period: 1/04/10 through 6/8/10

NOTES:

This is an FDOT project and the information provided herein is intended specifically for the information of the City Council.

New signal mast arms have been installed. Traffic pattern has been adjusted to new pattern.

Scheduled completion date is July 23, 2010, 7 weather days and 10 day extension for gas main relocation have been added to contract time.

THE FOLLOWING IS A SUMMARY OF COSTS TO DATE:		THE FOLLOWING IS SUMMARY OF PROGRESS TO DATE:	
ORIGINAL CONTRACT AMOUNT	\$834,374.68	CONTRACT DATE:	09/10/09
CHANGE ORDERS TO DATE (TOTAL)		NOTICE TO PROCEED:	02/01/10
ADJUSTED CONTRACT AMOUNT TO DATE	\$834,374.68	TIME OF COMPLETION	163 Days
TOTAL COST OF WORK PERFORMED TO DATE		CONTRACT DAY:	131
% OF WORK COMPLETE		% OF CONTRACT TIME COMPLETE:	80.37%



04-Jun-10
New traffic pattern looking east from Royal Palm Place



04-Jun-10
New traffic pattern looking east from Royal Palm Blvd.

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

STATUS REPORT AS OF 6/1/10
CITY OF VERO BEACH DEPARTMENT OF WATER AND SEWER

Prepared By: Jerry A. Gilbert, P.E.
 Consultant: Morgan & Associates
 Contract Date: 11-Dec-09
 Notice to Proceed Date: 19-Jan-10
 Time of Completion: 270 Days
 Scheduled Completion Date: 15-Oct-10

PROJECT NO: 1483
 FOR PERIOD: 5/1/10 - 6/1/10

Director's Signature



PROJECT DESCRIPTION:

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

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

DIVISION			
CONTRACTOR		S.P.S. Contracting, Inc.	
ORIGINAL CONTRACT AMOUNT		\$2,396,841.58	
CHANGE ORDERS TO DATE (TOTAL)		\$39,906.00	
ADJUSTED CONTRACT AMOUNT TO DATE		\$2,436,747.58	
TOTAL COST OF WORK PERFORMED TO DATE		\$1,575,928.12	
% OF WORK PAID		58.21%	
TOTAL WORK COMP.		\$1,418,335.31	



The force main and re-use main crossed Indian River Boulevard this month, not in a tunnel as shown on the plans, but by open cutting the roadway at night. The FDOT permitted the change, the crossing was completed in three nights, and the road was never closed to traffic. This change resulted in a cost savings to the City.

WATER TREATMENT PLANT INJECTION WELL SYSTEM

STATUS REPORT AS OF 6/1/10
CITY OF VERO BEACH DEPARTMENT OF WATER AND SEWER

Prepared By: Jerry A. Gilbert, P.E.
 Consultant: ARCADIS US
 Contract Date: 10/01/09
 Notice to Proceed Date: 10/07/09
 Time of Completion: 270 Calendar Days
 Substantial Completion Date: 06/04/10

PROJECT NO: 290-09/JV
 FOR PERIOD: 5/1/10 - 6/1/10

Director's Signature



PROJECT DESCRIPTION:

THE WORK TO BE PERFORMED UNDER THIS CONTRACT CONSISTS OF CONSTRUCTING ONE CLASS I INJECTION WELL THAT MAY BE PERMITTED TO ACCEPT AN INJECTION RATE OF 9.7 MILLION GALLONS PER DAY, ONE DUAL ZONE DEEP MONITOR WELL, AND REQUIRED OPERATIONAL TESTING.

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

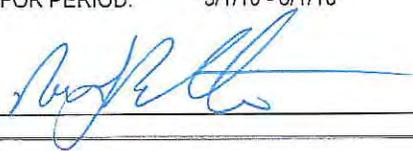
DIVISION			
CONTRACTOR	Youngquist Brothers, Inc.		
ORIGINAL CONTRACT AMOUNT	\$4,684,434.00		
CHANGE ORDERS TO DATE (APPROVED)	\$28,352.00		
ADJUSTED CONTRACT AMOUNT TO DATE	\$4,712,786.00		
TOTAL COST OF WORK PERFORMED TO DATE	\$3,725,211.00		
% OF WORK PAID	71.14%		
TOTAL WORK COMP.	\$3,352,689.90		



The deep injection well underwent its' final testing this month. First was the injection test, during which 4.41 million gallons were injected into the well to verify its' capacity. The picture above left shows two pumps connected to the new 3.0 mg ground storage tank, to obtain adequate water supply for the test. The picture above right shows the piping connection to the injection well. A second test was also performed, a radioactive tracer survey. The radioactive tracer survey determines the elevation at which the contents of the injection well are dispersed into the ground. The result of both tests exceeded the design expectations.

WATER TREATMENT MAINTENANCE BUILDING AND FIELD SERVICES COMPLEX

STATUS REPORT AS OF 6/1/10
CITY OF VERO BEACH DEPARTMENT OF WATER AND SEWER

Prepared By:	Jerry A. Gilbert, P.E.	PROJECT NO:	150-09/JV
Consultant:	Edlund, Dritenbas, Binkley Architects	FOR PERIOD:	5/1/10 - 6/1/10
Contract Date:	08/19/09		
Notice to Proceed Date:	12/04/09		
Time of Completion:	300 Calendar Days		
Scheduled Completion Date:	09/30/10	Director's Signature	

PROJECT DESCRIPTION:

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

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

DIVISION			
CONTRACTOR	Summit Construction Management, Inc.		
ORIGINAL CONTRACT AMOUNT	\$1,924,000.00		
CHANGE ORDERS TO DATE (TOTAL)	\$141,156.05		
ADJUSTED CONTRACT AMOUNT TO DATE	\$2,065,156.05		
TOTAL COST OF WORK PERFORMED TO DATE	\$1,101,400.00		
% OF WORK PAID	53.33%		
TOTAL WORK COMP.	\$991,260.00		



Above left, the field services building blockwork and framing is over 60 % complete. Electrical, fire sprinklers, plumbing and drywall work continues this month. Above right, the maintenance building interior work is also continuing. .

STORAGE RESERVOIR AND INJECTION WELL PUMP STATION

STATUS REPORT AS OF 6/1/10
CITY OF VERO BEACH WATER AND SEWER DEPARTMENT

Prepared By: Jerry A. Gilbert, P.E.
 Consultant: Arcadis, Inc.
 Contract Date: 30-Sep-2009
 Notice to Proceed Date: 13-Oct-2009
 Time of Completion: 395 Calendar Days
 Scheduled Completion Date: 12-Nov-2010

PROJECT NO: 280-09/JV
 FOR PERIOD: 5/1/10 - 6/1/10

Director's Signature 

PROJECT DESCRIPTION:

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

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

DIVISION			
CONTRACTOR	Florida Design Contractors, Inc.		
ORIGINAL CONTRACT AMOUNT	\$2,694,375.00		
CHANGE ORDERS TO DATE (TOTAL)	\$791,836.36		
ADJUSTED CONTRACT AMOUNT TO DATE	\$3,486,211.36		
TOTAL COST OF WORK PERFORMED TO DATE	\$1,802,699.44		
% OF WORK PAID	51.71%		
TOTAL WORK COMP.	\$1,622,429.50		



Above left, the contractor is adding new piping to redirect the flow of reuse water to the new storage tank at the water treatment plant. Above right, the injection well pump station is nearing completion.

COUNCIL AGENDA REPORT
MEETING OF JUNE 15, 2010

TO: The Honorable Mayor and Members of the City Council

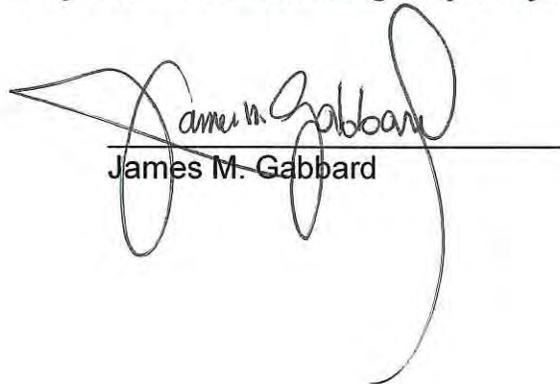
FROM: James M. Gabbard, City Manager

DATE: June 8, 2010

SUBJECT: SR A1A LANDSCAPE MEDIAN – RECOMMENDATION OF ACCEPTANCE AND FINAL PAYMENT

Attached is a memorandum from Bill Messersmith, dated June 7, 2010, which provides background information and a recommendation on the above-referenced subject.

It is the recommendation of the City Manager's Office that Council accept the above-referenced project with H&D Construction Co., Inc.; approve Change Order No. 2, for an increase of \$2,224.30, which results in a final contract amount of \$323,989.54; assess liquidated damages in the amount of \$18,590.00; and approve Pay Estimate No. 6 and Final, in the amount of \$39,903.28 (or a net amount of \$21,313.28 if Council approves the liquidated damages). Funding will be from Account No. 304.9900.541.604001, with all work eligible for reimbursement by the FDOT Local Agency Project (LAP) grant.


James M. Gabbard

:jav
Attachments

xc: Bill Messersmith
Monte Falls
Stephen Maillet



DEPARTMENTAL CORRESPONDENCE

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

VIA: Monte K. Falls, PE, Director
DEPT: Public Works *M.K. Falls 6/7/10*

FROM: William B. Messersmith, PE, Assistant City Engineer *WB 6/7/10*
DEPT: Public Works

DATE: June 7, 2010

**RE: SR A1A Landscape Median
Recommendation of Acceptance and Final Payment
City of Vero Beach Project No. 2002-12**

Recommendation:

- Place this item on the City Council Agenda for June 15, 2010;
- Accept the project as follows:

Approve Change Order No. 2, which reconciles as-built quantities, resulting in a final contract amount of \$323,989.54; and

Assess liquidated damages in the amount of \$18,590 for the time the Contract was delayed beyond the contracted completion date (26 days at \$715/day)

Approve Pay Estimate No. 6 and Final for \$39,903.28. If Council agrees with the recommended assessment of liquidated damages of \$18,590, the net final payment will be \$21,313.28.

Funding:

Funding for this project will be from account number 304.9900.541.604001, however all the work is eligible for reimbursement by the FDOT Local Agency Project (LAP) grant.

Background:

The City Council, at their meeting of May 19, 2009 awarded the contract for the referenced project to H&D Construction Co., Inc. of Ft. Pierce, Florida in the amount of \$254,609.87. On February 16, 2010 Council approved Change Order No. 1 for irrigation system modifications, curb modifications and drainage structure modifications for a new contract price of \$321,765.24.

Construction on the project was begun on June 29, 2009 with a contract time of 90 calendar days for a project completion date of September 26, 2009. The approved Change Order No. 1 increased the contract time by 14 days. Various issues worked to delay the project and the work was substantially completed on March 19, 2010 for a total project time of 264 days. That is 160 days beyond the approved contract time. The Contractor has requested additional time to account for bad weather, delays beyond his control and holidays. After review of the requests we recommend that an additional 134 days be added to the contract time. This would still be 26 days beyond the allowed contract time.

In accordance with FDOT requirements the City hired a certified Construction Engineering Inspector (CEI), Camp Dresser & McKee, Inc (CDM) to perform engineering inspections and quality control on the project. They have certified that the project was constructed in accordance with the contract requirements. We have reviewed the as-built quantities and confirm that \$323,989.54 represents the total amount of work completed. This total represents an increase of \$2,224.30 over the previously approved contract amount of \$321,765.24 and will be funded from the grant. Therefore, we confirm a final payment amount of \$39,903.28. If you choose to assess the recommended 26 days of liquidated damages, the final payment will be reduced by \$18,590 for a net final payment of \$21,313.28.

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

On April 29, 2010 we were advised by Etcheverry Harrison LLP, Attorneys for Guarantee Company of North America (the Surety for H&D Construction Co., Inc.) that H&D Construction had on April 6, 2010 represented that they were financially unable to complete the project. Therefore, final payment is to be made payable to Guarantee Company of North America.

We have attached four signed original copies of the final change order, along with one copy of the final pay request. 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
Charles Vitunac, City Attorney
John O'Brien, Purchasing Manager
Edward Etcheverry, Etcheverry Harrison LLP
Michael DiGiacomo, President, H&D Construction Co., Inc.

WBM/ntn

PROJECT NAME: SR A1A LANDSCAPE MEDIAN
 PERIODIC ESTIMATE FOR PARTIAL PAYMENT
 Prepared By: CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS
 ACCOUNT NUMBER: 304.9900.541.604001
 PROJECT NUMBER: 2002-12

SHEET NO. 1 of 2
 CONTRACT DATE: 06/15/2009
 NOTICE TO PROCEED: 06/29/2009
 TOTAL CONTRACT TIME: 90 DAYS
 ELAPSED CONTRACT TIME: 238 DAYS
 % OF CONTRACT TIME:

Name and Address of Contractor: H&D Construction Co., Inc.
 1805 S 25th St., Ste 1, Ft. Pierce, FL 34947

ITEMS:

PERIODIC ESTIMATE NO. 6 and Final FOR PERIOD March 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.
 (Work and cost data under change orders is to be shown in Part 2 of this form.)
 Columns (1) through (5) - Data shown is the proposal of the original executed contract.

Column (6) is provided by the Consultant or Engineer in agreement with the Contractor.
 Columns (7) thru (9) are calculated from Column (3) thru (6)

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)
101-1	MOBILIZATION	1	LS	\$10,000.00	\$10,000.00	1	\$10,000.00	\$0.00	100%
102-1	MAINTENANCE OF TRAFFIC	1	LS	\$11,609.50	\$11,609.50	1	11,609.50	\$0.00	100%
104-2	PREVENTION, CONTROL & ABATEMENT OF EROSION AND WATER POLLUTION	1	LS	\$5,678.00	\$5,678.00	1	\$5,678.00	\$0.00	100%
110-1-1	CLEARING & GRUBBING	1.19	AC	\$11,350.90	\$13,507.57	1.19	\$13,507.57	\$0.00	100%
120-1	REGULAR EXCAVATION	1,377	CY	\$2.70	\$3,717.90	1377	\$3,717.90	\$0.00	100%
160-4	STABILIZATION, TYPE "B"	2,579	SY	\$3.00	\$7,737.00	2579	\$7,737.00	\$0.00	100%
285-701	OPTIONAL BASE GROUP 1	1,125	SY	\$9.70	\$10,912.50	1125	\$10,912.50	\$0.00	100%
337-7-32	ASPHALTIC CONCRETE FRICTION COURSE (TRAFFIC C, FC-9.5, RUBBER)	52.9	TN	\$215.00	\$11,373.50	52.9	\$11,373.50	\$0.00	100%
425-1-431	INLETS (CURB TYPE J-3) (<10') (MODIFIED-W/ SKIMMER)	1	EA	\$3,453.00	\$3,453.00	1	\$3,453.00	\$0.00	100%
425-5	MANHOLE - ADJUST (STANDARD)	5	EA	\$397.10	\$1,985.50	5	\$1,985.50	\$0.00	100%
425-6	VALVE BOX - ADJUST	3	EA	\$330.90	\$992.70	3	\$992.70	\$0.00	100%
425-11	DRAINAGE STRUCTURES - MODIFY EXISTING	1	EA	\$856.20	\$856.20	1	\$856.20	\$0.00	100%
430-171-125	CONC. PIPE CULV. (18" STORM SEWER)	10	LF	\$59.30	\$593.00	10	\$593.00	\$0.00	100%
520-1-10	CONCRETE CURB & GUTTER (TYPE F)	3,591	LF	\$11.70	\$42,014.70	3610	\$42,237.00	\$222.30	101%
526-1-2	ARCHITECTURAL PAVERS (MEDIAN)	514	SY	\$38.20	\$19,634.80	514	\$19,634.80	\$0.00	100%
570-1-2	PERFORMANCE TURF (SOD) (ST. AUGUSTINE)	1,633	SY	\$2.90	\$4,735.70	2778	\$8,056.20	\$3,320.50	170%
580-1-1	LANDSCAPE COMPLETE (SMALL PLANTS)	1	LS	\$44,587.80	\$44,587.80	1	\$44,587.80	\$0.00	100%
580-1-2	LANDSCAPE COMPLETE LARGE PLANTS)	1	LS	\$8,600.00	\$8,600.00	1	\$8,600.00	\$0.00	100%
590-70	IRRIGATION SYSTEM	1	LS	\$33,713.10	\$33,713.10	1	\$33,713.10	\$0.00	100%
700-20-11	SINGLE POST SIGN (FURNISH & INSTALL) (LESS THAN 12 SF)	13	AS	\$389.20	\$5,059.60	13	\$5,059.60	\$0.00	100%
700-20-12	SINGLE POST SIGN (FURNISH & INSTALL) (12 - 20 SF)	1	AS	\$854.60	\$854.60	1	\$854.60	\$0.00	100%
700-20-60	SINGLE POST SIGN (REMOVE)	8	AS	\$10.80	\$86.40	8	\$86.40	\$0.00	100%
706-3	RETRO-REFLECTIVE PAVEMENT MARKER	273	EA	\$5.20	\$1,419.60	273	\$1,419.60	\$0.00	100%
710-11-29	PAINTED PAVEMENT MARKINGS (STANDARD) (YELLOW) (ISLAND NOSE)	104	SF	\$0.70	\$72.80	104	\$72.80	\$0.00	100%
711-11-121	THERMOPLASTIC (STANDARD) (WHITE) (SOLID) (6")	3,974	LF	\$0.90	\$3,576.60	3974	\$3,576.60	\$0.00	100%
711-11-123	THERMOPLASTIC (STANDARD) (WHITE) (SOLID) (12")	120	LF	\$1.90	\$228.00	120	\$228.00	\$0.00	100%
711-11-141	THERMOPLASTIC (STANDARD) (WHITE) (SKIP) (6")	96	LF	\$0.90	\$86.40	96	\$86.40	\$0.00	100%
711-11-170	THERMOPLASTIC (STANDARD) (WHITE) (ARROWS)	10	EA	\$53.80	\$538.00	10	\$538.00	\$0.00	100%
711-11-221	THERMOPLASTIC (STANDARD) (YELLOW) (SOLID) (6")	7,074	LF	\$0.90	\$6,366.60	7074	\$6,366.60	\$0.00	100%
711-11-224	THERMOPLASTIC (STANDARD) (YELLOW) (SOLID) (18")	221	LF	\$2.80	\$618.80	221	\$618.80	\$0.00	100%
TOTAL COST OF COLUMNS					\$254,609.87		\$258,152.67	\$3,542.80	

PART 2. SCHEDULE OF CONTRACT CHANGE ORDERS			ADDITIONS TO ORIGINAL CONTRACT PRICE		Page 2 of 2 PROJECT NO. 2002-12
List every approved change order issued to date of this request even if no work has been done under one or more such orders.			TOTAL COST ITEMS ADDED BY CHANGE ORDER	COST OF CHANGE ORDER ITEMS COMPLETED TO DATE	DEDUCTIONS FROM CONTRACT PRICE AS SHOWN ON CHANGE ORDERS
CONTRACT CHANGE ORDER		DESCRIPTION OF CHANGE ORDER	(4)	(5)	(6)
No. (1)	Date (2)	(3)			
1	02/17/2010	Change irrigation controller from battery operated to electric; Modify curb on west side of SR A1A for roadway shoulder safety improvements; Modify Drainage Structures (Time & Material Basis)	\$67,905.37	\$65,836.87	\$750.00
2	05/10/2010	Reconciliation of As-built Quantities - Original Contract Reconciliation of Change Order No. 1 T&M Quantities	\$3,542.80		\$1,318.50
TOTALS			\$71,448.17	\$65,836.87	\$2,068.50

PART 3. ANALYSIS OF CONTRACT AMOUNT TO DATE:

(a). Original contract amount (column 5 from page 1 and 2 of this form).....	\$254,609.87
(b). Plus: Additions scheduled in column 4 above.....	\$71,448.17
(c). Less: Deductions scheduled in column 6 above.....	-\$2,068.50
(d). Adjusted contract amount to date.....	\$323,989.54

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).....	\$258,152.67	
(b). Extra work performed to date (column 5 above).....	\$65,836.87	
(c). Total cost of work performed to date.....	\$323,989.54	
(d). Less: Amount retained in accordance with contract terms (show both percent and dollar amount).....	\$0.00	0.0%
(e). Net amount earned on contract work to date.....	\$323,989.54	
(f). Add: Materials stored at close of this period (attach detailed schedule and paid invoices).....	\$0.00	
(g). Subtotal of (e) and (f).....	\$323,989.54	
(h). Less: amount of previous payments.....	\$284,086.26	
(i). BALANCE DUE THIS PAYMENT.....	\$39,903.28	

PART 5. CERTIFICATION OF CONTRACTOR:

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

By: Date: 6/3/10

H&D Construction Co., for
The Guarantee Company of North America, Surety

Name: _____ Title: V.P.

PART 6. PRE-PAYMENT CERTIFICATION BY PROJECT MANAGER:

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

Signed: Date: 6/7/10
William B. Messersmith, PE, Assistant City Engineer

PART 7. CERTIFICATION OF DIRECTOR

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

Signed: Date: 6/7/10
Monte K. Falls, Director of Public Works

SR A1A LANDSCAPE MEDIAN
CHANGE ORDER NO. 2 & FINAL RECONCILIATION
Prepared By: DEPARTMENT OF PUBLIC WORKS
ACCOUNT NUMBER: 304.9900.541.604001
PROJECT NUMBER: 2002-12

SHEET 2 of 2
CONTRACT DATE: 06/15/2009
NOTICE TO PROCEED: 06/29/2009

1. Necessity for changes:

Reconcile As-built quantities for original contract as well as Change Order No. 1 Time & Material items.

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

W56/16

Recommended by:



Monte K. Falls, Public Works Director

Date:

6/2/09

3-A)

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Kevin Sawnick and
City Councilmembers

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

DATE: May 7, 2010

SUBJECT: **Request by Vero Property Investment, LLC (Applicant) to Amend the Future Land Use Map to Re-designate ±1.76 Acres from C, Commercial to RH, Residential High; and to Rezone those ±1.76 Acres from C-1, Highway Oriented Commercial to RM-10/12, Medium and High Density Multiple-Family Residential District (Applications #C10-000001-FLUM-MAP and #Z10-000002-MAP)**

Request

The City Planning and Development Department received the attached applications requesting the following: a small scale comprehensive plan future land use map amendment to re-designate ±1.76 acres from C, Commercial (up to 15 dwelling units/acre) to RH, Residential High (up to 15 dwelling units/acre); and a zoning map change amendment to rezone those ±1.76 acres from C-1, Highway Oriented Commercial District to RM-10/12, Medium and High Density Multiple-Family Residential District. The subject property is located east of the northeast intersection of 21st Street (US Highway 1) and 10th Avenue.

Description and Conditions

General Summary

- Applicant: Vero Property Investment, LLC.
- Location: East of northeast intersection of 21st Street (US Highway 1) and 10th Avenue.
- Acreage: ±1.76 acres.
- Existing Land Use Designation: C, Commercial (up to 15 units/acre).
- Requested Land Use Designation: RH, Residential High (up to 15 units/acre).
- Existing Zoning: C-1, Highway Oriented Commercial (0 units/acre).

Requested Zoning: RM-10/12, Multiple-Family Residential (up to 12 units/acre).

Existing Land Uses: Office building (formerly Michael Thorpe Real Estate), vacant building (formerly Kane's Appliances), paved area.

Adjacent Land:

North: Royal Palm Convalescent Center and multi-family residential apartments; zoned RM-10/12, Multiple-Family Residential

South: (Across 21st Street [US Highway 1]) RBC Bank and vacant commercial building; zoned C-1, Highway Oriented Commercial

East: Bill's Auto Repair; zoned C-1, Highway Oriented Commercial

West: Vacant building (formerly Citgo gas station) and Royal Palm Convalescent Center accessory administrative office; zoned C-1, Highway Oriented Commercial

Future Land Use Pattern

The subject property and the properties to the south, east, and west are designated C, Commercial District on the City's future land use map. The C designation permits various commercial, office, and multi-family residential zoning districts (up to 15 dwelling units per acre). Land to the north of the subject property is designated RH, Residential High District (up to 15 dwelling units/acre), on the City's future land use map. The RH designation permits residential densities up to 15 dwelling units per acre and professional office and institutional uses.

Existing Land Use Pattern

The subject property consists of two abutting parcels under the same ownership. The parcels total ±1.76 acres in size. Both parcels are zoned C-1, Highway Oriented Commercial District on the City's zoning map. Both properties are developed and, currently, the smaller parcel (0.52 acre) to the west is not in use but contains a vacant building (formerly Kane's Appliance Store) and a paved surface parking area. The larger parcel (1.24 acres) to the east contains an office building, which is currently in use (formerly the Michael Thorpe Realty Building).

To the west, the subject property abuts the currently closed Citgo gas station site and a building that is used as accessory office space for the Royal Palm Convalescent Center, which are zoned C-1, Highway Oriented Commercial District, and are under the same ownership as the subject property. The abutting properties to the north of the subject property are zoned RM-10/12, Medium and High Density Multiple-Family Residential District and contain multi-family residential apartments and the Royal Palm Convalescent Center (also under the same ownership as the subject property). To the east, the abutting

property is also zoned C-1, Highway Oriented Commercial District and contains an auto repair shop (Bill's Auto Repair). To the south, the subject property abuts 21st Street (US Highway 1). Across 21st Street (US Highway 1) is the RBC Bank site and a vacant building, which are zoned C-1, Highway Oriented Commercial District.

Environment

The Comprehensive Plan does not designate the subject property as environmentally significant or sensitive. According to the Flood Insurance Rating Maps, the parcels are within the X-Other Areas flood zone.

Utilities and Services

The property is within the Urban Service Area of the City. The property is located in the City's current water and sewer service area and capacity is available in the system to provide necessary services. The property is located within the City's electric service area.

Transportation System

The subject property's south boundary abuts and has frontage on 21st Street (US Highway 1), which is classified as an urban principal arterial on the future roadway classification plan map, and is a state road. This segment of 21st Street (US Highway 1) is a four lane, paved road with approximately 70 feet of existing public road right-of-way.

Zoning District Differences

The existing C-1, Highway Oriented Commercial zoning district and the proposed RM-10/12, Medium-and High-Density Multiple-Family Residential zoning district permitted uses are identified below.

Permitted uses in the existing C-1 zoning district include various highway oriented commercial uses, such as professional offices, banks and financial institutions, general retail sales and services, restaurants, medical services, vehicular sales and services, et. al.

Permitted uses in the proposed RM-10/12 zoning district include single-family residential, duplexes, multiple-family residential, adult congregate living facilities, and nursing homes.

Review and Analysis

The staff reviewed the proposed future land use map amendment and zoning map change based on the standards for considering amendments as required in Chapter 65, Article III, of the City's Land Development Regulations. Section 65.22(i) sets the standards for amendments and states amendments shall be consistent with the goals, objectives, and

policies of the Comprehensive Plan, zoning district standards and criteria, and all applicable requirements of Chapter 163, Florida Statutes.

Comprehensive Plan Consistency

Staff evaluated the subject request for consistency with all applicable comprehensive plan policies and objectives. Of particular applicability for this request are the policies discussed below.

Policy 1.6 of the Land Use Element states that the Residential High (RH) Land Use Designation “shall be applied to areas of the City which are suitable for multi-family residential uses with high densities, based on access to public utilities, adjacent to arterial or collector streets, which are a transition between multi-family and more intensive uses.” The proposed land use map amendment and rezoning request is found to be consistent with Policy 1.6 as the subject property has access to public utilities, is adjacent to a principal arterial street (US Highway 1) and is compatible with immediately adjacent zoning and uses.

Policy 3.3 of the Land Use Element states that “higher density residential uses shall be located on sites highly accessible to arterial or collector streets and near employment centers and goods and services.” The subject property is accessible to US Highway 1 and is located near the City’s downtown and Miracle Mile commercial areas.

Policy 2.3 of the Land Use Element states “land use designations and regulations shall be used to limit future strip commercial development along roadway thoroughfares.” Since the proposed amendments would provide an opportunity for a variation in land uses along this area of the US Highway 1 corridor, the request is consistent with Policy 2.3.

Compatibility with the Surrounding Area

To the north and adjacent to the subject property the future land use designation is Residential High (RH) and the current zoning is RM-10/12. Re-designating and rezoning the subject property will result in a continuation of the same future land use designation and zoning to the south. Properties to the south, east and west of the subject property have commercial land use designations and zoning and should be compatible with the proposed amendments, as high density residential land uses are considered to provide a good transition and/or buffer between more intensive commercial uses.

Impacts on Available Public Facilities

Staff reviewed the potential development impacts of the requested land use designation and zoning on the potential availability of public facilities. The analysis included the potential available capacity of each facility and determined that there is sufficient sanitary sewer, potable water, solid waste, recreation and transportation capacity to accommodate any additional demand generated by the proposed change in land use and zoning. From a

traffic generation perspective, the impacts are estimated to be less due to the less intensive uses permitted in the RH and RM-10/12 districts.

The change in future land use will not result in an increase in the overall residential density (both land uses allow up to 15 dwelling units per acre). However, rezoning the subject property from C-1 (0 dwelling units per acre) to RM-10/12 (up to 12 dwelling units per acre) would allow for a potential increase in residential density; therefore, potential impacts on school facilities were provided by the applicant via the School District. The School District provided a conditional School Concurrency Availability Determination letter acknowledging the availability of school capacity (based upon an estimated 22 multi-family residential units). The stormwater management level of service standard will be met by limiting off-site discharge to the existing predevelopment rate.

Consistency with Zoning District Standards and Criteria

The stated purpose of the RM-10/12 Zoning District is to “provide suitable areas for high-density residential development where sufficient urban services and facilities are provided.” As stated above, under the discussion of consistency with the Comprehensive Plan and compatibility with surrounding area, the staff finds that the proposed zoning is consistent with the zoning district standards and criteria.

It should be noted that in the proposed RM-10/12 zoning district professional offices are not permitted uses. Therefore, should the existing office uses currently occupying the building (former Thorpe Realty) on the east side of the subject property remain, these uses will become non-conforming in the new zoning district.

Consistency with City’s Charter & Zoning Limitations

Article V., General Provisions, Section 5.06, of the City’s Charter states the density levels existing in the Zoning Ordinance of the City of Vero Beach, Florida, on August 15, 1989, shall not be increased by action of the City Council unless approved first by voter referendum. It is the City Attorney’s opinion that this section of the Charter applies only to instances where the actual ‘Zoning Ordinance’ itself is being considered for amendment to allow for an increase in density and not amendments to the Official Zoning Map that rezone individual properties or parcels of land. In other words, requests to increase densities from one Zoning District to the other does not require approval by voter referendum; however, requests to increase allowable density levels within individual Zoning Districts or to create a new Zoning District with higher densities would first require a voter referendum. Therefore, based on the City Attorney’s opinion, the proposed rezoning of the subject property is found to be consistent with the provisions in the City’s Charter.

Consistency with Chapter 163, F.S.

As stated above the staff finds the proposed land use amendment and zoning change is consistent with the Comprehensive Plan and Land Development Regulations (Zoning Code).

Planning and Zoning Board Recommendation

The Planning and Zoning Board, at an advertised public hearing, voted 9 to 0 to recommend approval of the two requested map amendments as presented.

Staff Recommendation

Based on the analysis and the Planning and Zoning Board recommendation, staff recommends that the City Council approve this request to amend the future land use map from C, Commercial to RH, Residential High and amend the zoning map from C-1, Highway Oriented Commercial to RM-10/12, Medium and High Density Multiple-Family Residential District by adopting the attached ordinances.

TJM:cbf/tf
Attachments

FUTURE LAND USE MAP (FLUM) AMENDMENT APPLICATION

City of Vero Beach Planning & Development Department

1053 20th Place - P.O. Box 1389

Vero Beach, Florida 32961-1389

Phone (772) 978-4550 / Fax (772) 778-3856

Date Received 2/23/10 Application # C10-000001-FLUM-MAP

Prior to completing or signing this application, applicants and property owners are encouraged to read it thoroughly. If you have any questions, please do not hesitate to contact the Planning Department at (772) 978-4550.

APPLICANT Vero Property Investment, LLC Telephone 423-424-1830
Fax #: 423-308-1834

MAILING ADDRESS 7201 Shallowford Road, Suite 200, Chattanooga, TN 37421

SITE OWNER Vero Property Investment, LLC Telephone 423-424-1830
Fax #: 423-308-1834

OWNER ADDRESS 7201 Shallowford Road, Suite 200, Chattanooga, TN 37421

SITE LOCATION NE Corner of Intersection of US Highway 1 and 10th Avenue
33390100009001000007.0, 33390100009001000001.0

PARCEL I.D. NUMBER 33390100009001000003.0, 33390100009001000011.0

LEGAL DESCRIPTION See attached exhibit A

PROPOSED CHANGE: FROM C TO RH

(If this amendment requires a zoning change, a Zoning Change Application must accompany this request.)

Application Fee*

with Zoning Change

Large Scale (More than 10 acres) \$2,800

\$4,100

Small Scale (Less than 10 acres) \$2,100

\$3,000

* See attached fee schedule for additional advertising and administrative costs



[Signature]
Applicant Signature _____ Date _____

SAUE
Property Owner Signature _____ Date _____

Byron DeBoer
(Print Name)

(Print Name)

FUTURE LAND USE MAP (FLUM) CHANGE JUSTIFICATION

The applicant shall have the burden for justifying the amendment including identifying specific reasons warranting the amendment. Therefore, unless waived by the Planning Director, as part of the FLUM change request, please provide justification for the proposed change by providing the following required items along with any supporting data and information:

1. Describe why the proposed change is needed, including any change in circumstances to the property or the neighborhood/area in which the property is located that warrant a change in the FLUM designation.
2. Describe how the proposed amendment to the FLUM is compatible with the goals, objectives, and policies of the Land Use Element and other affected elements of the Comprehensive Plan.
3. Describe how the proposed amendment is compatible with the FLUM designations within the immediate vicinity of the property subject to the proposed change and will not lead to undesirable changes to established residential neighborhoods.
4. Provide School Impact Analysis, if allowable residential density is increased, indicating number of potential dwelling units by type. For purposes of dwelling unit type, the applicant shall use single family for ES and RL designations and multi-family for all other designations.
5. Provide data and analysis of the impacts on non-educational school facilities and services subject to the concurrency requirements of the Capital Improvements Element of the Comprehensive Plan. This analysis should show the availability of and demand on the following: sanitary sewer; solid waste; drainage; potable water; roads; and recreation, as appropriate. The demand estimates should be based on the change in demand over the current land use designation for the property and clearly spell out the assumptions used in the demand and availability analysis.

NOTE: If the proposed FLUM change is in combination with a proposed Zoning Map change, required Items 4 and 5 above should be prepared based on the permitted residential densities and non-residential uses and intensities of the proposed zoning district.

ADDITIONAL MATERIALS REQUIRED

The following materials are also required:

1. A copy of the property deed.
2. One original and one copy of submitted materials.
3. A Traffic Impact Assessment or Statement if required by Chapter 910, Indian River County Code.
4. Two (2) sealed surveys prepared by a State of Florida licensed surveyor made and dated within one year and to include existing topographic features, elevations based on mean sea

ZONING MAP CHANGE AMENDMENT APPLICATION

City of Vero Beach Planning & Development Department
1053 20th Place - P.O. Box 1389
Vero Beach, Florida 32961-1389
Phone (772) 978-4550 / Fax (772) 778-3856

Date Received 2/23/0

Application # Z10-000002 -MAP

Prior to completing or signing this application, applicants and property owners are encouraged to read it thoroughly. If you have any questions, please do not hesitate to contact the Planning Department at (772) 978-4550.

APPLICANT Vero Property Investment, LLC Telephone 423-424-1830
Fax #: 423-308-1834

MAILING ADDRESS 7201 Shallowford Road, Suite 200, Chattanooga, TN 37421

SITE OWNER Vero Property Investment, LLC Telephone 423-424-1830
Fax #: 423-308-1834

OWNER ADDRESS 7201 Shallowford Road, Suite 200, Chattanooga, TN 37421

SITE LOCATION NE Corner of Intersection of US Highway 1 and 10th Avenue
33390100009001000007.0, 33390100009001000001.0

PARCEL I.D. NUMBER 33390100009001000003.0, 33390100001000000015.0

PROPOSED ZONING CHANGE: FROM C-1 TO RM-10/12

(If this amendment requires a comprehensive plan change, a future land use map amendment application must accompany this request.)

Application Fee*

with Future Land Use Change

Large Scale (More than 10 acres)	\$3,370	\$4,100
Small Scale (Less than 10 acres)	\$2,600	\$3,000

* See attached fee schedule for additional advertising and administrative costs



[Signature]
Applicant Signature Date

SAME AS APPLICANT
Property Owner Signature Date

Byron DeFoor
(Print Name)

||
(Print Name)

ZONING MAP CHANGE JUSTIFICATION

The applicant shall have the burden for justifying the amendment including identifying specific reasons warranting the amendment. Therefore, unless waived by the Planning Director, as part of the Zoning Map change request, please provide justification for the proposed change by providing the following required items, including any supporting data and information:

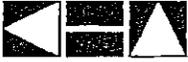
1. Describe why the proposed change is needed, including any change in circumstances to the property or the neighborhood/area in which the property is located that warrant a change in the Zoning Map designation.
2. Describe how the proposed amendment to the Zoning Map is compatible with the goals, objectives, and policies of the Land Use Element and other affected elements of the Comprehensive Plan and consistent with zoning district standards and criteria.
3. Describe how the proposed amendment is compatible with the Zoning Map designations within the immediate vicinity of the property subject to the proposed change and will not lead to undesirable changes to established residential neighborhoods.
4. Provide School Impact Analysis, if allowable residential density is increased, indicating number of potential dwelling units by type. For purposes of dwelling unit type, the applicant shall use single family units for R-1AAA through R-1 and multi-family for all other zoning districts.
5. Provide data and analysis of the impacts on non-educational school facilities and services subject to the concurrency requirements of the Capital Improvements Element of the Comprehensive Plan. This analysis should show the availability of and demand on the following: sanitary sewer; solid waste; drainage; potable water; roads; and recreation, as appropriate. The demand estimates should be based on the change in demand over the current land use designation for the property and clearly spell out the assumptions used in the demand and availability analysis.

NOTE: If the proposed Zoning Map change is in combination with a proposed FLUM change, required items 4 and 5 above should be prepared based on the permitted residential densities and non-residential uses and intensities of the proposed zoning district.

ADDITIONAL MATERIALS REQUIRED

The following materials are also required:

1. A copy of the property deed.
2. One original and one copy of submitted materials.
3. A Traffic Impact Assessment or Statement if required by Chapter 910, Indian River County Code.



Kimley-Horn
and Associates, Inc.

Copy



February 23, 2010

147090000

■
Suite 300
601 21st Street
Vero Beach, Florida
32960-0861

Sherry Fitzgerald, AICP
City of Vero Beach
Planning and Development Department
1053 20th Place
Vero Beach, FL 32960

RE: Vero Property Investment, LLC
Zoning Map Change and Future Land Use Map (FLUM) Amendment Application

Dear Sherry:

Vero Property Investment, LLC holds fee simple title to 2.5+/- acres of land in the City of Vero Beach. The property consists of three parcels located contiguous to each other at the northeast corner of the intersection of US Highway 1 and 10th Avenue. The uses on site at the present time include a Citgo gas station (closed), a single family residence adjacent to Citgo to the north (currently used as office space for the Royal Palm Convalescent Center, and a small commercial building occupied by Kane's Appliance. The applicant has also recently purchased the parcel adjacent to the east, the building previously owned by Michael Thorpe which is a small office strip center. A vicinity map of these parcels is included in this application packet.

The Future Land Use designation of these properties is C-Commercial. All four properties are currently zoned C-1, Commercial.

The applicant also owns a 2.76 +/- acre parcel immediately north of the subject properties, which is occupied by the Royal Palm Convalescent Center. That property has a Future Land Use designation of RH and a zoning designation of RM-10/12.

The applicant is requesting a Future Land Use Map change to RH, and a zoning map change to RM-10/12 for all of the additional properties except for a parcel at the corner. This will make the FLU and Zoning consistent with that of the Convalescent Center property. Application forms and supporting documentation for this request are attached. If you have any questions, please contact me at 772/794-4035.

Sincerely,
KIMLEY HORN AND ASSOCIATES, INC.

Keith A. Pelan, RLA, AICP
Senior Associate

■
TEL 772 562 7981
FAX 772 562 9689



Kimley-Horn
and Associates, Inc.

March 15, 2010

☐
Suite 200
445 24th Street
Vero Beach, Florida
32960

Mr. Tim McGarry
Director of Planning and Development
City of Vero Beach
1053 20th Place
Vero Beach, Florida 32961

Re: Additional information – Vero Property Investment, LLC request for Future
Land Use and Zoning Map amendment (Applications #C10-000001-FLUM-MAP &
#Z10-000002-MAP)

Dear Tim:

Pursuant to your letter of March 4, 2010, please accept the following supplemental
information in support of the above mentioned application.

Compatibility with Land Use Element

Objective 1, Policy 1.6: The Residential High (RH) Land Use designation shall be
applied to areas of the city which are suitable for multifamily residential uses with
high densities, based on access to public utilities, adjacent to arterial or collector
streets, which are a transition between multifamily and more intensive uses. This
land use category shall allow single and multifamily residential development, park
and recreation uses, public facilities, institutional uses, schools, cultural and civic
uses, utilities, professional offices (as permitted by Land Use Element Policy 1.16),
and non-residential uses within a master plan development pursuant to Policy 1.21.

The request is consistent with this policy as the property has access to public utilities,
is adjacent to an arterial street (US 1) and is compatible with immediately adjacent
zoning and uses.

Objective 2, Policy 2.4. Redevelopment programs and incentives shall be established
to foster infill development and revitalization of older areas of the City.

Although the proposed rezoning and FLU Map amendment request is not receiving
any incentives, it does constitute infill development and revitalization of some older
and prime redevelopment properties.

Objective 3, Policy 3.3. Higher density residential uses shall be located on sites
highly accessible to arterial or collector streets and near employment centers and
goods and services.

☐

TEL 772 794 4100
FAX 772 794 4130



Kimley-Horn
and Associates, Inc.

The subject site is accessible to US 1 and is near many goods and services.

Objective 3, Policy 3.5. Development shall be planned and regulated in such a manner to provide for an orderly transition from low intensity/density uses to higher intensity/density uses.

The subject site provides this transition and is a good buffer between the high density residential use to the north and east and US 1.

Objective 3, Policy 3.7. Land development regulations shall include provisions for on-site stormwater retention/detention, safe and convenient access and traffic flow, and minimum open space and landscaping sufficient to avoid or minimize impacts on adjacent properties while adequately meeting on-site needs.

Rezoning the subject property will allow the redevelopment of not only this property, but an adjacent property to the north. In so doing, the entire site will be improved in many ways, including stormwater management (which the current property has no provisions for), and landscape.

Objective 3, Policy 3.8d. Minimum open space and landscaping standards and requirements to conserve native vegetation and buffer potentially incompatible land uses.

The redevelopment of the subject site will require that the landscape be brought up to current standards.

Compatibility with Housing Element

Objective 2, Policy 2.2. The City of Vero Beach, through its future land use plan map, hereby designates land for residential land uses and support services for a wide variety of housing types (including mobile homes), densities, and physical environments to facilitate an equally-wide variety of housing costs for present and future residents with special consideration given to the following:

- Lot sizes, setbacks and land use mixes;
- Proximity to public transportation, recreational facilities, and community services, such as shopping, personal services, and health care;
- Compatibility of land use relationships and neighborhood character; and
- Reduction of automobile travel to meet normal daily needs for access to employment, services, recreation and other local activities.

The FLUJM amendment request furthers this policy by allowing residential uses in a location convenient to both commercial uses and residential neighborhoods.

Compatibility with Traffic Circulation Element



Kimley-Horn
and Associates, Inc.

Objective 1, Policy 1.7. No development project shall be approved if the projected impacts of the project would serve to reduce service levels of any roadway on the traffic circulation system below the standards identified in Policy 1.1. . . .

The FLUM amendment request actually constitutes a reduction in land use intensity, thereby reducing overall traffic impacts.

Density Comparison

The subject property's current zoning designation is C-1, Commercial, which does not allow residential uses. Typical commercial intensity for a property of this size (1.76 acres) would be around 17,600 s.f. (using an estimated 10,000 s.f. per acre of commercial development). From a traffic perspective, the most intense uses allowed in this district would be Financial Institutions or Restaurants.

The proposed zoning of RM-10/12 would allow up to 22 residential units on the property. Of the permitted uses in this district, Single Family residential would have the highest estimated traffic generation, but would still be less than any of the commercial uses allowed in the C-1 district.

School and Recreation Impacts

The school concurrency determination form is attached. Per the City's Comprehensive Plan, there are more than adequate recreational facilities in the City to accommodate the number of residential units allowed under the proposed zoning designation.

Solid Waste Impacts

The City projects an average of 2.07 persons per housing unit in Table 3.9 of the Housing element of the Comprehensive Plan. At the maximum density of 12 units/acre under the proposed zoning, the 22 units allowed would house 46 persons. Solid waste generation is estimated to be 1.14 tons per person per year (as referenced in the Sanitary Sewer and Solid Waste element), resulting in a total of 52.5 tons of solid waste per year.

Solid waste generated in the City is disposed of in the County landfill. The September 13, 2005 amended supplement to the Solid Waste Sub-element of the County's comprehensive plan states that the County has sufficient solid waste disposal capacity, for the next 25 years (to year 2030).

Traffic Impact Analysis

Attached is a copy of e-mail correspondence from Jeanne Bressett at Indian River County confirming no traffic impact analysis or statement is required.



Kimley-Horn
and Associates, Inc.

I trust this information will complete the submittal. If you have questions or need additional information, please call.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "K. Pelan", with a long horizontal line extending to the right.

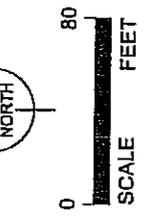
Keith A. Pelan, RLA, AICP, GRP
Senior Associate

ZONING/ LAND USE EXHIBIT

DATE: 01/25/10
 PROJECT NO.: 147090000
 SHEET NUMBER

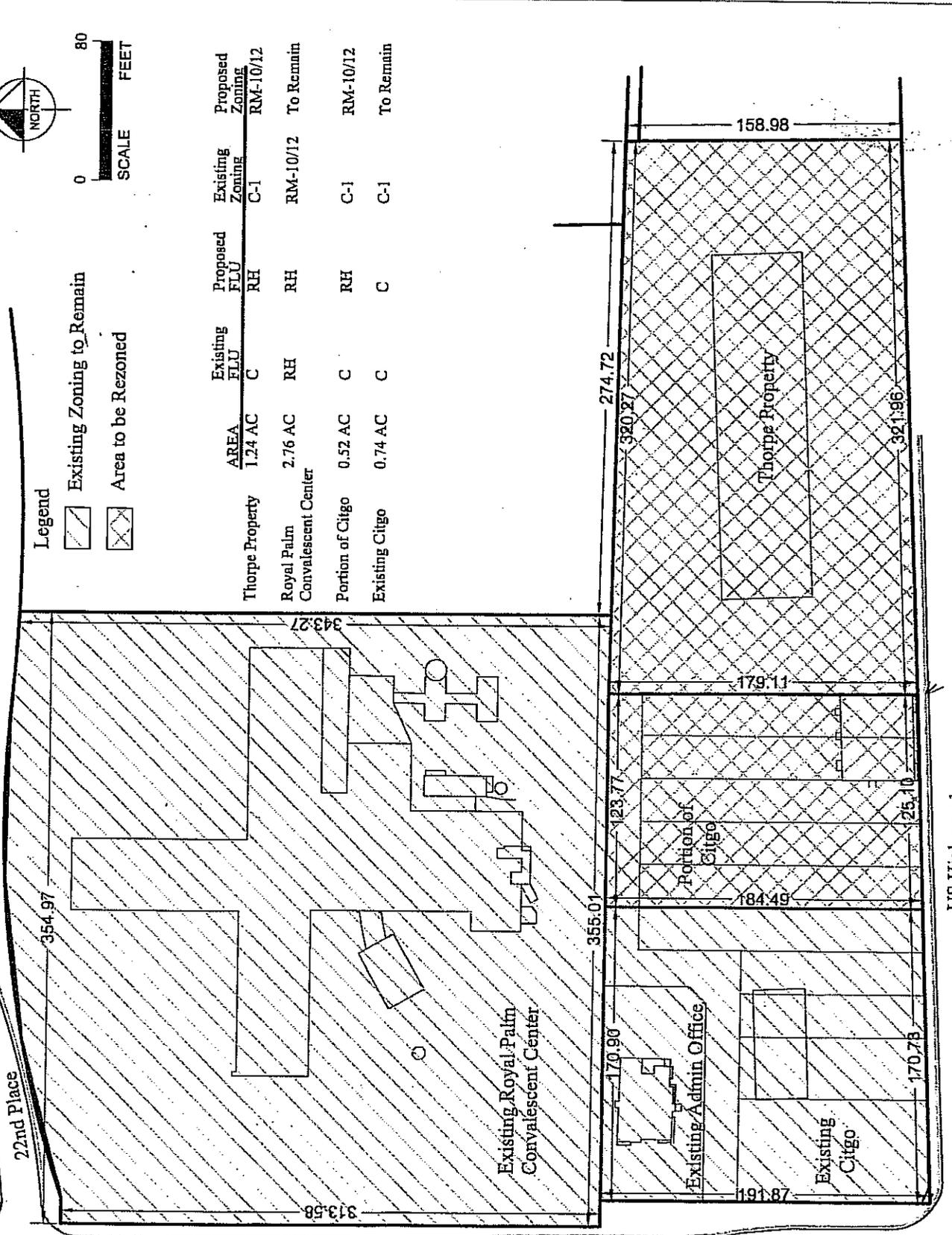
Kimley-Horn
 and Associates, Inc.
 2010 KIMLEY-HORN AND ASSOCIATES, INC.
 801 21ST STREET, SUITE 300, VERO BEACH, FL 32960
 PHONE: 772-562-7971 FAX: 772-562-9549
 WWW.KIMLEY-HORN.COM CA 0000099

DESIGNED BY: KEITH A. PELAN
 FLORIDA P.E. LICENSE NUMBER: 1688
 DRAWN BY:
 CHECKED BY:
 DATE:



Legend
 Existing Zoning to Remain
 Area to be Rezoned

AREA	Existing FLU	Proposed FLU	Existing Zoning	Proposed Zoning
Thorpe Property	C	RH	C-1	RM-10/12
Royal Palm Convalescent Center	RH	RH	RM-10/12	To Remain
Portion of Citgo	C	RH	C-1	RM-10/12
Existing Citgo	C	C	C-1	To Remain



Friday, March 12, 2010

Indian River County School District

School Concurrency Availability Determination

Project Name: Vero Property Investment, LLC
Date Received: 3/12/2010
Case Number: 123
Builder Name: Vero Property Investment, LLC
Location: 870 - 940 21st Street
 Vero Beach, FL 32960
 NE Corner US# (21st ST) & 10th
 Avenue
 Parcel ID# 33390100001000000015.0

Project Unit Yield By Type of School

	Yield	Elem	Mid	High
--	-------	------	-----	------

Multi-Family	0.037	1		
Multi-Family	0.015		0	
Multi-Family	0.014			0

Project Planned Units:

Single Family: 0 **# Multi-Family:** 22
Townhomes: 0 **# Apartments:** 0

Additional Information: Mailing Address:
 Keith Pelan/Kimley-Horn And Associates, Inc.
 445 24th Street
 Suite 200
 Vero Beach, FL 32960

Service Area Analysis

School Service Area Boundary (SSAB)	Current Capacity	Programmed Capacity	Total Capacity	Current Enrollment	Vested Demand	Total Demand	Available Capacity	Project Demand
Vero Beach ES	559	191	750	535	3	538	212	1
Gifford MS	1122	0	1122	969	1	970	152	0
Vero Beach HS	2771	0	2771	2685	4	2689	82	0

This letter is in response to a Concurrency Determination Request for Project Vero Property Investment, LLC – 870 – 940 21st Street, Vero Beach, FL 32960. This project is located in the SSAB for Beachland Elementary, Gifford Middle School and Vero Beach High School. At this time the SSAB **DOES NOT** have sufficient space available at Beachland Elementary to accommodate the students projected to be generated from this Project (please see attached School Concurrency Availability Determination). The adjacent Elementary School with available capacity is Vero Beach Elementary School.

Please note that when a SCADL is issued, the SCADL shall note the School Service Areas and their Available School Capacity. This does not mean that the development's students will attend the adjacent school. The School District will be responsible for determining when and what adjustments will be made in the future to maintain the adopted level of service.

Date: March 25, 2010 147090000
To: Cheri Fitzgerald, AICP
From: Keith Pelan
Re: Supplemental Information,
Vero Property Investment, LLC
Zoning Map Change and Future Land Use Map (FLUM) Amendment Application

Below is additional information regarding the above referenced request.

Sanitary Sewer

City of Vero Beach wastewater service is available to the site. Based upon the most intense use allowed under the requested FLU and Zoning Map change the subject site will have a wastewater generation rate of approximately 22 Equivalent Residential Units (ERU) or 5,500 gallons per day (1 ERU = 250 gallons per day). The City of Vero Beach Wastewater Treatment Plant has sufficient capacity to accommodate the wastewater generated by the most intense use of the stated request as referenced in the comprehensive plan.

Potable Water

City of Vero Beach water supply is available to the site. Based upon the most intense use allowed under the requested FLU and Zoning Map change the subject site will have a wastewater generation rate of approximately 22 Equivalent Residential Units (ERU) or 5,500 gallons per day (1 ERU = 250 gallons per day). The City of Vero Beach Water Plant has sufficient capacity to accommodate the water demand by the most intense use of the stated request as referenced in the comprehensive Plan

I trust this adequately responds to your request for more information.

ORDINANCE NO. 2010 – _____

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, REQUESTED BY VERO PROPERTY INVESTMENT, LLC, TO AMEND THE COMPREHENSIVE PLAN FUTURE LAND USE MAP BY CHANGING THE LAND USE DESIGNATION FROM C, COMMERCIAL (UP TO 15 DWELLING UNITS/ACRE) TO RH, RESIDENTIAL HIGH (UP TO 15 DWELLING UNITS/ACRE) FOR THE PROPERTY GENERALLY LOCATED EAST OF THE NORTHEAST CORNER OF THE INTERSECTION OF 21ST STREET (US HIGHWAY 1) AND 10TH AVENUE, INCLUDING ALL OF THE REPLAT OF HENNING'S SUBDIVISION THAT LIES NORTH OF 21ST STREET (US HIGHWAY 1) AND A PORTION OF BLOCK 1, CITRUS PARK, CONTAINING 1.76 ACRES, MORE OR LESS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Vero Property Investment, LLC submitted an application for a small scale amendment to the Comprehensive Plan Future Land Use Map to the City of Vero Beach, pursuant to Chapter 65, Article III, of the City's Land Development Regulations, requesting a change in the future land use map from C, Commercial (up to 15 dwelling units/acre) to RH, Residential High (up to 15 dwelling units/acre) for property comprising 1.76 acres, more or less, generally located east of the northeast corner of the intersection of 21st Street (US Highway 1) and 10th Avenue; and

WHEREAS, the City Council adopted the Vero Beach Comprehensive Plan on July 21, 1992; and

WHEREAS, the property described herein meets the criteria for small scale comprehensive plan amendments, pursuant to Section 163.3187(1)(c) of the Florida Statutes; and

WHEREAS, pursuant to Section 163.3174(4)(a) of the Florida Statutes, the Planning and Zoning Board, acting as the Local Planning Agency, held an advertised Local Planning Agency Public Hearing on the small scale comprehensive plan amendment on April 15, 2010, and made a recommendation regarding the amendment to the Vero Beach City Council; and

WHEREAS, the Vero Beach City Council finds the proposed amendment to the Future Land Use Map to be consistent with the goals, objectives, and policies of the Comprehensive Plan.

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

Section 1. Small Scale Comprehensive Plan Amendment Adoption

The small scale amendment to the Vero Beach Comprehensive Plan identified in Section 2 is hereby adopted, and one (1) copy each is to be transmitted to the State of Florida Department of Community Affairs, the Treasure Coast Regional Planning Council, Indian River County, and others.

Section 2. Small Scale Amendment to the Comprehensive Plan Future Land Use Map

The Comprehensive Plan Future Land Use Map designation, for the property that is located generally east of the northeast corner of the intersection of 21st Street (US Highway 1) and 10th Avenue, comprising 1.76 acres more or less, including all of the Replat of Henning's Subdivision as shown on the Plat thereof as recorded in Plat Book 2, Page 11, of the Public Records of Indian River County, Florida, that lies north of

21st Street (US Highway 1), together with a portion of Block 1, Citrus Park, as recorded in Plat Book 5, Page 28, of the Public Records of Indian River County, Florida, is hereby changed from to C, Commercial (up to 15 dwelling units per acre), to RH, Residential High (up to 15 dwelling units per acre), as graphically depicted in the attached Exhibit "A."

[SEE Exhibit "A"]

Map of Location and Future Land Use of Subject Property

Section 3. Authorization to Transmit Plan Amendment

The City Planning and Development Director is directed to transmit a certified copy hereof to the authorities designated under Section 163.3184(3) Florida Statutes, and proceed herewith in accordance with the provisions of Chapter 163, Part II, Florida Statutes.

Section 4. Effective Date

The effective date of this ordinance is on the 31st day after adoption, as provided by Section 163.3187(3)(c), Florida Statutes.

This Ordinance was read for the first time on the ____ day of _____, 2010, and was advertised in the 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:

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

Mayor Kevin Sawnick

Yes

No

Vice Mayor Sabin C. Abell, Jr.

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**

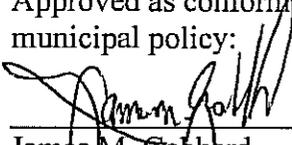
Tammy K. Vock
City Clerk

Kevin Sawnick
Mayor

Approved as to form and legal sufficiency:

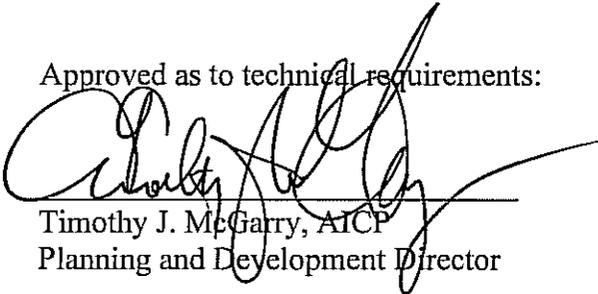
Approved as conforming to
municipal policy:

Charles P. Vitunac
City Attorney

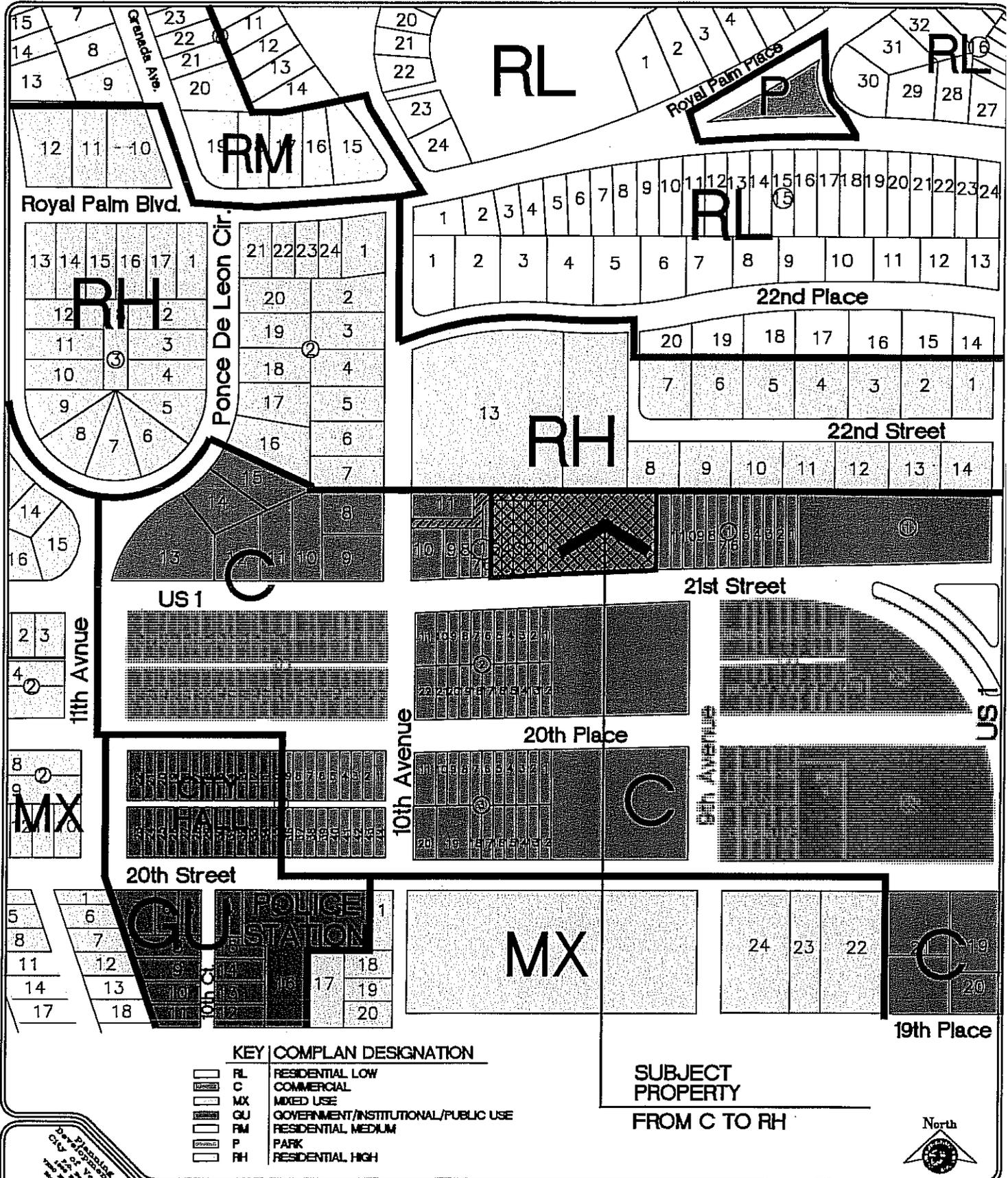


James M. Gabbard
City Manager

Approved as to technical requirements:



Timothy J. McGarry, AICP
Planning and Development Director



KEY		COMPLAN DESIGNATION
	RL	RESIDENTIAL LOW
	C	COMMERCIAL
	MX	MIXED USE
	GU	GOVERNMENT/INSTITUTIONAL/PUBLIC USE
	RM	RESIDENTIAL MEDIUM
	P	PARK
	RH	RESIDENTIAL HIGH

SUBJECT PROPERTY
FROM C TO RH



LAND USE CHANGE APPLICATION # C10-000001-FLUM-MAP
LOCATION AND LAND USE OF SUBJECT PROPERTY

DATE 03/25/2010
SCALE-NTS
EXHIBIT A

3-A)

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Kevin Sawnick and
City Councilmembers

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

DATE: May 7, 2010

SUBJECT: **Request by Vero Property Investment, LLC (Applicant) to Amend the Future Land Use Map to Re-designate ±1.76 Acres from C, Commercial to RH, Residential High; and to Rezone those ±1.76 Acres from C-1, Highway Oriented Commercial to RM-10/12, Medium and High Density Multiple-Family Residential District (Applications #C10-000001-FLUM-MAP and #Z10-000002-MAP)**

Request

The City Planning and Development Department received the attached applications requesting the following: a small scale comprehensive plan future land use map amendment to re-designate ±1.76 acres from C, Commercial (up to 15 dwelling units/acre) to RH, Residential High (up to 15 dwelling units/acre); and a zoning map change amendment to rezone those ±1.76 acres from C-1, Highway Oriented Commercial District to RM-10/12, Medium and High Density Multiple-Family Residential District. The subject property is located east of the northeast intersection of 21st Street (US Highway 1) and 10th Avenue.

Description and Conditions

General Summary

Applicant:	Vero Property Investment, LLC.
Location:	East of northeast intersection of 21 st Street (US Highway 1) and 10 th Avenue.
Acreage:	±1.76 acres.
Existing Land Use Designation:	C, Commercial (up to 15 units/acre).
Requested Land Use Designation:	RH, Residential High (up to 15 units/acre).
Existing Zoning:	C-1, Highway Oriented Commercial (0 units/acre).

Requested Zoning: RM-10/12, Multiple-Family Residential (up to 12 units/acre).

Existing Land Uses: Office building (formerly Michael Thorpe Real Estate), vacant building (formerly Kane's Appliances), paved area.

Adjacent Land:

North: Royal Palm Convalescent Center and multi-family residential apartments; zoned RM-10/12, Multiple-Family Residential

South: (Across 21st Street [US Highway 1]) RBC Bank and vacant commercial building; zoned C-1, Highway Oriented Commercial

East: Bill's Auto Repair; zoned C-1, Highway Oriented Commercial

West: Vacant building (formerly Citgo gas station) and Royal Palm Convalescent Center accessory administrative office; zoned C-1, Highway Oriented Commercial

Future Land Use Pattern

The subject property and the properties to the south, east, and west are designated C, Commercial District on the City's future land use map. The C designation permits various commercial, office, and multi-family residential zoning districts (up to 15 dwelling units per acre). Land to the north of the subject property is designated RH, Residential High District (up to 15 dwelling units/acre), on the City's future land use map. The RH designation permits residential densities up to 15 dwelling units per acre and professional office and institutional uses.

Existing Land Use Pattern

The subject property consists of two abutting parcels under the same ownership. The parcels total ±1.76 acres in size. Both parcels are zoned C-1, Highway Oriented Commercial District on the City's zoning map. Both properties are developed and, currently, the smaller parcel (0.52 acre) to the west is not in use but contains a vacant building (formerly Kane's Appliance Store) and a paved surface parking area. The larger parcel (1.24 acres) to the east contains an office building, which is currently in use (formerly the Michael Thorpe Realty Building).

To the west, the subject property abuts the currently closed Citgo gas station site and a building that is used as accessory office space for the Royal Palm Convalescent Center, which are zoned C-1, Highway Oriented Commercial District, and are under the same ownership as the subject property. The abutting properties to the north of the subject property are zoned RM-10/12, Medium and High Density Multiple-Family Residential District and contain multi-family residential apartments and the Royal Palm Convalescent Center (also under the same ownership as the subject property). To the east, the abutting

property is also zoned C-1, Highway Oriented Commercial District and contains an auto repair shop (Bill's Auto Repair). To the south, the subject property abuts 21st Street (US Highway 1). Across 21st Street (US Highway 1) is the RBC Bank site and a vacant building, which are zoned C-1, Highway Oriented Commercial District.

Environment

The Comprehensive Plan does not designate the subject property as environmentally significant or sensitive. According to the Flood Insurance Rating Maps, the parcels are within the X-Other Areas flood zone.

Utilities and Services

The property is within the Urban Service Area of the City. The property is located in the City's current water and sewer service area and capacity is available in the system to provide necessary services. The property is located within the City's electric service area.

Transportation System

The subject property's south boundary abuts and has frontage on 21st Street (US Highway 1), which is classified as an urban principal arterial on the future roadway classification plan map, and is a state road. This segment of 21st Street (US Highway 1) is a four lane, paved road with approximately 70 feet of existing public road right-of-way.

Zoning District Differences

The existing C-1, Highway Oriented Commercial zoning district and the proposed RM-10/12, Medium-and High-Density Multiple-Family Residential zoning district permitted uses are identified below.

Permitted uses in the existing C-1 zoning district include various highway oriented commercial uses, such as professional offices, banks and financial institutions, general retail sales and services, restaurants, medical services, vehicular sales and services, et. al.

Permitted uses in the proposed RM-10/12 zoning district include single-family residential, duplexes, multiple-family residential, adult congregate living facilities, and nursing homes.

Review and Analysis

The staff reviewed the proposed future land use map amendment and zoning map change based on the standards for considering amendments as required in Chapter 65, Article III, of the City's Land Development Regulations. Section 65.22(i) sets the standards for amendments and states amendments shall be consistent with the goals, objectives, and

policies of the Comprehensive Plan, zoning district standards and criteria, and all applicable requirements of Chapter 163, Florida Statutes.

Comprehensive Plan Consistency

Staff evaluated the subject request for consistency with all applicable comprehensive plan policies and objectives. Of particular applicability for this request are the policies discussed below.

Policy 1.6 of the Land Use Element states that the Residential High (RH) Land Use Designation “shall be applied to areas of the City which are suitable for multi-family residential uses with high densities, based on access to public utilities, adjacent to arterial or collector streets, which are a transition between multi-family and more intensive uses.” The proposed land use map amendment and rezoning request is found to be consistent with Policy 1.6 as the subject property has access to public utilities, is adjacent to a principal arterial street (US Highway 1) and is compatible with immediately adjacent zoning and uses.

Policy 3.3 of the Land Use Element states that “higher density residential uses shall be located on sites highly accessible to arterial or collector streets and near employment centers and goods and services.” The subject property is accessible to US Highway 1 and is located near the City’s downtown and Miracle Mile commercial areas.

Policy 2.3 of the Land Use Element states “land use designations and regulations shall be used to limit future strip commercial development along roadway thoroughfares.” Since the proposed amendments would provide an opportunity for a variation in land uses along this area of the US Highway 1 corridor, the request is consistent with Policy 2.3.

Compatibility with the Surrounding Area

To the north and adjacent to the subject property the future land use designation is Residential High (RH) and the current zoning is RM-10/12. Re-designating and rezoning the subject property will result in a continuation of the same future land use designation and zoning to the south. Properties to the south, east and west of the subject property have commercial land use designations and zoning and should be compatible with the proposed amendments, as high density residential land uses are considered to provide a good transition and/or buffer between more intensive commercial uses.

Impacts on Available Public Facilities

Staff reviewed the potential development impacts of the requested land use designation and zoning on the potential availability of public facilities. The analysis included the potential available capacity of each facility and determined that there is sufficient sanitary sewer, potable water, solid waste, recreation and transportation capacity to accommodate any additional demand generated by the proposed change in land use and zoning. From a

traffic generation perspective, the impacts are estimated to be less due to the less intensive uses permitted in the RH and RM-10/12 districts.

The change in future land use will not result in an increase in the overall residential density (both land uses allow up to 15 dwelling units per acre). However, rezoning the subject property from C-1 (0 dwelling units per acre) to RM-10/12 (up to 12 dwelling units per acre) would allow for a potential increase in residential density; therefore, potential impacts on school facilities were provided by the applicant via the School District. The School District provided a conditional School Concurrency Availability Determination letter acknowledging the availability of school capacity (based upon an estimated 22 multi-family residential units). The stormwater management level of service standard will be met by limiting off-site discharge to the existing predevelopment rate.

Consistency with Zoning District Standards and Criteria

The stated purpose of the RM-10/12 Zoning District is to “provide suitable areas for high-density residential development where sufficient urban services and facilities are provided.” As stated above, under the discussion of consistency with the Comprehensive Plan and compatibility with surrounding area, the staff finds that the proposed zoning is consistent with the zoning district standards and criteria.

It should be noted that in the proposed RM-10/12 zoning district professional offices are not permitted uses. Therefore, should the existing office uses currently occupying the building (former Thorpe Realty) on the east side of the subject property remain, these uses will become non-conforming in the new zoning district.

Consistency with City’s Charter & Zoning Limitations

Article V., General Provisions, Section 5.06, of the City’s Charter states the density levels existing in the Zoning Ordinance of the City of Vero Beach, Florida, on August 15, 1989, shall not be increased by action of the City Council unless approved first by voter referendum. It is the City Attorney’s opinion that this section of the Charter applies only to instances where the actual ‘Zoning Ordinance’ itself is being considered for amendment to allow for an increase in density and not amendments to the Official Zoning Map that rezone individual properties or parcels of land. In other words, requests to increase densities from one Zoning District to the other does not require approval by voter referendum; however, requests to increase allowable density levels within individual Zoning Districts or to create a new Zoning District with higher densities would first require a voter referendum. Therefore, based on the City Attorney’s opinion, the proposed rezoning of the subject property is found to be consistent with the provisions in the City’s Charter.

Consistency with Chapter 163, F.S.

As stated above the staff finds the proposed land use amendment and zoning change is consistent with the Comprehensive Plan and Land Development Regulations (Zoning Code).

Planning and Zoning Board Recommendation

The Planning and Zoning Board, at an advertised public hearing, voted 9 to 0 to recommend approval of the two requested map amendments as presented.

Staff Recommendation

Based on the analysis and the Planning and Zoning Board recommendation, staff recommends that the City Council approve this request to amend the future land use map from C, Commercial to RH, Residential High and amend the zoning map from C-1, Highway Oriented Commercial to RM-10/12, Medium and High Density Multiple-Family Residential District by adopting the attached ordinances.

TJM:cbf/tf
Attachments

FUTURE LAND USE MAP (FLUM) AMENDMENT APPLICATION

City of Vero Beach Planning & Development Department
1053 20th Place - P.O. Box 1389
Vero Beach, Florida 32961-1389
Phone (772) 978-4550 / Fax (772) 778-3856

Date Received 2/23/10 Application # C10-000001-FLUM-MAP

Prior to completing or signing this application, applicants and property owners are encouraged to read it thoroughly. If you have any questions, please do not hesitate to contact the Planning Department at (772) 978-4550.

APPLICANT Vero Property Investment, LLC Telephone 423-424-1830
Fax #: 423-308-1834

MAILING ADDRESS 7201 Shallowford Road, Suite 200, Chattanooga, TN 37421

SITE OWNER Vero Property Investment, LLC Telephone 423-424-1830
Fax #: 423-308-1834

OWNER ADDRESS 7201 Shallowford Road, Suite 200, Chattanooga, TN 37421

SITE LOCATION NE Corner of Intersection of US Highway 1 and 10th Avenue
33390100009001000007.0, 33390100009001000001.0

PARCEL I.D. NUMBER 33390100009001000003.0, 33390100009001000011.0

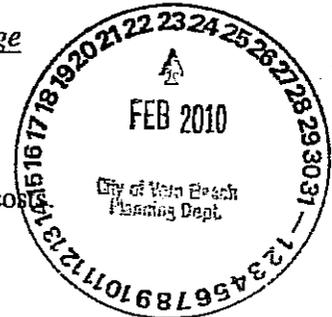
LEGAL DESCRIPTION See attached exhibit A

PROPOSED CHANGE: FROM C TO RH

(If this amendment requires a zoning change, a Zoning Change Application must accompany this request.)

<u>Application Fee*</u>		<u>with Zoning Change</u>
Large Scale (More than 10 acres)	\$2,800	\$4,100
Small Scale (Less than 10 acres)	\$2,100	<u>\$3,000</u>

* See attached fee schedule for additional advertising and administrative costs



[Signature]
Applicant Signature _____ Date _____

SAUE
Property Owner Signature _____ Date _____

Byron Debor
(Print Name)

(Print Name)

FUTURE LAND USE MAP (FLUM) CHANGE JUSTIFICATION

The applicant shall have the burden for justifying the amendment including identifying specific reasons warranting the amendment. Therefore, unless waived by the Planning Director, as part of the FLUM change request, please provide justification for the proposed change by providing the following required items along with any supporting data and information:

1. Describe why the proposed change is needed, including any change in circumstances to the property or the neighborhood/area in which the property is located that warrant a change in the FLUM designation.
2. Describe how the proposed amendment to the FLUM is compatible with the goals, objectives, and policies of the Land Use Element and other affected elements of the Comprehensive Plan.
3. Describe how the proposed amendment is compatible with the FLUM designations within the immediate vicinity of the property subject to the proposed change and will not lead to undesirable changes to established residential neighborhoods.
4. Provide School Impact Analysis, if allowable residential density is increased, indicating number of potential dwelling units by type. For purposes of dwelling unit type, the applicant shall use single family for ES and RL designations and multi-family for all other designations.
5. Provide data and analysis of the impacts on non-educational school facilities and services subject to the concurrency requirements of the Capital Improvements Element of the Comprehensive Plan. This analysis should show the availability of and demand on the following: sanitary sewer; solid waste; drainage; potable water; roads; and recreation, as appropriate. The demand estimates should be based on the change in demand over the current land use designation for the property and clearly spell out the assumptions used in the demand and availability analysis.

NOTE: If the proposed FLUM change is in combination with a proposed Zoning Map change, required Items 4 and 5 above should be prepared based on the permitted residential densities and non-residential uses and intensities of the proposed zoning district.

ADDITIONAL MATERIALS REQUIRED

The following materials are also required:

1. A copy of the property deed.
2. One original and one copy of submitted materials.
3. A Traffic Impact Assessment or Statement if required by Chapter 910, Indian River County Code.
4. Two (2) sealed surveys prepared by a State of Florida licensed surveyor made and dated within one year and to include existing topographic features, elevations based on mean sea

ZONING MAP CHANGE AMENDMENT APPLICATION

City of Vero Beach Planning & Development Department

1053 20th Place - P.O. Box 1389

Vero Beach, Florida 32961-1389

Phone (772) 978-4550 / Fax (772) 778-3856

Date Received 2/23/0

Application # Z10-000002 -MAP

Prior to completing or signing this application, applicants and property owners are encouraged to read it thoroughly. If you have any questions, please do not hesitate to contact the Planning Department at (772) 978-4550.

APPLICANT Vero Property Investment, LLC

Telephone 423-424-1830

Fax #: 423-308-1834

MAILING ADDRESS 7201 Shallowford Road, Suite 200, Chattanooga, TN 37421

SITE OWNER Vero Property Investment, LLC

Telephone 423-424-1830

Fax #: 423-308-1834

OWNER ADDRESS 7201 Shallowford Road, Suite 200, Chattanooga, TN 37421

SITE LOCATION NE Corner of Intersection of US Highway 1 and 10th Avenue
33390100009001000007.0, 33390100009001000001.0

PARCEL I.D. NUMBER 33390100009001000003.0, 33390100001000000015.0

PROPOSED ZONING CHANGE: FROM C-1 TO RM-10/12

(If this amendment requires a comprehensive plan change, a future land use map amendment application must accompany this request.)

Application Fee*

with Future Land Use Change

Large Scale (More than 10 acres) \$3,370

\$4,100

Small Scale (Less than 10 acres) \$2,600

\$3,000

* See attached fee schedule for additional advertising and administrative costs.



[Signature]
Applicant Signature Date

SAME AS APPLICANT
Property Owner Signature Date

Byron DeFoe
(Print Name)

||
(Print Name)

ZONING MAP CHANGE JUSTIFICATION

The applicant shall have the burden for justifying the amendment including identifying specific reasons warranting the amendment. Therefore, unless waived by the Planning Director, as part of the Zoning Map change request, please provide justification for the proposed change by providing the following required items, including any supporting data and information:

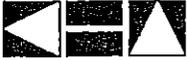
1. Describe why the proposed change is needed, including any change in circumstances to the property or the neighborhood/area in which the property is located that warrant a change in the Zoning Map designation.
2. Describe how the proposed amendment to the Zoning Map is compatible with the goals, objectives, and policies of the Land Use Element and other affected elements of the Comprehensive Plan and consistent with zoning district standards and criteria.
3. Describe how the proposed amendment is compatible with the Zoning Map designations within the immediate vicinity of the property subject to the proposed change and will not lead to undesirable changes to established residential neighborhoods.
4. Provide School Impact Analysis, if allowable residential density is increased, indicating number of potential dwelling units by type. For purposes of dwelling unit type, the applicant shall use single family units for R-1AAA through R-1 and multi-family for all other zoning districts.
5. Provide data and analysis of the impacts on non-educational school facilities and services subject to the concurrency requirements of the Capital Improvements Element of the Comprehensive Plan. This analysis should show the availability of and demand on the following: sanitary sewer; solid waste; drainage; potable water; roads; and recreation, as appropriate. The demand estimates should be based on the change in demand over the current land use designation for the property and clearly spell out the assumptions used in the demand and availability analysis.

NOTE: If the proposed Zoning Map change is in combination with a proposed FLUM change, required items 4 and 5 above should be prepared based on the permitted residential densities and non-residential uses and intensities of the proposed zoning district.

ADDITIONAL MATERIALS REQUIRED

The following materials are also required:

1. A copy of the property deed.
2. One original and one copy of submitted materials.
3. A Traffic Impact Assessment or Statement if required by Chapter 910, Indian River County Code.



Kimley-Horn
and Associates, Inc.

Copy



February 23, 2010

147090000

■
Suite 300
601 21st Street
Vero Beach, Florida
32960-0861

Sherry Fitzgerald, AICP
City of Vero Beach
Planning and Development Department
1053 20th Place
Vero Beach, FL 32960

RE: Vero Property Investment, LLC
Zoning Map Change and Future Land Use Map (FLUM) Amendment Application

Dear Sherry:

Vero Property Investment, LLC holds fee simple title to 2.5+/- acres of land in the City of Vero Beach. The property consists of three parcels located contiguous to each other at the northeast corner of the intersection of US Highway 1 and 10th Avenue. The uses on site at the present time include a Citgo gas station (closed), a single family residence adjacent to Citgo to the north (currently used as office space for the Royal Palm Convalescent Center, and a small commercial building occupied by Kane's Appliance. The applicant has also recently purchased the parcel adjacent to the east, the building previously owned by Michael Thorpe which is a small office strip center. A vicinity map of these parcels is included in this application packet.

The Future Land Use designation of these properties is C-Commercial. All four properties are currently zoned C-1, Commercial.

The applicant also owns a 2.76 +/- acre parcel immediately north of the subject properties, which is occupied by the Royal Palm Convalescent Center. That property has a Future Land Use designation of RH and a zoning designation of RM-10/12.

The applicant is requesting a Future Land Use Map change to RH, and a zoning map change to RM-10/12 for all of the additional properties except for a parcel at the corner. This will make the FLU and Zoning consistent with that of the Convalescent Center property. Application forms and supporting documentation for this request are attached. If you have any questions, please contact me at 772/794-4035.

Sincerely,
KIMLEY-HORN AND ASSOCIATES, INC.

Keith A. Pelan, RLA, AICP
Senior Associate

■
TEL 772 562 7981
FAX 772 562 9688



Kimley-Horn
and Associates, Inc.

March 15, 2010

☐
Suite 200
445 24th Street
Vero Beach, Florida
32960

Mr. Tim McGarry
Director of Planning and Development
City of Vero Beach
1053 20th Place
Vero Beach, Florida 32961

Re: Additional information – Vero Property Investment, LLC request for Future
Land Use and Zoning Map amendment (Applications #C10-000001-FLUM-MAP &
#Z10-000002-MAP)

Dear Tim:

Pursuant to your letter of March 4, 2010, please accept the following supplemental
information in support of the above mentioned application.

Compatibility with Land Use Element

Objective 1, Policy 1.6: The Residential High (RH) Land Use designation shall be
applied to areas of the city which are suitable for multifamily residential uses with
high densities, based on access to public utilities, adjacent to arterial or collector
streets, which are a transition between multifamily and more intensive uses. This
land use category shall allow single and multifamily residential development, park
and recreation uses, public facilities, institutional uses, schools, cultural and civic
uses, utilities, professional offices (as permitted by Land Use Element Policy 1.16),
and non-residential uses within a master plan development pursuant to Policy 1.21.

The request is consistent with this policy as the property has access to public utilities,
is adjacent to an arterial street (US 1) and is compatible with immediately adjacent
zoning and uses.

Objective 2, Policy 2.4. Redevelopment programs and incentives shall be established
to foster infill development and revitalization of older areas of the City.

Although the proposed rezoning and FLU Map amendment request is not receiving
any incentives, it does constitute infill development and revitalization of some older
and prime redevelopment properties.

Objective 3, Policy 3.3. Higher density residential uses shall be located on sites
highly accessible to arterial or collector streets and near employment centers and
goods and services.

☐

TEL 772 794 4100
FAX 772 794 4130



Kimley-Horn
and Associates, Inc.

The subject site is accessible to US 1 and is near many goods and services.

Objective 3, Policy 3.5. Development shall be planned and regulated in such a manner to provide for an orderly transition from low intensity/density uses to higher intensity/density uses.

The subject site provides this transition and is a good buffer between the high density residential use to the north and east and US 1.

Objective 3, Policy 3.7. Land development regulations shall include provisions for on-site stormwater retention/detention, safe and convenient access and traffic flow, and minimum open space and landscaping sufficient to avoid or minimize impacts on adjacent properties while adequately meeting on-site needs.

Rezoning the subject property will allow the redevelopment of not only this property, but an adjacent property to the north. In so doing, the entire site will be improved in many ways, including stormwater management (which the current property has no provisions for), and landscape.

Objective 3, Policy 3.8d. Minimum open space and landscaping standards and requirements to conserve native vegetation and buffer potentially incompatible land uses.

The redevelopment of the subject site will require that the landscape be brought up to current standards.

Compatibility with Housing Element

Objective 2, Policy 2.2. The City of Vero Beach, through its future land use plan map, hereby designates land for residential land uses and support services for a wide variety of housing types (including mobile homes), densities, and physical environments to facilitate an equally-wide variety of housing costs for present and future residents with special consideration given to the following:

- Lot sizes, setbacks and land use mixes;
- Proximity to public transportation, recreational facilities, and community services, such as shopping, personal services, and health care;
- Compatibility of land use relationships and neighborhood character; and
- Reduction of automobile travel to meet normal daily needs for access to employment, services, recreation and other local activities.

The FLUM amendment request furthers this policy by allowing residential uses in a location convenient to both commercial uses and residential neighborhoods.

Compatibility with Traffic Circulation Element



Kimley-Horn
and Associates, Inc.

Objective 1, Policy 1.7. No development project shall be approved if the projected impacts of the project would serve to reduce service levels of any roadway on the traffic circulation system below the standards identified in Policy 1.1. . . .

The FLUM amendment request actually constitutes a reduction in land use intensity, thereby reducing overall traffic impacts.

Density Comparison

The subject property's current zoning designation is C-1, Commercial, which does not allow residential uses. Typical commercial intensity for a property of this size (1.76 acres) would be around 17,600 s.f. (using an estimated 10,000 s.f. per acre of commercial development). From a traffic perspective, the most intense uses allowed in this district would be Financial Institutions or Restaurants.

The proposed zoning of RM-10/12 would allow up to 22 residential units on the property. Of the permitted uses in this district, Single Family residential would have the highest estimated traffic generation, but would still be less than any of the commercial uses allowed in the C-1 district.

School and Recreation Impacts

The school concurrency determination form is attached. Per the City's Comprehensive Plan, there are more than adequate recreational facilities in the City to accommodate the number of residential units allowed under the proposed zoning designation.

Solid Waste Impacts

The City projects an average of 2.07 persons per housing unit in Table 3.9 of the Housing element of the Comprehensive Plan. At the maximum density of 12 units/acre under the proposed zoning, the 22 units allowed would house 46 persons. Solid waste generation is estimated to be 1.14 tons per person per year (as referenced in the Sanitary Sewer and Solid Waste element), resulting in a total of 52.5 tons of solid waste per year.

Solid waste generated in the City is disposed of in the County landfill. The September 13, 2005 amended supplement to the Solid Waste Sub-element of the County's comprehensive plan states that the County has sufficient solid waste disposal capacity, for the next 25 years (to year 2030).

Traffic Impact Analysis

Attached is a copy of e-mail correspondence from Jeanne Bressett at Indian River County confirming no traffic impact analysis or statement is required.



Kimley-Horn
and Associates, Inc.

I trust this information will complete the submittal. If you have questions or need additional information, please call.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "K. Pelan", with a long horizontal line extending to the right.

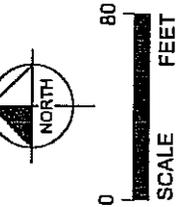
Keith A. Pelan, RLA, AICP, GRP
Senior Associate

ZONING/ LAND USE EXHIBIT

DATE: 01/26/10
 PROJECT NO.: 147090000
 SHEET NUMBER

DESIGNED BY: KEITH A. PELAN
 DRAWN BY: 1888
 CHECKED BY:
 DATE:

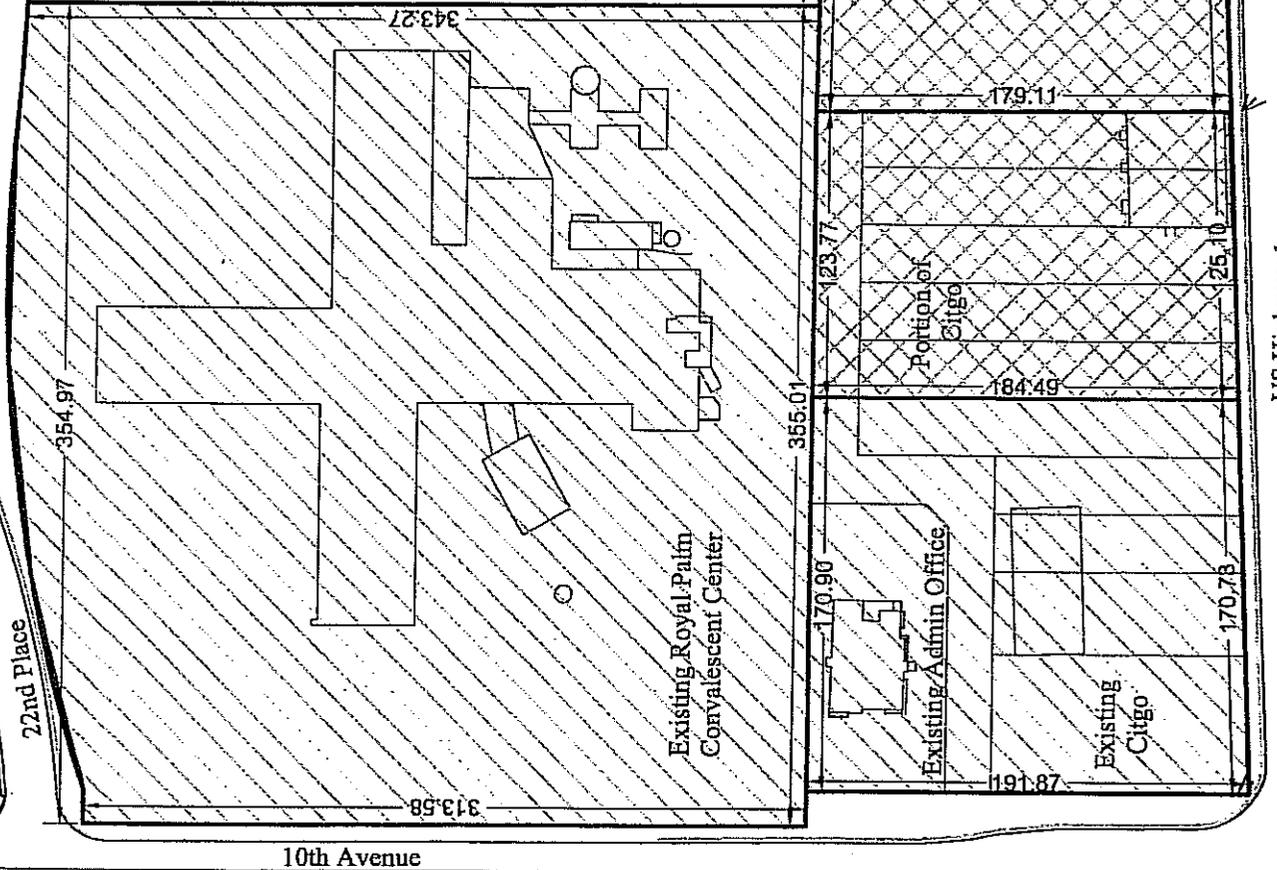
DESIGN ENGINEER: KEITH A. PELAN
 FLORIDA P.E. LICENSE NUMBER: 1888
 © 2010 KIMLEY-HORN AND ASSOCIATES, INC.
 801 21ST STREET, SUITE 300, VERO BEACH, FL 32960
 PHONE: 772-562-7981 FAX: 772-562-9089
 WWW.KIMLEY-HORN.COM CA 0000098



Legend

- Existing Zoning to Remain
- Area to be Rezoned

AREA	Existing FLU	Proposed FLU	Existing Zoning	Proposed Zoning
Thorpe Property	1.24 AC	RH	C-1	RM-10/12
Royal Palm Convalescent Center	2.76 AC	RH	RM-10/12	To Remain
Portion of Citgo	0.52 AC	RH	C-1	RM-10/12
Existing Citgo	0.74 AC	C	C-1	To Remain



Indian River County School District

School Concurrency Availability Determination

Project Name: Vero Property Investment, LLC
Date Received: 3/12/2010
Case Number: 123
Builder Name: Vero Property Investment, LLC
Location: 870 - 940 21st Street
 Vero Beach, FL 32960
 NE Corner US# (21st ST) & 10th Avenue
 Parcel ID# 33390100001000000015.0

Project Unit Yield By Type of School

	Yield	Elem	Mid	High
--	-------	------	-----	------

Multi-Family	0.037	1		
Multi-Family	0.015		0	
Multi-Family	0.014			0

Project Planned Units:

Single Family: 0 **# Multi-Family:** 22
Townhomes: 0 **# Apartments:** 0

Additional Information: Mailing Address:
 Keith Pelan/Kimley-Horn And Associates, Inc.
 445 24th Street
 Suite 200
 Vero Beach, FL 32960

Service Area Analysis

School Service Area Boundary (SSAB)	Current Capacity	Programmed Capacity	Total Capacity	Current Enrollment	Vested Demand	Total Demand	Available Capacity	Project Demand
Vero Beach ES	559	191	750	535	3	538	212	1
Gifford MS	1122	0	1122	969	1	970	152	0
Vero Beach HS	2771	0	2771	2685	4	2689	82	0

This letter is in response to a Concurrency Determination Request for Project Vero Property Investment, LLC – 870 – 940 21st Street, Vero Beach, FL 32960. This project is located in the SSAB for Beachland Elementary, Gifford Middle School and Vero Beach High School. At this time the SSAB ***DOES NOT*** have sufficient space available at Beachland Elementary to accommodate the students projected to be generated from this Project (please see attached School Concurrency Availability Determination). The adjacent Elementary School with available capacity is Vero Beach Elementary School.

Please note that when a SCADL is issued, the SCADL shall note the School Service Areas and their Available School Capacity. This does not mean that the development's students will attend the adjacent school. The School District will be responsible for determining when and what adjustments will be made in the future to maintain the adopted level of service.

Date: March 25, 2010 147090000
To: Cheri Fitzgerald, AICP
From: Keith Pelan
Re: Supplemental Information,
Vero Property Investment, LLC
Zoning Map Change and Future Land Use Map (FLUM) Amendment Application

Below is additional information regarding the above referenced request.

Sanitary Sewer

City of Vero Beach wastewater service is available to the site. Based upon the most intense use allowed under the requested FLU and Zoning Map change the subject site will have a wastewater generation rate of approximately 22 Equivalent Residential Units (ERU) or 5,500 gallons per day (1 ERU = 250 gallons per day). The City of Vero Beach Wastewater Treatment Plant has sufficient capacity to accommodate the wastewater generated by the most intense use of the stated request as referenced in the comprehensive plan.

Potable Water

City of Vero Beach water supply is available to the site. Based upon the most intense use allowed under the requested FLU and Zoning Map change the subject site will have a wastewater generation rate of approximately 22 Equivalent Residential Units (ERU) or 5,500 gallons per day (1 ERU = 250 gallons per day). The City of Vero Beach Water Plant has sufficient capacity to accommodate the water demand by the most intense use of the stated request as referenced in the comprehensive Plan

I trust this adequately responds to your request for more information.

ORDINANCE NO. 2010 – _____

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, REQUESTED BY VERO PROPERTY INVESTMENT, LLC, TO AMEND THE COMPREHENSIVE PLAN FUTURE LAND USE MAP BY CHANGING THE LAND USE DESIGNATION FROM C, COMMERCIAL (UP TO 15 DWELLING UNITS/ACRE) TO RH, RESIDENTIAL HIGH (UP TO 15 DWELLING UNITS/ACRE) FOR THE PROPERTY GENERALLY LOCATED EAST OF THE NORTHEAST CORNER OF THE INTERSECTION OF 21ST STREET (US HIGHWAY 1) AND 10TH AVENUE, INCLUDING ALL OF THE REPLAT OF HENNING'S SUBDIVISION THAT LIES NORTH OF 21ST STREET (US HIGHWAY 1) AND A PORTION OF BLOCK 1, CITRUS PARK, CONTAINING 1.76 ACRES, MORE OR LESS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Vero Property Investment, LLC submitted an application for a small scale amendment to the Comprehensive Plan Future Land Use Map to the City of Vero Beach, pursuant to Chapter 65, Article III, of the City's Land Development Regulations, requesting a change in the future land use map from C, Commercial (up to 15 dwelling units/acre) to RH, Residential High (up to 15 dwelling units/acre) for property comprising 1.76 acres, more or less, generally located east of the northeast corner of the intersection of 21st Street (US Highway 1) and 10th Avenue; and

WHEREAS, the City Council adopted the Vero Beach Comprehensive Plan on July 21, 1992; and

WHEREAS, the property described herein meets the criteria for small scale comprehensive plan amendments, pursuant to Section 163.3187(1)(c) of the Florida Statutes; and

WHEREAS, pursuant to Section 163.3174(4)(a) of the Florida Statutes, the Planning and Zoning Board, acting as the Local Planning Agency, held an advertised Local Planning Agency Public Hearing on the small scale comprehensive plan amendment on April 15, 2010, and made a recommendation regarding the amendment to the Vero Beach City Council; and

WHEREAS, the Vero Beach City Council finds the proposed amendment to the Future Land Use Map to be consistent with the goals, objectives, and policies of the Comprehensive Plan.

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

Section 1. Small Scale Comprehensive Plan Amendment Adoption

The small scale amendment to the Vero Beach Comprehensive Plan identified in Section 2 is hereby adopted, and one (1) copy each is to be transmitted to the State of Florida Department of Community Affairs, the Treasure Coast Regional Planning Council, Indian River County, and others.

Section 2. Small Scale Amendment to the Comprehensive Plan Future Land Use Map

The Comprehensive Plan Future Land Use Map designation, for the property that is located generally east of the northeast corner of the intersection of 21st Street (US Highway 1) and 10th Avenue, comprising 1.76 acres more or less, including all of the Replat of Henning's Subdivision as shown on the Plat thereof as recorded in Plat Book 2, Page 11, of the Public Records of Indian River County, Florida, that lies north of

21st Street (US Highway 1), together with a portion of Block 1, Citrus Park, as recorded in Plat Book 5, Page 28, of the Public Records of Indian River County, Florida, is hereby changed from to C, Commercial (up to 15 dwelling units per acre), to RH, Residential High (up to 15 dwelling units per acre), as graphically depicted in the attached Exhibit "A."

[SEE Exhibit "A"]

Map of Location and Future Land Use of Subject Property

Section 3. Authorization to Transmit Plan Amendment

The City Planning and Development Director is directed to transmit a certified copy hereof to the authorities designated under Section 163.3184(3) Florida Statutes, and proceed herewith in accordance with the provisions of Chapter 163, Part II, Florida Statutes.

Section 4. Effective Date

The effective date of this ordinance is on the 31st day after adoption, as provided by Section 163.3187(3)(c), Florida Statutes.

This Ordinance was read for the first time on the ____ day of _____, 2010, and was advertised in the 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:

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

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

ATTEST:

**CITY OF VERO BEACH,
FLORIDA**

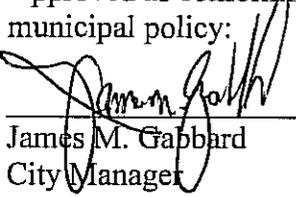
 Tammy K. Vock
 City Clerk

 Kevin Sawnick
 Mayor

Approved as to form and legal sufficiency:

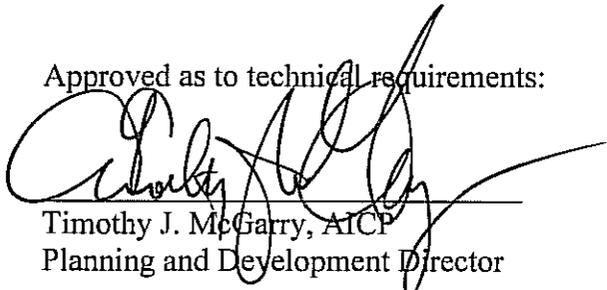
Approved as conforming to
 municipal policy:

 Charles P. Vitunac
 City Attorney

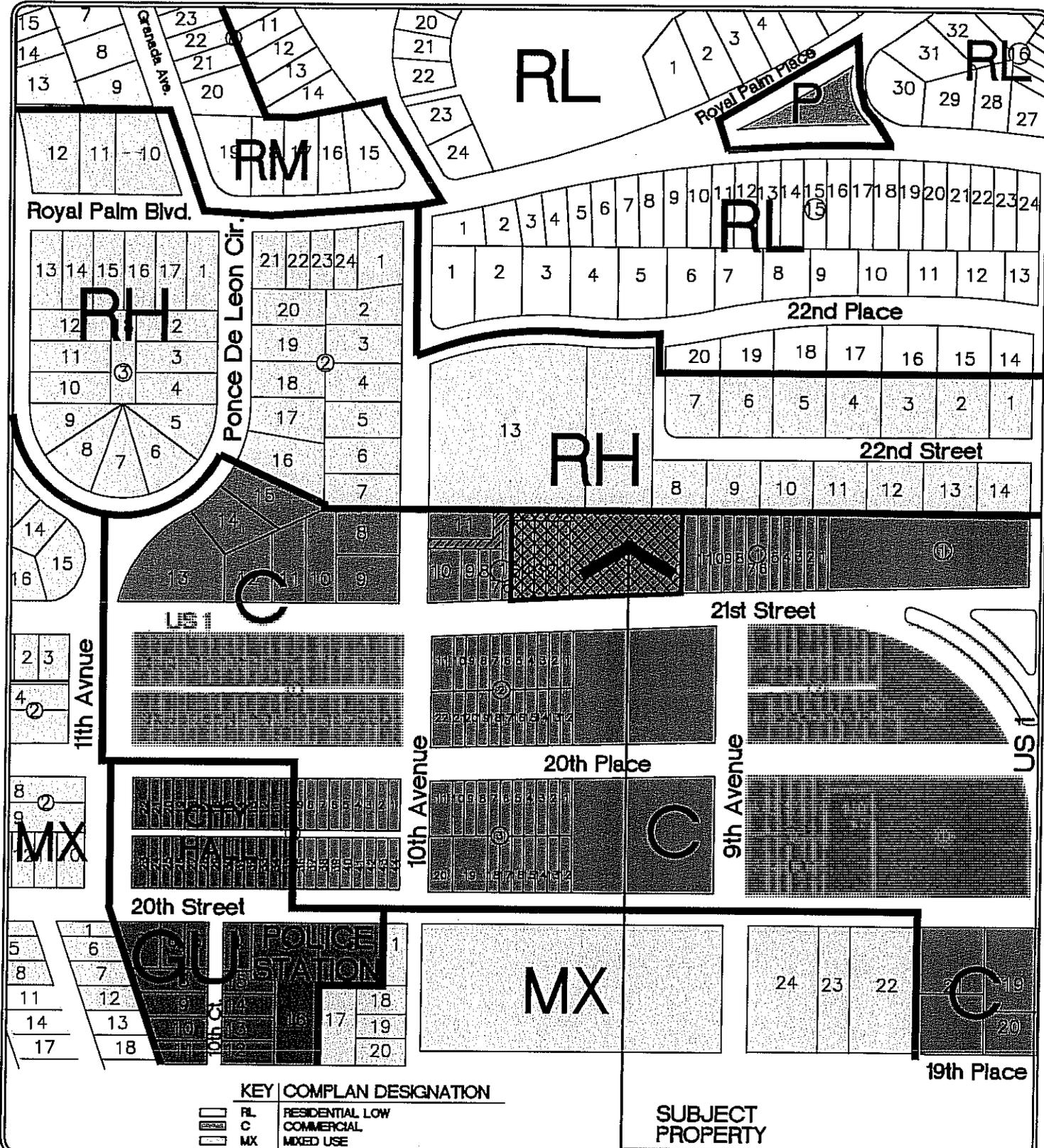


 James M. Gabbard
 City Manager

Approved as to technical requirements:



 Timothy J. McGarry, AICP
 Planning and Development Director



KEY / COMPLAN DESIGNATION	
	RESIDENTIAL LOW
	COMMERCIAL
	MIXED USE
	GOVERNMENT/INSTITUTIONAL/PUBLIC USE
	RESIDENTIAL MEDIUM
	PARK
	RESIDENTIAL HIGH

SUBJECT PROPERTY
FROM C TO RH



LAND USE CHANGE APPLICATION # C10-00001-FLUM-MAP
LOCATION AND LAND USE OF SUBJECT PROPERTY

DATE 03/25/2010
SCALE-NTS
EXHIBIT A

NOTICE PUBLIC HEARING

An Ordinance of the City of Vero Beach, Florida, requested by Vero Property Investment, LLC, to amend the Comprehensive Plan Future Land Use Map by Changing the Land Use Designation from C, Commercial (up to 15 Dwelling Units/Acre) to RH, Residential High (up to 15 Dwelling Units/Acre) for the property generally located East of the Northeast corner of the Intersection of 21st Street (US Highway 1) and 10th Avenue, including all of the replat of Henning's Subdivision that lies North of 21st Street (US Highway 1) and a portion of Block 1, Citrus Park, containing 1.76 acres, more or less, and providing for an Effective Date.

An Ordinance of the City of Vero Beach, Florida, requested by Vero Property Investment, LLC, to amend the Official Zoning Map by Changing the Zoning Designation from C01, Highway Oriented Commercial to RM010/12 Medium and High Density Multiple-Family Residential District for the property generally located East of the Northeast corner of the Intersection of 21st Street (US Highway 1) and 10th Avenue, including all of the replat of Henning's Subdivision that lies North of 21st Street (US Highway 1) and a portion of Block 1, Citrus Park, containing 1.76 acres, more or less, and providing for an effective date.

The City Council of the City of Vero Beach, Florida, will hold a public hearing concerning the Adoption of an Ordinance with the title as shown at 6:00 p.m., on July 15, 2010 in the City Hall, Council Chambers, at 1053 20th Place, Vero Beach, Florida. At the conclusion of this public hearing the Council may enact this Ordinance into law.

Interested parties may obtain a copy of this Ordinance at the Office of the City Clerk at City Hall and are welcome to attend the public hearing concerning this Ordinance. Anyone who may wish to appeal any decision which may be made at this hearing will need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is based. Anyone who needs a special accommodation for this meeting may contact the City's Americans with Disabilities Act (ADA) Coordinator at 978-4920 at least 48 hours in advance of the meeting.

CITY OF VERO BEACH, FLORIDA

BY: Tammy K. Vock, MMC

City Clerk

ADVERTISE: June 5, 2010

Please send proof of publication: City Clerk's office, P.O. Box 1389, Vero Beach, Florida 32960

3-B)

ORDINANCE NO. 2010 – _____

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, REQUESTED BY VERO PROPERTY INVESTMENT, LLC, TO AMEND THE OFFICIAL ZONING MAP BY CHANGING THE ZONING DESIGNATION FROM C-1, HIGHWAY ORIENTED COMMERCIAL TO RM-10/12, MEDIUM-AND HIGH-DENSITY MULTIPLE-FAMILY RESIDENTIAL DISTRICT FOR THE PROPERTY GENERALLY LOCATED EAST OF THE NORTHEAST CORNER OF THE INTERSECTION OF 21ST STREET (US HIGHWAY 1) AND 10TH AVENUE, INCLUDING ALL OF THE REPLAT OF HENNING'S SUBDIVISION THAT LIES NORTH OF 21ST STREET (US HIGHWAY 1) AND A PORTION OF BLOCK 1, CITRUS PARK, CONTAINING 1.76 ACRES, MORE OR LESS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Vero Property Investment, LLC submitted an application for an amendment to the official zoning map of the City of Vero Beach, pursuant to Chapter 65, Article III, of the City's Land Development Regulations, requesting a change in the official zoning map from C-1, Highway Oriented Commercial to RM-10/12, Medium-and High-Density Multiple-Family Residential District for property comprising 1.76 acres, more or less, generally located east of the northeast corner of the intersection of 21st Street (US Highway1) and 10th Avenue; and

WHEREAS, the Vero Beach City Council has adopted the small scale amendment to the Comprehensive Plan Future Land Use Map to redesignate this property from C, Commercial (up to 15 dwelling units/acre) to RH, Residential High (up to 15 dwelling units/acre); and

WHEREAS, the Planning and Zoning Board held an advertised public hearing on the zoning map amendment on April 15, 2010, and made a recommendation to the Vero Beach City Council; and

WHEREAS, the Vero Beach City Council finds the proposed amendment to the official zoning map to be consistent with the Future Land Use Map and the goals, objectives, and policies of the Comprehensive Plan.

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

Section 1. Amendment to the Official Zoning Map

The City's Official Zoning Map, for the property that is located generally east of the northeast corner of the intersection of 21st Street (US Highway 1) and 10th Avenue, comprising 1.76 acres more or less, including all of the Replat of Henning's Subdivision as shown on the Plat thereof as recorded in Plat Book 2, Page 11, of the Public Records of Indian River County, Florida, that lies north of 21st Street (US Highway 1), together with a portion of Block 1, Citrus Park, as recorded in Plat Book 5, Page 28, of the Public Records of Indian River County, Florida, is hereby changed from to C-1, Highway Oriented Commercial to RM-10/12, Medium-and High-Density Multiple-Family Residential, as graphically depicted in the attached Exhibit "A."

[SEE Exhibit "A"]

Map of Location and Zoning of Subject Property

Page 2 of 4

Plus Exhibit(s) incorporated by reference

Section 2. Effective Date

This ordinance shall become effective upon the effective date of the small scale comprehensive plan amendment.

This Ordinance was read for the first time on the ____ day of _____, 2010, and was advertised in the 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:

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

Mayor Kevin Sawnick

Yes No

Vice Mayor Sabin C. Abell, Jr.

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

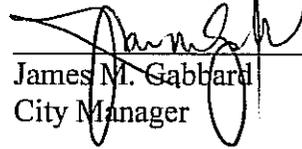
Kevin Sawnick
Mayor

Approved as to form and legal sufficiency:

Approved as conforming to
municipal policy:

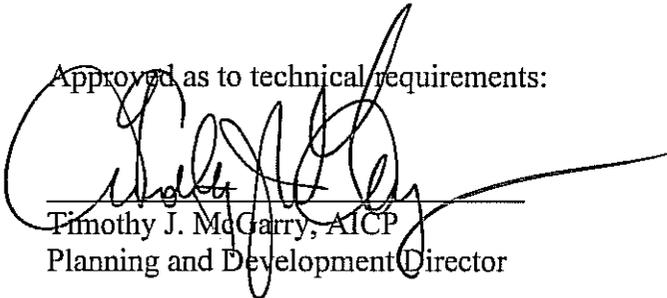


Charles P. Vitunac
City Attorney

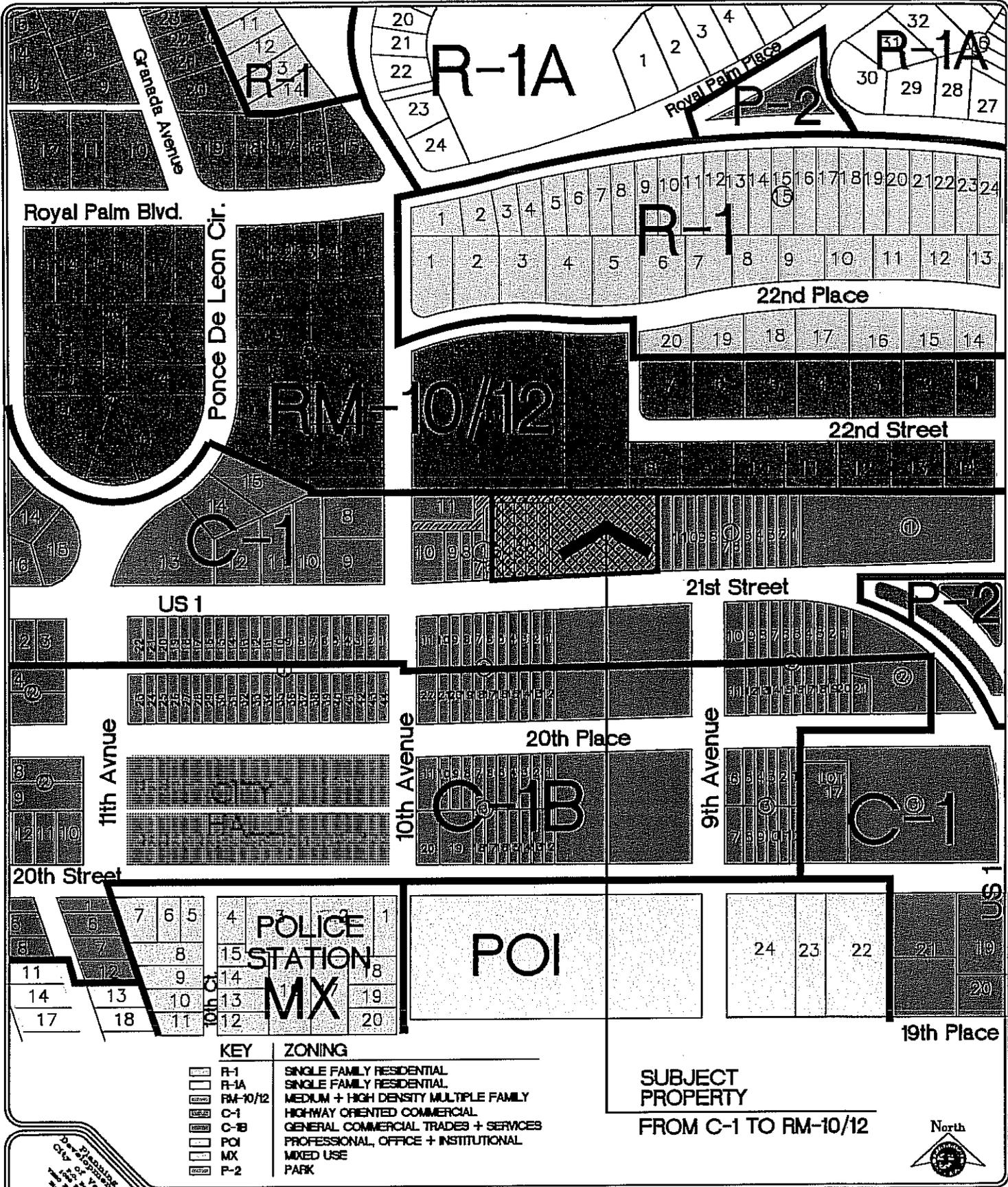


James M. Gabbard
City Manager

Approved as to technical requirements:

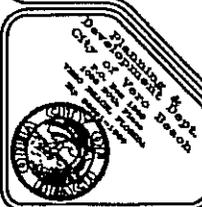


Timothy J. McGarry, AICP
Planning and Development Director



KEY	ZONING
	SINGLE FAMILY RESIDENTIAL
	SINGLE FAMILY RESIDENTIAL
	MEDIUM + HIGH DENSITY MULTIPLE FAMILY
	HIGHWAY ORIENTED COMMERCIAL
	GENERAL COMMERCIAL TRADES + SERVICES
	PROFESSIONAL, OFFICE + INSTITUTIONAL
	MIXED USE
	PARK

SUBJECT PROPERTY
FROM C-1 TO RM-10/12



ZONING MAP CHANGE APPLICATION # Z10-00002-MAP
 LOCATION AND ZONING OF SUBJECT PROPERTY

DATE 03/25/2010
 SCALE-NTS
 EXHIBIT A

MEMORANDUM

4-A)

TO: James M. Gabbard, City Manager
VIA: Charles P. Vitunac, City Attorney
FROM: Ericson W. Menger, Airport Director
DATE: May 27, 2010
SUBJECT: JOINT PARTICIPATION AGREEMENT BETWEEN THE CITY OF VERO BEACH AND THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR OBSTRUCTIONS REMOVAL, PHASE 2 (FDOT #420769-1-94-01)

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

BACKGROUND

This project was originally approved by City Council in the airport's FY07 capital budget (account number 443.4000.542.607001). It was proposed as one phase, but was broken into two phases due to reduced federal and state funding.

Phase 1 was the survey portion of this project, and is now complete. At the City Council meeting on April 6, 2010, URS Corporation presented to City Council the areas surveyed and our primary, transitional, and approach surfaces as defined by 14 CFR Part 77 and other FAA regulations.

Phase 2 will be the actual obstruction removal and/or mitigation of natural and man-made obstructions to runway approaches as required by the Federal Aviation Administration.

The Airport Commission discussed this item at its March 5, 2010, meeting and recommended that City Council authorize staff to proceed to Phase 2 of this project. Total cost of the proposed project is currently estimated at about \$1,000,000. Before actual obstruction removal begins, the City will also need to accept a grant from the Federal Aviation Administration (FAA) in the amount of approximately \$950,000 (if offered) and award a contract through the normal bid process. These items will be presented to the City Council at a later date.

The attached JPA is the first piece of the funding puzzle in the amount of \$25,000, which funds only 2.5% of the total estimated project cost. Another \$25,000 (approximately) will come from the airport, but no cost will be expended from the City's general fund.

RECOMMENDATION

I respectfully request that this item be placed on the next available City Council Agenda. I recommend approval of the proposed Resolution and acceptance of the grant from FDOT (JPA).

EWM:dfw

cc: Airport Commission Members
Steve Maillet, Finance Director
Joyce Vonada, City Manager's Office

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION
JOINT PARTICIPATION AGREEMENT

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

Financial Project No.: 420769-1-94-01 <small>(item-segment-phase-sequence)</small>	Fund: DS Function: 637 Federal No.: _____ DUNS No.: _____	FLAIR 088719 Object Code: 750004 Org. Code: 55042010428 Vendor No.: VF596000445004
Contract No.: _____ CFDA Number: _____	CSFA Number: 55004	

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

hereinafter referred to as Agency. The Department and Agency agree that all terms of this Agreement will be completed on or before July 31, 2012 and this Agreement will expire unless a time extension is provided in accordance with Section 18.00.

WITNESSETH:

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

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

1.00 Purpose of Agreement: The purpose of this Agreement is to provide FDOT participation in an Obstructions Removal project at Vero Beach Municipal Airport

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

2.00 Accomplishment of the Project

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

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

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

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

3.00 Project Cost: The total estimated cost of the project is \$ 1,000,000. This amount is based upon the estimate summarized in Exhibit "B" attached hereto and by this reference made a part hereof this Agreement. The Agency agrees to bear all expenses in excess of the total estimated cost of the project and any deficits involved.

4.00 Department Participation: The Department agrees to maximum participation, including contingencies, in the project in the amount of \$ 25,000 as detailed in Exhibit "B", or in an amount equal to the percentage(s) of total cost shown in Exhibit "B", whichever is less.

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

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

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

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

6.00 Project Budget and Payment Provisions:

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

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

7.00 Accounting Records:

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

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

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

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

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

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

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

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

7.62 Audits:

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

1. In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Exhibit "D" to this agreement indicates Federal resources awarded through the Department by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.

2. In connection with the audit requirements addressed in Part I, Paragraph 1., the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133.

3. If the recipient expends less than the amount in Part I, Paragraph 1., an audit conducted in accordance with the provisions of OMB Circular A-133, is not required. If the recipient elects to conduct such an audit, the cost of the audit must be paid from resources obtained from other than Federal entities.

4. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.

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

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services and the CFO; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit "D" to this agreement indicates state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, Paragraph 1., the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapter 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

3. If the recipient expends less than the amount in Part II, Paragraph 1., such audit is not required. If the recipient elects to conduct such an audit, the cost of the audit must be paid from the recipient's resources obtained from nonstate entities.

4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

Part III Other Audit Requirements

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

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

Part IV Report Submission

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

A. The Department at each of the following addresses:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.00 Requisitions and Payments:

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

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

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

8.13 For real property acquired, submit;

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

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

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

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

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

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

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

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

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

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

9.00 Termination or Suspension of Project:

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

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

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

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

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

12.00 Contracts of the Agency:

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

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

12.30 Disadvantaged Business Enterprise (DBE) Policy

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

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

13.00 Restrictions, Prohibitions, Controls, and Labor Provisions:

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

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

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

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

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

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

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

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

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

14.00 Miscellaneous Provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

17.00 Appropriation of Funds:

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

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

18.00 Expiration of Agreement: The Agency agrees to complete the project on or before July 31, 2012. If the Agency does not complete the project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the Director of Transportation Development. Expiration of this Agreement will be considered termination of the project and the procedure established in Section 9.00 of this Agreement shall be initiated.

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

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

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

21.00 Restrictions on Lobbying:

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

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

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

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

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

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

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

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

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

Financial Project No. 420769-1-94-01

Contract No. _____

Agreement Date _____

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

AGENCY

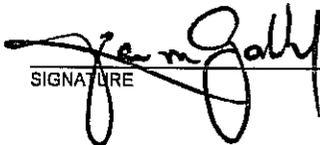
FDOT

City of Vero Beach
 AGENCY NAME

See attached Encumbrance Form for date of Funding Approval by Comptroller

 SIGNATORY (PRINTED OR TYPED)

 LEGAL REVIEW
 DEPARTMENT OF TRANSPORTATION


 SIGNATURE

 DEPARTMENT OF TRANSPORTATION

 TITLE

Director of Transportation Development
 TITLE

CITY OF VERO BEACH	APPROVED	DATE
City Manager		
City Attorney		6.2.10
City Clerk		
Utilities		
Public Works		
Finance		
Human Resources		
Planning		

Fin. Proj. No.: 420769-1-94-01

Contract No.: _____

Agreement Date: _____

EXHIBIT "A"
PROJECT DESCRIPTION AND RESPONSIBILITIES

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

PROJECT LOCATION: Vero Beach Municipal Airport

PROJECT DESCRIPTION: Obstructions Removal

SPECIAL CONSIDERATIONS BY AGENCY:

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

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

SPECIAL CONSIDERATIONS BY DEPARTMENT: N/A

Fin. Proj. No.: 420769-1-94-01

Contract No.: _____

Agreement Date: _____

EXHIBIT "B"
PROJECT BUDGET

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

I. TOTAL PROJECT COST:		<u><u>\$1,000,000</u></u>
II. PARTICIPATION:		
Federal Participation:		
FAA, FTA, UMTA, etc.	95.00%	\$950,000
Agency Participation:		
In-Kind		
Cash	2.50%	\$25,000
Other		
**Maximum Department Participation:		
Primary (DS) (DDR) (DIM) (PORT)	2.50%	\$25,000
Federal Reimbursable (DU) (FRA) (DFTA)		
Local Reimbursable (DL)		
III. TOTAL PROJECT COST:		<u><u>\$1,000,000</u></u>

AVIATION PROGRAM ASSURANCES

FINANCIAL PROJECT NO.: 420769-1-94-01

EFFECTIVE DATE: _____

A. General

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

B. Agency Compliance Certification

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

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

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

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

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

AVIATION PROGRAM ASSURANCES

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

c. Local Government Requirements

- Airport Zoning Ordinance
- Local Comprehensive Plan

d. Department Requirements

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

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

a. Federal Requirements

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

b. Local Government Requirements

- Local Building Codes
- Local Zoning Codes

c. Department Requirements

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

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

a. Federal Requirements

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

b. Florida Requirements

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

C. Agency Authority

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
EXHIBIT "C"
AVIATION PROGRAM ASSURANCES

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

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

D. Agency Responsibilities

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

1. **Accounting System**

a. The Agency shall create and maintain a separate account to document all of the financial transactions related to the airport as a distinct entity.

b. The accounting records shall be kept by the Agency or its authorized representative in accordance with Generally Accepted Accounting Principles and in an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

c. The Department has the right to audit and inspect all financial records of the airport upon reasonable notice.

2. **Good Title**

a. The Agency holds good title, satisfactory to the Department, to the airport or site thereof, or gives assurance, satisfactory to the Department, that good title will be obtained.

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

3. **Preserving Rights and Powers**

a. The Agency will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms and assurances of this Agreement without the written approval of the Department. Further, it will act promptly to acquire, extinguish, or modify, in a manner acceptable to the Department, any outstanding rights or claims of right of others which would interfere with such performance by the Agency.

b. If an arrangement is made for management and operation of the airport by any entity or person other than the Agency or an employee of the Agency, the Agency will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with the terms and assurances of this Agreement.

4. **Hazard Removal and Mitigation**

a. For airport hazards located on airport controlled property, the Agency will clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

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

5. **Airport Compatible Land Use**

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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
EXHIBIT "C"
AVIATION PROGRAM ASSURANCES

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

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

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

6. Consistency with Local Government Plans

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

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

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

7. Consistency with Airport Master Plan and Airport Layout Plan

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

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

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

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

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

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

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

8. Airport Financial Plan

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

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

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

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

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

9. Airport Revenue

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

AVIATION PROGRAM ASSURANCES

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

10. Fee and Rental Structure

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

11. Public-Private Partnership for Aeronautical Uses

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

12. Economic Nondiscrimination

a. The Agency assures that it will make the airport available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public.

- (1) The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- (2) The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

b. The Agency assures that each airport Fixed-Based Operator (FBO) shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other FBOs making the same or similar uses of such airport and utilizing the same or similar facilities.

13. Air and Water Quality Standards

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

14. Operations and Maintenance

a. The Agency assures that the airport and all facilities, which are necessary to serve the aeronautical users of the airport, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal and state agencies for maintenance and operation, as well as minimum standards established by the Department for State of Florida licensing as a public-use airport.

- (1) The Agency assures that it will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.
- (2) Except in emergency situations, any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Department.
- (3) The Agency assures that it will have arrangements for promptly notifying airmen of any condition affecting aeronautical use of the airport.

b. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when adverse weather conditions interfere with safe airport operations.

15. Federal Funding Eligibility

AVIATION PROGRAM ASSURANCES

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

16. Project Implementation

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

17. Exclusive Rights

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

18. Airfield Access

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

19. Retention of Rights and Interests

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

20. Consultant, Contractor, Scope, and Costs

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

21. Planning Projects

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

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

AVIATION PROGRAM ASSURANCES

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

22. Land Acquisition Projects

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

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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
EXHIBIT "C"
AVIATION PROGRAM ASSURANCES

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

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

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

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

(1) For land purchased for airport development or noise compatibility purposes, the Agency will, when the land is no longer needed for such purposes, dispose of such land at fair market value and/or make available to the Department an amount equal to the state's proportionate share of its fair market value.

(2) Land shall be considered to be needed for airport purposes under this assurance if:

(a) It serves aeronautical purposes, e.g. runway protection zone or as a noise buffer.

(b) Revenue from uses of such land contributes to airport financial self-sufficiency.

(3) Disposition of land under Section 22f(1) or (2), above, shall be subject to retention or reservation of any interest or right therein needed to ensure such land will only be used for purposes compatible with noise levels related to airport operations.

(4) For disposal of real property purchased with Department funding:

(a) The Agency will reimburse the Department a proportional amount of the proceeds of the sale of any airport-owned real property.

(b) The proportional amount shall be determined on the basis of the ratio of the Department financing of the acquisition of the real property multiplied against the sale amount, and shall be remitted to the Department within ninety (90) days of closing of sale.

(c) Sale of real property acquired with Department funds shall be at fair market value as determined by appraisal, and the contract for sale must be approved in advance by the Department.

(d) If any portion of the proceeds from the sale to the Agency is non-cash considerations, reimbursement to the Department shall include a proportional amount based on the value of the non-cash considerations.

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

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

(1) Consultant and contractor selection comply with all applicable federal, state and local laws, rules, regulations, and policies.

(2) All design plans and specifications comply with federal, state, and professional standards and applicable FAA advisory circulars, as well as the minimum standards established by the Department for State of Florida licensing as a public-use airport.

(3) Completed construction complies with all applicable local building codes.

(4) Completed construction complies with the project plans and specifications with certification of that fact by the project Engineer.

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

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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
EXHIBIT "C"
AVIATION PROGRAM ASSURANCES

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The Agency shall enter into an agreement with the owner of that property to exclude future actions against the airport.

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

EXHIBIT D

<u>State Agency</u>	<u>Catalog of State Financial Assistance (Number & Title)</u>	<u>Amount</u>
FDOT	55004 - Aviation Grant Program	\$25,000

COMPLIANCE REQUIREMENTS**Activities Allowed:****Airport Planning**

Airport Planning Grants are to study options for airport development and operations. The Department funds airport master plans, airport layout plans (ALP), noise and environmental studies, economical impact, services development, and airport promotion. Examples of projects are:

- Master plans and ALPs;
- Master drainage plans;
- Environmental assessments (EA);
- Development of regional impact (DRI);
- Operations and emergency response plans;
- Federal Aviation Regulations (FAR) Part 150 noise studies;
- Environmental impact studies (EIS);
- Wildlife hazard studies;
- Feasibility and site selection studies;
- Business plans;
- Airport management studies and training;
- Air services studies and related promotional materials.

(FDOT Aviation Grant Program Handbook)

Airport Improvement

These grants are to provide capital facilities and equipment for airports. Examples of projects are:

- Air-side capital improvement projects (runways, taxiways, aprons, T-hangers, fuel farms, maintenance hangers, lighting, control towers, instrument approach aids, automatic weather observation stations);
- Land-side capital improvement projects (terminal buildings, parking lots and structures, road and other access projects);
- Presentation projects (overlays, crack sealing, marking, painting buildings, roofing buildings, and other approved projects);
- Safety equipment (including AARF fire fighting equipment and lighted Xs);
- Safety projects (tree clearing, land contouring on overrun areas, and removing, lowering, moving, and marking, lighting hazards);
- Information technology equipment (used to inventory and plan airport facility needs);
- Drainage improvements.

(FDOT Aviation Grant Program Handbook)

Land Acquisition

This grant program protects Florida's citizens from airport noise and protects airport clear zones and runway approach areas from encroachment. Administrative Costs, appraisals, legal fees, surveys, closing costs and preliminary engineering fees are eligible costs. In the event the negotiation for a fair market value is unsuccessful, the court will be petitioned for "an Order of Taking" under the eminent domain laws of Florida. Examples of projects are:

- Land acquisition (for land in an approved master plan or ALP);
- Mitigation land (on or off airport);
- Aviation easements;
- Right of way;
- Approach clear zones.

(FDOT Aviation Grant program Handbook)

Airport Economic Development

This grant program is to encourage airport revenue. Examples of projects are:

- Any airport improvement and land purchase that will enhance economic impact;
- Building for lease;
- Industrial park infrastructure and buildings;
- General aviation terminals that will be 100 percent leased out;
- Industrial park marketing programs.

(FDOT Aviation Grant Program Handbook)

Aviation Land Acquisition Loan Program

The Department provides interest free loans for 75 percent of the cost of airport land purchases for both commercial service and general aviation airports.

This is a general description of project types. A detail list of project types approved for these grant programs can be found in the Aviation Grant Program manual which can be accessed through the internet at www.dot.state.fl.us/Aviation/Public.htm.

Allowable Cost: See part three of compliance supplement

Cash Management: See part three of compliance supplement

Matching Requirements are as follows:

Commercial Service Airports

When no federal funding is available, the Department provides up to 50 percent of the project costs. When federal funding is available, the Department can provide up to 50 percent of the non-federal share.

(FDOT Aviation Grant Program Handbook and Section 332.007(6) Florida Statutes)

General Aviation Airports

When no federal funding is available, the Department provides up to 80 percent of project costs. When federal funding is available, the Department can provide up to 80 percent of the non-federal share.

(FDOT Aviation Grant Program Handbook and Section 332.007(6) Florida Statutes)

Economic Development

The Department provides up to 50 percent of airport economic development funds to build on-airport revenue-producing capital improvements. This program is for local match only.
(FDOT Aviation Grant Program Handbook and Section 332.007(6) Florida Statutes)

Airport Loans

The Department provides a 75 percent loan program to fund the Aviation Land Acquisition Loan Program.

(FDOT Aviation Grant Program Handbook and Section 332.007(6) Florida Statutes)

RESOLUTION NO. 10-____

A RESOLUTION AUTHORIZING THE CITY OF VERO BEACH, FLORIDA, TO ENTER INTO A JOINT PARTICIPATION AGREEMENT WITH THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, FOR OBSTRUCTIONS REMOVAL (FDOT #420769-1-94-01)

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

WHEREAS, the City desires to participate in an obstruction removal project and;

WHEREAS, the State government has agreed to participate in the funding of the above-referenced airport improvements with the City of Vero Beach.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERO Beach, Florida that:

The Mayor and City Manager are authorized to execute all appropriate documents as representatives of the City in connection with the Joint Participation Agreement between the State of Florida and the City of Vero Beach for an obstructions removal project.

THIS RESOULTION was moved for adoption by Councilmember _____, seconded by Councilmember _____, and adopted on the _____ day of _____ 2010, by the following vote:

Mayor Sawnick	_____
Vice-Mayor Abell	_____
Councilmember White	_____
Councilmember Heady	_____
Councilmember Daige	_____

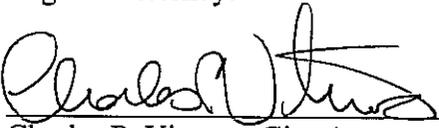
ATTEST

CITY OF VERO BEACH, FLORIDA

Tammy K. Vock, City Clerk

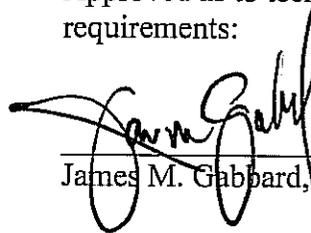
Kevin Sawnick, Mayor

Approved as to form and
Legal sufficiency:



Charles P. Vitunac, City Attorney

Approved as to technical
requirements:



James M. Gabbard, City Manager

Approved as to technical
requirements:



Ericson W. Menger, Airport Director

4-B)

RESOLUTION NO. 2010 - _____

A RESOLUTION OF THE CITY OF VERO BEACH, FLORIDA, REPEALING THE RATE INCREASES FOR FISCAL YEAR 2010, 2011, 2012, AND 2013 WATER AND SEWER AS DESCRIBED IN ATTACHMENT "A" AND "B" OF RESOLUTION 2009-31; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Vero Beach owns and operates a water and sewer system for all of the City and parts of the Town of Indian River Shores and unincorporated area of the County as an enterprise fund supported only by revenues of the system and not by property taxes; and

WHEREAS, the City of Vero Beach adopted Resolution 2009-31 as a result of a cost of service and rate study that reviewed its rate structure; and

WHEREAS, the City of Vero Beach has determined that the need for the scheduled increases as originally adopted with the rate study no longer exists; and

WHEREAS, the Water and Sewer and Finance Directors have recommended that there is no immediate need to change the current rate structure to keep the system financially sound;

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

Section 1 – Repeal of a portion of Attachment "A" and "B" of Resolution 2009-31.

The rate increases shown in Attachments "A" and "B" of Resolution 2009-31 effective October 1, 2010, October 1, 2011, October 1, 2012, and October 1, 2013 are hereby repealed.

Section 2 – Effective Date.

This Resolution shall become effective upon adoption.

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

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

ATTEST

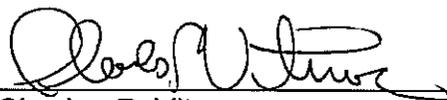
CITY OF VERO BEACH, FLORIDA:

Tammy K. Vock
City Clerk

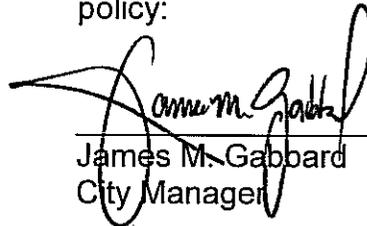
Kevin Sawnick
Mayor

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:



Charles P. Vitunac
City Attorney



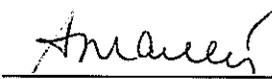
James M. Gabbard
City Manager

Approved as to technical requirements:

Approved as to technical requirements:



Robert J. Bolton
Water & Sewer Director



Steve Maillet
Finance Director

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

Attachment "A"
City of Vero Beach

Water System Rates

Description	Rates Effective October 1st,				
	2009	2010	2011	2012	2013
WATER SYSTEM					
<u>Residential</u>					
Single Family - Inside City					
Base Facility					
5/8 " Meter	\$13.60	\$14.00	\$14.40	\$14.80	\$15.20
3/4 " Meter	16.50	18.34	20.30	22.20	22.80
1 " Meter	22.30	27.16	32.11	37.00	38.00
1.5 " Meter	36.78	49.14	61.63	74.00	76.00
2 " Meter	54.15	75.60	96.91	118.40	121.60
3 " Meter	100.49	140.98	181.44	222.00	228.00
4 " Meter	152.62	225.12	297.50	370.00	380.00
6 " Meter	297.43	444.92	592.42	740.00	760.00
Commodity					
0 - 5,000 gallons	\$0.83	\$1.02	\$1.23	\$1.47	\$1.66
5,001 - 15,000 gallons	2.78	2.92	3.08	3.26	3.32
15,001 - 30,000 gallons	5.56	5.84	6.16	6.52	6.64
Above 30,000 gallons	6.95	7.30	7.70	8.15	8.30
Single Family - Outside City					
Base Facility					
5/8 " Meter	\$14.96	\$15.40	\$15.84	\$16.28	\$16.72
3/4 " Meter	18.15	20.17	22.33	24.42	25.08
1 " Meter	24.53	29.88	35.32	40.70	41.80
1.5 " Meter	40.46	54.05	67.80	81.40	83.60
2 " Meter	59.57	83.16	106.60	130.24	133.76
3 " Meter	110.54	155.08	199.58	244.20	250.80
4 " Meter	167.88	247.63	327.25	407.00	418.00
6 " Meter	327.17	489.41	651.66	814.00	836.00
Commodity					
0 - 5,000 gallons	\$0.92	\$1.12	\$1.36	\$1.61	\$1.83
5,001 - 15,000 gallons	3.06	3.21	3.39	3.59	3.65
15,001 - 30,000 gallons	6.12	6.42	6.78	7.17	7.30
Above 30,000 gallons	7.65	8.03	8.47	8.97	9.13

Water System Rates

Description	Rates Effective October 1st,				
	2009	2010	2011	2012	2013
Multi-Family - Inside City Base Facility (Per Unit)	\$12.24	\$12.60	\$12.96	\$13.32	\$13.68
Commodity (Per Unit)					
0 - 5,000 gallons	\$0.83	\$1.02	\$1.23	\$1.47	\$1.66
5,001 - 15,000 gallons	2.78	2.92	3.08	3.26	3.32
15,001 - 30,000 gallons	5.56	5.84	6.16	6.52	6.64
Above 30,000 gallons	6.95	7.30	7.70	8.15	8.30
Multi-Family - Outside City Base Facility (Per Unit)	\$13.46	\$13.86	\$14.26	\$14.65	\$15.05
Commodity (Per Unit)					
0 - 5,000 gallons	\$0.92	\$1.12	\$1.36	\$1.61	\$1.83
5,001 - 15,000 gallons	3.06	3.21	3.39	3.59	3.65
15,001 - 30,000 gallons	6.12	6.42	6.78	7.17	7.30
Above 30,000 gallons	7.65	8.03	8.47	8.97	9.13

Water System Rates

Description	Rates Effective October 1st,				
	2009	2010	2011	2012	2013
Single Family Irrigation - Inside City					
Base Facility					
5/8 " Meter	\$13.60	\$14.00	\$14.40	\$14.80	\$15.20
3/4 " Meter	16.50	18.34	20.30	22.20	22.80
1 " Meter	22.30	27.16	32.11	37.00	38.00
1.5 " Meter	36.78	49.14	61.63	74.00	76.00
2 " Meter	54.15	75.60	96.91	118.40	121.60
3 " Meter	100.49	140.98	181.44	222.00	228.00
4 " Meter	152.62	225.12	297.50	370.00	380.00
6 " Meter	297.43	444.92	592.42	740.00	760.00
Commodity					
0 - 10,000 gallons	\$2.78	\$2.92	\$3.08	\$3.26	\$3.32
10,001 - 25,000 gallons	5.56	5.84	6.16	6.52	6.64
Above 25,000 gallons	6.95	7.30	7.70	8.15	8.30
Single Family Irrigation - Outside City					
Base Facility					
5/8 " Meter	\$14.96	\$15.40	\$15.84	\$16.28	\$16.72
3/4 " Meter	18.15	20.17	22.33	24.42	25.08
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Water System Rates

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Commodity					
0 - 30,000 gallons	\$2.78	\$2.92	\$3.08	\$3.26	\$3.32
30,001 - 50,000 gallons	5.56	5.84	6.16	6.52	6.64
Above 50,000 gallons	6.95	7.30	7.70	8.15	8.30
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Commodity					
0 - 30,000 gallons	\$3.06	\$3.21	\$3.39	\$3.59	\$3.65
30,001 - 50,000 gallons	6.12	6.42	6.78	7.17	7.30
Above 50,000 gallons	7.65	8.03	8.47	8.97	9.13

Water System Rates

Description	Rates Effective October 1st,				
	2009	2010	2011	2012	2013
<u>Commercial</u>					
Commercial - Inside City					
Base Facility					
5/8 " Meter	\$13.60	\$14.00	\$14.40	\$14.80	\$15.20
3/4 " Meter	16.50	18.34	20.30	22.20	22.80
1 " Meter	22.30	27.16	32.11	37.00	38.00
1.5 " Meter	36.78	49.14	61.63	74.00	76.00
2 " Meter	54.15	75.60	96.91	118.40	121.60
3 " Meter	100.49	140.98	181.44	222.00	228.00
4 " Meter	152.62	225.12	297.50	370.00	380.00
6 " Meter	297.43	444.92	592.42	740.00	760.00
Commodity					
All Water Usage	\$2.60	\$2.60	\$2.83	\$3.09	\$3.24
Commercial - Outside City					
Base Facility					
5/8 " Meter	\$14.96	\$15.40	\$15.84	\$16.28	\$16.72
3/4 " Meter	18.15	20.17	22.33	24.42	25.08
1 " Meter	24.53	29.88	35.32	40.70	41.80
1.5 " Meter	40.46	54.05	67.80	81.40	83.60
2 " Meter	59.57	83.16	106.60	130.24	133.76
3 " Meter	110.54	155.08	199.58	244.20	250.80
4 " Meter	167.88	247.63	327.25	407.00	418.00
6 " Meter	327.17	489.41	651.66	814.00	836.00
Commodity					
All Water Usage	\$2.86	\$2.86	\$3.12	\$3.40	\$3.57

Water System Rates

Description	Rates Effective October 1st,				
	2009	2010	2011	2012	2013
Commercial Irrigation - Inside City					
Base Facility					
5/8 " Meter	\$13.60	\$14.00	\$14.40	\$14.80	\$15.20
3/4 " Meter	16.50	18.34	20.30	22.20	22.80
1 " Meter	22.30	27.16	32.11	37.00	38.00
1.5 " Meter	36.78	49.14	61.63	74.00	76.00
2 " Meter	54.15	75.60	96.91	118.40	121.60
3 " Meter	100.49	140.98	181.44	222.00	228.00
4 " Meter	152.62	225.12	297.50	370.00	380.00
6 " Meter	297.43	444.92	592.42	740.00	760.00
Commodity					
0 - 30,000 gallons	\$2.78	\$2.92	\$3.08	\$3.26	\$3.32
30,001 - 50,000 gallons	5.56	5.84	6.16	6.52	6.64
Above 50,000 gallons	6.95	7.30	7.70	8.15	8.30
Commercial Irrigation - Outside City					
Base Facility					
5/8 " Meter	\$14.96	\$15.40	\$15.84	\$16.28	\$16.72
3/4 " Meter	18.15	20.17	22.33	24.42	25.08
1 " Meter	24.53	29.88	35.32	40.70	41.80
1.5 " Meter	40.46	54.05	67.80	81.40	83.60
2 " Meter	59.57	83.16	106.60	130.24	133.76
3 " Meter	110.54	155.08	199.58	244.20	250.80
4 " Meter	167.88	247.63	327.25	407.00	418.00
6 " Meter	327.17	489.41	651.66	814.00	836.00
Commodity					
0 - 30,000 gallons	\$3.06	\$3.21	\$3.39	\$3.59	\$3.65
30,001 - 50,000 gallons	6.12	6.42	6.78	7.17	7.30
Above 50,000 gallons	7.65	8.03	8.47	8.97	9.13

Wastewater System Rates

Description	Rates Effective as of					
	October 1st 2009	April 1st 2010	October 1st 2010	October 1st 2011	October 1st 2012	October 1st 2013
<u>Commercial</u>						
Commercial - Inside City						
Base Facility						
5/8 " Meter	\$19.89	\$19.89	\$20.49	\$21.09	\$21.69	\$22.29
3/4 " Meter	25.17	25.17	26.84	29.74	32.54	33.44
1 " Meter	35.76	35.76	39.75	47.03	54.23	55.73
1.5 " Meter	62.23	62.23	71.92	90.27	108.45	111.45
2 " Meter	93.98	93.98	110.65	141.94	173.52	178.32
3 " Meter	178.67	178.67	206.33	265.73	325.35	334.35
4 " Meter	273.93	273.93	329.48	435.72	542.25	557.25
6 " Meter	538.56	538.56	651.17	867.64	1,084.50	1,114.50
Commodity						
All Metered Water Usage	\$2.93	\$4.06	\$4.06	\$4.39	\$4.57	\$4.72
Commercial - Outside City						
Base Facility						
5/8 " Meter	\$21.88	\$21.88	\$22.54	\$23.20	\$23.86	\$24.52
3/4 " Meter	27.69	27.69	29.53	32.71	35.79	36.78
1 " Meter	39.34	39.34	43.73	51.73	59.65	61.30
1.5 " Meter	68.45	68.45	79.11	99.29	119.30	122.60
2 " Meter	103.38	103.38	121.71	156.13	190.87	196.15
3 " Meter	196.53	196.53	226.97	292.31	357.89	367.79
4 " Meter	301.31	301.31	362.43	479.29	596.48	612.98
6 " Meter	592.39	592.39	716.29	954.41	1,192.95	1,225.95
Commodity						
All Metered Water Usage	\$3.22	\$4.47	\$4.47	\$4.83	\$5.03	\$5.19

4 - C)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF VERO BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE A TIME EXTENSION TO THE LOCAL AGENCY PROGRAM AGREEMENT DATED 5/02/2005 WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RELATIVE TO THE STATE ROAD A1A LANDSCAPING ENHANCEMENT PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation and the City of Vero Beach, Florida desire to facilitate the State Road A1A Landscaping Enhancement Project within the corporate limits of the City of Vero Beach; and

WHEREAS, the State of Florida Department of Transportation and the City of Vero Beach previously entered into a Local Agency Program (LAP) Agreement for said project; and

WHEREAS, the State of Florida has requested the City of Vero Beach, Florida to execute and deliver to the State of Florida Department of Transportation a Time Extension to LAP Agreement for the aforementioned project.

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

The City Manager is hereby authorized to make, execute and deliver to the State of Florida Department of Transportation a Time Extension to LAP Agreement for the aforementioned project.

This Resolution 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 J. Daige _____

ATTEST:

CITY OF VERO BEACH, FLORIDA

Tammy K. Vock
City Clerk

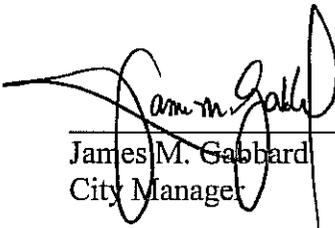
Kevin Sawnick
Mayor

Approved as to form and
legal sufficiency:

Approved as to technical
requirements:

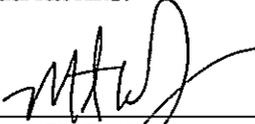


Charles P. Vitunac
City Attorney



James M. Gabbard
City Manager

Approved as to technical
requirements:



Monte K. Falls
City Engineer

5-A)

DEPARTMENTAL CORRESPONDENCE

TO: James M. Gabbard, City Manager

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

DATE: May 24, 2010

SUBJECT: **Public Hearing on Draft Ordinance to Authorize
Ad Valorem Tax Exemptions for Improvements
to Historic Properties**

Overview

The proposed attached draft ordinance will enable the City Council to authorize ad valorem tax exemptions for improvements to historic properties. The draft ordinance, which was prepared by Planning and Development staff with assistance from the City Attorney's office, is based on Sections 196.1997 and 196.1998, Florida Statutes, and Chapter 1A-38, Florida Administrative Code. It was prepared at the direction of the City Council upon the request of the Historic Preservation Commission (HPC).

Actions by the HPC and PZB

The HPC recommended approval by the City Council of the draft ordinance at that body's April 14, 2010, meeting. At the May 20, 2010, public hearing, the Planning and Zoning Board (PZB) unanimously recommended approval of the ordinance by the City Council. The PZB further recommended that the City of Vero Beach pursue obtaining a Certified Local Government designation by the Florida Division of Historic Resources to be eligible for historic preservation grants. [Note: In order to obtain the Certified Local Government designation, minor amendments to the City's historic preservation regulations will be required; however, the one major obstacle to such designation is the requirement that all members of the HPC must be City residents. More than 50 percent of the HPC members are nonresidents.]

Summary of Contents

The following is a summary of the contents of the ordinance:

- A. **Scope of Exemption:** Ad valorem tax exemption (City property taxes only) would be available for the following:
 - 1. 100 percent of the assessed value of all improvements to eligible historic properties for a period of 10 years;

2. 100 percent of the assessed value, as improved, for 10 years, where the assessed value of the improvements to an historic property open to the public is equal to at least 50 percent of the total assessed value of the property as improved.

[Commentary: The Florida Statutes allow local governing bodies to grant a tax exemption of up to 100 percent and for a period of up to 10 years. The staff is recommending, for consistency purposes, that the amount and length of the exemption granted by the City Council be the full 100 percent and 10-year period allowed by the state law. This also would provide more certainty to property owners in making investment decisions regarding proposed improvements. However, at the property owner's request in the initial application, the City Council will have the authority to reduce the term length of the exemption.]

- B. Eligible Properties:** Only properties designated as an historic site (placed on the Vero Beach Register of Historic Places) pursuant to Chapter 76, Historic Preservation, would be eligible for the tax exemption.

[Commentary: The Florida Statutes allow a property to be eligible that is listed in the National Register of Historic Places. The staff believes that it would be inadvisable to include such properties, as these properties are not subject to protection under the City's regulations and it would be a further disincentive for such properties to seek such designation.]

- C. Eligible Construction:** Only improvements made on or after the date of the ordinance and improvements approved under a development permit and, if required, a certificate of appropriateness, are eligible for tax exemption. A pre-construction application can't be filed without the aforementioned approvals.

- D. Process for Granting Exemption:** The process for seeking a tax exemption would be as follows:

1. If development approval is required, applicant must file an application with the Planning and Development Department, including an application for a "certificate of appropriateness" if required.
2. Subsequent to the approval of the development permit and issuance of a "certificate of appropriateness" (if required), the applicant may then file a "pre-construction application" to the Planning and Development Department, which after reviewed for eligibility and completeness, is submitted to the Division of Historical Resources of the Florida Department of State ("Division").

[Commentary: As the City is not a Certified Local Government, the review of the improvements to ensure the standards of Rule 1A-38.005,

F.A.C., are met must be conducted by the State rather than a local official. Routing the application through the Planning and Development Department ensures that the local development process is being followed and that improvements for projects not on the Vero Beach Register of Historic Places are not considered by the State.]

3. After the Division has completed its review and forwarded its comments and recommendations to the Planning Director, a public hearing before the City Council will be scheduled and advertised. At this hearing, the City Council may grant or deny the application. Approval of the ordinance granting the tax exemption is by ordinance. The City Council is not bound by the recommendations of the Division. A copy of the ordinance granting the exemption is provided to the applicant and county property appraiser.

[Commentary: The Florida Statutes provide that the tax exemption for properties under Section 196.1997 be granted by either resolution or ordinance; however, properties seeking tax exemption under Section 196.1998 must be approved by ordinance. Therefore, the ordinance was simplified to require the approval of an ordinance by the City Council for both types of exemptions.]

4. The applicant and City Council will execute the Historic Preservation Property Tax Exemption Covenant, which will be filed with the deed for the property in the official records of Indian River County prior to the effective date of the exemption [January 1st following substantial completion of the improvement(s)].

E. Revocation: The draft ordinance provides conditions for revocation of the tax exemption that basically follows the language in the model language of the Historic Preservation Property Tax Exemption Covenant approved by the Division. The revocation process follows the same process as the granting of the tax exemption.

If the tax exemption is revoked, the terms of the Historic Preservation Tax Exemption Covenant will require the property owner to “pay the difference between the total amount of taxes due in March in each of the previous years in which the covenant was in effect had the property not received the exemption plus interest.” In situations where the property is damaged by accidental or natural causes, the property owner will have the opportunity to retain the tax exemption by returning the property to the condition existing at the time of project completion. If the damage is so severe that property can’t be returned to this condition, no penalty or interest will be charged.

Recommendation

The staff recommends that the draft ordinance be placed on the City Council's June 15, 2010, agenda for First Reading. The ordinance will require one public hearing to be adopted.

TJM/tf
Attachment

ORDINANCE NO. 2010- _____

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING CHAPTER 76, HISTORIC PRESERVATION, OF THE CITY OF VERO BEACH CODE BY REVISING OR CREATING NEW DEFINITIONS IN SECTION 76.02; CREATING NEW ARTICLE VI, AD VALOREM TAX EXEMPTIONS FOR IMPROVEMENTS TO HISTORIC PROPERTIES PURSUANT TO SECTIONS 196.1997 AND 196.1998, FLORIDA STATUTES; PROVIDING FOR AUTHORIZATION; PROVIDING FOR ELIGIBILITY AND PROCEDURES FOR OBTAINING EXEMPTIONS; PROVIDING FOR REVOCATION OF TAX EXEMPTION; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Vero Beach adopted Ordinance No. 2008-08 on July 15, 2008, that established regulations governing the designation and protection of historic structures and sites; and

WHEREAS, Section 76.58(b) of these regulations provides that improvements to all historic properties designated pursuant to Chapter 76, Historic Preservation, shall be eligible for tax exemption, if such tax exemption is enacted by ordinance of the City Council and if such improvements meet the criteria required therein pursuant to Florida Statutes and this ordinance; and

WHEREAS, Section 196.1997, Florida Statutes, grants authority to local governments to grant tax exemptions to improvements to properties designated as historic with the adoption of a local ordinance enacted and administered pursuant to Florida Statutes; and

WHEREAS, the City Council, with the concurrence and recommendation of the Historic Preservation Commission, directed City staff to prepare this Ordinance pursuant to Sections 196.1997 and 196.1998, Florida Statutes; and

WHEREAS, the City Council finds that adoption of this Ordinance is in the public interest, creates incentives for the improvement and preservation of historic properties, complies with the requirements for such an ordinance pursuant to the Florida Statutes, and is consistent with the criteria of Section 65.22(i) of the City Code for adopting text amendments to the City's Land Development Regulations;

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

Section 1. Amendment of Chapter 76, Section 76.02, Definitions.

The definitions of Section 76.02 are amended as follow:

Assessed value means the most recent total just value of a tax parcel, excluding the value of the land, as determined by the property appraiser.

Division means the Division of Historical Resources of the Florida Department of State.

Improvement means changes in the condition of any building, structure, fence, gate, wall, walkway, driveway, park, light fixture, bench, fountain, sign, work of art, earth works, or other manmade objects constituting a physical improvement of real property, or any part of such improvement brought about by the expenditure of labor or money for the restoration, renovation, or rehabilitation of historic sites. Improvements include additions and accessory structures (e.g., a garage) so long as the new construction is compatible with the historic character of the building and site in terms of size, scale, massing, design and materials, and preserves the historic relationship between a building or buildings, landscape features, and open space.

~~*Rehabilitation* means the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.~~

Rehabilitation or renovation for historic properties, or the portion of those properties that has historical, architectural, archaeological, or cultural significance, means the act or process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those portions or features of the property that are significant to its historical, architectural, cultural and archaeological values. For historic properties or the historic portions of such properties that are of archaeological significance or that are severely deteriorated, renovation or rehabilitation means the act or process of applying measures designed to sustain and protect the existing form and integrity of a property, or re-establish the stability of an unsafe or deteriorated property while maintaining the essential form of the property as it presently exists.

Section 2. Amendment of Chapter 76, Creation of Article VI.

Article VI of Chapter 76, is hereby created that reads as follows:

ARTICLE VI. HISTORIC PRESERVATION AD VALOREM TAX EXEMPTION

Sec. 76.61. Authority.

Sections 196.1997 and 196.1998, Florida Statutes, authorize the governing authority of any municipality to adopt an ordinance allowing ad valorem tax exemptions under Section 3, Article VII of the State Constitution to historic properties that meet certain requirements.

Sec. 76.62. Purpose.

The intent of this article is to provide a method by which the city council is authorized to allow ad valorem tax exemptions for the restoration, renovation, or rehabilitation of historic properties.

Sec. 76.63. Ad valorem tax exemption for historic properties.

Pursuant to Section 196.1997, F.S., the city council may grant to eligible properties as defined in Section 76.66, an historic preservation ad valorem tax exemption of 100 percent of the assessed value of all improvements that result from the restoration, renovation, or rehabilitation of eligible historic properties, after the council's receipt of a recommendation from the division as provided elsewhere in this article. The exemption only applies to improvements to real property and only to taxes levied by the city council. The exemption does not apply to any taxes levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to Section 9(b) or Section 12, Article VII, Florida Constitution. In order for the improvements to historic property to qualify for the ad valorem tax exemption, the improvements must have been made on or after the effective date of the ordinance from which this Article derives ("insert effective date of

the ordinance"). All exemptions granted under this article shall be for a term of up to ten years.

Sec. 76.64. Ad valorem tax exemption for historic properties open to the public.

Pursuant to Section 196.1998, F.S, if an eligible property, as defined in Section 76.66, is used for a non-profit or governmental purpose and is regularly and frequently open for the public's visitation, use and benefit, the city council may grant to that property an ad valorem tax exemption of 100 percent of the assessed value of the property (as improved) from ad valorem taxes levied by the city provided that the assessed value of the improvement is equal to at least 50 percent of the total assessed value of the property as improved. This subsection applies only if the improvements are made by or for the use of the existing property owner. In order for the property to qualify for the exemption provided in this section, any such improvements must be made on or after the day the ordinance granting the exemption is adopted. An eligible property is considered used for non-profit or governmental purposes if the occupant or user of at least 65 per cent of the usable space of the historic building or of the upland requirement of an archaeological site is an agency of the federal, state or local government or a non-profit corporation whose articles of incorporation have been filed by the department of state in accordance with Section 617.0125, F.S. Usable space means that portion of the space within a building which is available for assignment or rental to an occupant, including every type of space available for use of the occupant. For purposes of the exemption under Section 196.1998, F.S., a property is considered regularly and frequently open to the public if public access to the property is provided not less than 52 days a year on an equitably spaced basis, and at other times by appointment. This exemption does not prohibit the owner from charging a reasonable non-discriminatory admission fee. If a property that qualifies for this exemption is no longer used for non-profit or governmental purposes or is no longer regularly and frequently open to the public or if ownership is transferred, then this exemption shall no longer be effective and the property shall, instead, be subject to the exemption provided for by section 76.63 above.

Sec. 76.65. Term of exemption.

Any historic preservation ad valorem tax exemption granted pursuant to this article shall remain in effect for 10 years from the effective date of the Historic Preservation Ad Valorem Tax Exemption Covenant entered into by the applicant and the city. The city council shall have the discretion to set a lesser term if requested by the property owner in its original application and covenant. The exemption shall continue in force if the authority of the city to grant exemptions changes or if ownership of the property changes, including any change from a tax exempt entity to a tax paying entity except as set forth in section 76.64 above. In order to retain an exemption, however, the historic character of the property, and improvements that qualified the property for an

exemption, must be maintained in the historic state over the period for which the exemption was granted.

Sec. 76.66. Properties and construction eligible for ad valorem tax exemption.

(a) *Eligible property.* Only property designated as an historic site pursuant to this chapter and recorded in the Vero Beach Register of Historic Places is eligible for an application for the ad valorem tax exemption authorized by this article.

(b) *Eligible construction.* Only improvements made to an eligible property on or after the effective date of the ordinance from which this Article derives (“insert effective date of the ordinance”) may be reviewed by the division and approved by the city council for an historic preservation ad valorem tax exemption.

Sec. 76.67. Development approval and certificate of appropriateness required.

Prior to submittal of a preconstruction application for an eligible property, an applicant shall be required to obtain development approval for any work pursuant to chapter 60, article I, development review, and, if required, a certificate of appropriateness, pursuant to article IV of this chapter.

Sec. 76.68. Preconstruction application process.

(a) *Application review responsibilities.* The division is hereby designated as the representative of the city council for reviewing applications for the historic preservation ad valorem tax exemption authorized by this article. The planning and development department shall be responsible for receiving tax exemption applications and forwarding these applications to the division and for receiving the division’s recommendations and forwarding those recommendations to the historic preservation commission and city council.

(b) *Application form and fees.* Prior to commencing construction, any person that desires an historic preservation ad valorem tax exemption pursuant to this article, shall file with the planning and development department one original and two copies of the completed Part 1-Evaluation of Property Eligibility and Part 2-Description of Improvements of DOS Form No. HR3E101292, incorporated herein by reference, including any supporting materials required by the division. If the property is eligible for the ad valorem tax exemption pursuant to this Chapter, the planning director shall promptly forward the completed application to the division and a copy to the county property appraiser. If the planning director determines that the subject property is not eligible for ad valorem tax exemption, the application shall be returned to the applicant within fifteen (15) days following receipt of the completed application with a cover letter identifying the ineligibility. Any aggrieved party may appeal any final decision of the

planning director to the historic preservation commission in accordance with the appeal procedure for administrative appeals in section 64.04 of this part.

(c) *Application review by the division.* Once the division receives the preconstruction application, the division must review the application pursuant to the procedures and standards set forth in Rules 1A-38.003 through 1A-38.005, F.A.C., which are hereby incorporated into this article by reference. Written copies of the division's recommendations must be sent to the planning and development department and applicant. If the division's recommendation finds that the proposed work is inconsistent with standards of Rule 1A-38.005, F.A.C., failure of the applicant to correct the planned work, as recommended by the division, may result in denial of the historic preservation ad valorem tax exemption by the city council when the work is finally completed.

Sec. 76.69. Request for review of completed work.

(a) *Application for review of completed work.* When work is completed on the improvements subject to historic preservation ad valorem tax exemption, the applicant must file with the planning and development department one original and one copy of completed Part 3-Request for Review of Completed Work portion of DOS Form No. HR3E101292, incorporated herein by reference, together with any supporting materials required by the division. For purposes of this section, no application for review of completed work shall be accepted without a certificate of occupancy or certification of completion being issued by the building official for the subject improvements. The planning director shall promptly forward the completed application for review of completed work to the division.

(b) *Division review of completed work.* When the division receives a request for review, the division must review the request pursuant to the procedures and standards set forth in Rules 1A-38.003 through 1A-38.005, F.A.C. On completion of its review of a request for review of completed work, the division must recommend to the city council that it grant or deny the historic preservation ad valorem tax exemption. The recommendation and the reasons, therefore, must be provided in writing by the division to the applicant and the planning and development department. A recommendation to grant the exemption constitutes certification by the division that the property for which the exemption is sought meets the requirements of Rules 1A-38.003 through 1A-38.005, F.A.C.

Sec. 76.70. Final review.

(a) *Hearing by the city council.* Upon receipt of the division's recommendations regarding the completed work, the planning director shall forward the recommendations, together with the entire application to the city clerk for placement on the city council's next available public hearing agenda. The division's recommendations will advise the applicant of the applicant's right to a fair hearing pursuant to Section 120.57, F.S. If the

division's recommendation is to deny the ad valorem tax exemption and the applicant timely elects to pursue an administrative appeal under Section 120.57, F.S., then the public hearing on the ad valorem tax exemption shall not be scheduled and the city council shall not take action on the application until the final resolution of the appeal.

(b) *City council action on exemption application.* At the scheduled quasi-judicial public hearing, the city council may grant or deny the application for an exemption from ad valorem taxes authorized by this article. The city council shall not consider a tax exemption application prior to receiving a Historic Preservation Ad Valorem Tax Exemption Covenant signed by the property owner required by (d) below. If granted, such exemption shall take effect on January 1st following the substantial completion of the improvement(s).

If the historic preservation ad valorem tax exemption is granted by the city council, the ordinance approving the written application for ad valorem tax exemption shall contain the following:

- (1) The name of the owner, the address of the historic property and the legal description of the property, for which the exemption is granted;
- (2) The period of time for which the exemption will remain in effect and the expiration date of the exemption.
- (3) A finding that the historic property qualifies for an exemption pursuant to the requirements of Section 196.1997, Section 196.1998, F.S., if applicable, and this article.

If the historic preservation ad valorem tax exemption is denied, the city council's decision shall be in writing and state the reasons for the denial. A copy of the written decision denying the application shall be provided to the property owner. Appeals of the final decision by the City Council shall be pursuant to section 76.72 of this Article.

(c) A copy of the city council's ordinance granting the ad valorem tax exemption shall be provided to the applicant and county property appraiser.

(d) *Covenant requirements.* As a condition precedent to the ad valorem tax exemption taking effect, the owner of the property and city council shall execute the Historic Preservation Property Tax Exemption Covenant using DOS Form No. HR3E111292, incorporated herein by reference, or any substitute form approved by the division. The effective date of such covenant shall be on January 1st following the substantial completion of the improvement(s).

On or before the effective date of the exemption, the property owner shall record the covenant with the deed for the property in the official records of Indian River County

and shall provide an official copy of the recorded covenant and deed to the planning and development department.

Sec. 76.71. Revocation.

(a) *Exemption under section 196.1997, F.S.* Any one of the following conditions shall provide justification for removal of a property from eligibility for the ad valorem property tax exemption provided under Section 196.1997, F.S.:

- (1) The owner is in violation of the provisions of the Historic Preservation Tax Exemption Covenant; or
- (2) The property has been damaged by accidental or natural causes to the extent that the historic integrity of the features, materials, appearance, workmanship and environment, or archaeological integrity which made the property eligible for designation pursuant to this article III of this chapter have been lost or so damaged that restoration is not feasible.

(b) *Exemption under section 196.1998, F.S.* Any one of the conditions listed in (a) of this section, above, or the following conditions shall provide justification for removal of a property from eligibility for the ad valorem property tax exemption provided under Section 196.1998, F.S.:

- (1) The property is sold or otherwise transferred from the owner who made application and was granted the exemption; or
- (2) The property no longer meets the requirements in section 76.64 of this article.

(c) *Revocation of tax exemption.* Revocation of ad valorem property tax exemptions pursuant to this section shall be pursuant to the terms of the Historic Preservation Tax Exemption Covenant executed by the property owner and city council and Florida Statutes. However, nothing shall limit the authority of the city to initiate proceedings to revoke an ad valorem property tax exemption where the property owner is found in violation of any provisions of this chapter in accordance with part II, chapter 2, article VII, code enforcement of this Code. Proceedings to revoke ad valorem property exemptions shall be in the same manner as for approval of the ad valorem property tax exemption, including providing notice to the property owner and holding of a quasi-judicial public hearing by the city council. If the covenant is revoked, an official copy of the revocation ordinance shall be filed by the city clerk in the official records of Indian River County and copies provided to the county appraiser and tax collector.

Sec. 76.72. Appeals

Appeals of the decision by the city council to grant, deny or revoke an ad valorem tax exemption shall be to a court of competent jurisdiction.

Sec. 76.73-76.80. Reserved

Section 3. 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 article 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 article, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

Section 4. 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:

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

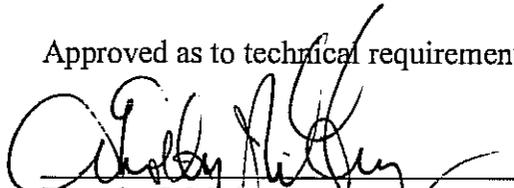


Charles P. Vitunac
City Attorney



James M. Gabbard
City Manager

Approved as to technical requirements:



Timothy J. McGarry, AICP
Planning and Development Director

CITY OF VERO BEACH, FLORIDA
JUNE 15, 2010 6:00 P.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

1. CALL TO ORDER

A. Roll Call

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

B. Invocation

The invocation was given by Pastor Jim Gallagher of Calvary Chapel of Vero Beach.

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

Mayor Sawnick requested that item 9B-1) "Request for Funding from the Tree and Beautification Commission" be moved up on the agenda and heard before items under Resolutions for Adoption without Public Hearing are discussed.

Mr. Heady did not have a problem with moving that item up on the agenda, but suggested that as soon as Mr. Zimmermann arrives for the meeting that his matter be heard. Council had no problems with that.

Mr. Abell made a motion that they delete the proposed presentation by Dr. Stephen Faherty and Mr. Glen Heran. He said that it would normally go before the Utilities Commission and he thinks that it is inappropriate that it comes before Council before being presented to the Utilities Commission. Also, in the backup material provided by Dr. Faherty, electric is mentioned and the Council cannot discuss that because of the "Heady lawsuit." Mr. White seconded the motion.

Mr. Heady asked if the presentation that was going to be given by Dr. Faherty and Mr. Heran was printed on the agenda. He could see that it was not. He was surprised that Mr. Abell wanted to remove an item from Public Comment. He said that it is the public that wants to comment.

Mayor Sawnick said there is a motion and second on the floor. He noted that they have received a copy of the presentation that Dr. Faherty and Mr. Heran would like to present tonight. However, their request to be on the agenda was received after the deadline for the agenda had closed. So Council is aware of the presentation being made, but it is not on the agenda. He suggested limiting the presentation to five minutes. He asked Mr. Abell and Mr. White if they would accept that as part of the motion.

Mr. White stated that if Mr. Abell would amend his motion to allow the presentation to be made, but limiting it to five minutes, that he would second the amendment.

Mr. Abell explained that if they make the presentation then they have to use different rates because the rates are inaccurate. He reiterated that this item needs to go before the Utilities Commission.

Mr. Heady stated that under Public Comment that Dr. Faherty and Mr. Heran are allowed to make their presentation. The fact that some Councilmembers don't like them making it is unfortunate. He said that with respect to limitations, you can't have one meeting and decide that what you want to do is place time limits on certain citizens who wish to speak. Another thing was that Mr. Abell said that the presentation was about water and sewer rates and there is an item on tonight's agenda about water and sewer rates. He thought that it made sense if citizens of this community had some information for this Council that they (Council) listen to the information that they have to present. He knows in the past that staff has given him information that was not totally accurate and it seems to him that they are going down the wrong path and they need to allow the citizens to speak. They cannot treat one person different from how they treat someone else or they are setting themselves up for another lawsuit.

Mr. Daige understood that they received a copy of the presentation and Dr. Faherty sent an email to the City Clerk after the agenda had already been posted. He reviewed the presentation and believes that they can stay within the time frame. It is public comment and he hoped that Dr. Faherty and Mr. Heran could do their presentation within a timely fashion.

Mr. Heady asked Dr. Faherty and Mr. Heran how long they thought that their presentation would take.

Mayor Sawnick would not allow Dr. Faherty or Mr. Heran to answer.

Mayor Sawnick called the question.

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

Mr. White commented that after reviewing the agenda package he knows that they have a large business meeting. He thinks that it would be important for them to get their business out of the way first. He noted that over the last couple of meetings that Public

Comment has taken two to three hours and he would suggest either moving Public Comment to the end of the agenda or place a time limit on people wishing to speak under Public Comment if they (Council) wish to keep it where it is.

Mayor Sawnick expressed that it is his discretion to limit someone and Council can always override his decision.

Mr. White thought that it was important for them to make this decision so anyone in the audience wishing to speak will know if they will be heard in the beginning or at the end of the meeting.

Mr. Daige felt that Dr. Faherty and Mr. Heran would be respectful of the time.

Mr. Heady asked Dr. Faherty or Glenn Heran to shake their heads if presentation would be under 10 minutes. Dr. Faherty and Mr. Heran both agreed that their presentation would take no longer than ten minutes.

Mr. Heady stated that the Council had now discussed limiting this presentation by citizens for an amount of time longer than the citizens want to be allowed to speak.

Mr. White made a motion to remove Mr. Heady's items 9A-1, 2, 4, 5, 6, 7, and 8 off of the agenda. Mayor Sawnick seconded the motion. The motion passed 4-1 with Mr. Heady voting no.

Mr. Daige made a motion to remove Mr. Heady's items 9A-3, and 9A-9 off of the agenda. Mayor Sawnick seconded the motion and it passed 4-1 with Mr. Heady voting no.

Mr. Abell made a motion to pull Mr. Heady's item 9B-5) off of the agenda. Mayor Sawnick seconded the motion.

Mr. Heady stated under discussion that all of the items that he put on the agenda have been removed.

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

The City Clerk removed items 3-A) and 3-B) off of the agenda. They will be heard at the July 20, 2010 City Council meeting.

Mr. Heady made a motion to add under New Business discussion of the memo that they received on some upcoming meeting dates. Mr. Daige seconded the motion and it passed unanimously.

Mayor Sawnick made a motion to adopt the agenda as amended. Mr. White seconded the motion and it passed 5-0.

B. Proclamations

1. Korean War Veterans Day – June 25, 2010

Mayor Sawnick read and presented the proclamation.

C. Public Comment

Mr. Joseph Cantarella (spelling may not be correct), Mr. Lee Cantarella, and Miss Meredith Hickman all asked to speak about shark fishing.

Mr. Joseph Cantarella explained that fisherman do fish for sharks from the beach. He wanted to clear up some of the misconceptions that he has heard so much about. There never has been use of chum when they shark fish. This is a red heron to pass a blanket law on this. He said that the beach is not just for swimmers, but also for fishermen. There are facts according to the Florida Museum History that the shark attacks that occur are not related to fishermen.

Mr. Lee Cantarella went over the shark tournament that they hold every year and have done so for the last five years. He has read some articles in TCPalm about chumming the waters and it was directed at them. He said for the five years that they have held their tournaments, they have never chummed the waters. One thing they do is tag over 100 sharks to determine their age growth, etc, and send it to NOAH and have all the facts to see where the sharks are moving to and what they are eating.

Miss Meredith Hickman commented that she has grown up in Vero Beach and there are minimal things for young people to do in this community and fishing is one of the honest activities that they enjoy. She said that it is part of Florida culture. She asked Council to look objectively at the facts and to educate themselves about shark fishing.

Dr. Guy Hickman explained that the reason why there are shark fishermen at the beach is because there are sharks at the beach. There is a shark tournament held every year and something for young people to do in Vero Beach is to go fishing. They don't want anyone to get hurt, but shark fishing on the beach is not bringing sharks to the beach. They are already there. They do not chum. There are very few things for young people to do in Vero Beach and this is something they get excited about. If laws want to be put in to keep people from chumming that is fine. But don't take fishing away.

Mr. White asked how close to guarded beaches do they fish.

Mr. Cantarella explained that they fish at peak fishing hours, which is early in the morning and late in the evening. They do not fish in guarded beaches.

Mr. Abell asked how far away from the beach are you fishing (guarded beach). Mr. Cantarella said that they fish at Turtle Beach, which has no lifeguards.

Mr. Heady thanked these individuals for bringing the other side of this issue up. He agreed that they were there because the fish are there. He said that maybe they could work on doing away with chumming.

Mrs. Olska Forbes, owner and operator of Greenhouse Café, explained that she was at tonight's meeting because she was visited at the restaurant last week by an inspector who told her that in order to serve people with pets that she would have to have the City pass a dog friendly ordinance for dining. She asked the City Council to consider adopting a dog friendly ordinance for their community. She noted that there are a lot of other cities who have this ordinance already in place.

Mr. Vitunac explained to Mrs. Forbes that this item has come up twice in the past and has not passed. He invited her to his office to look at the documents that they have.

Mrs. Forbes said that she has seen some of those documents and understands what is required of the restaurant owner who operates under the ordinance. She felt that most of the guidelines were common sense.

Mr. Daige made it clear that if this ordinance passes it is up to each individual restaurant owner as to whether they want to operate under it or not. He wants to help people promote their businesses. He will work with staff and Mrs. Forbes on this matter.

Mayor Sawnick told Mrs. Forbes that they would get back with her concerning the ordinance.

Mr. White noted that Mrs. Forbes approached him about this and Council and staff did discuss it. He asked Mr. Vitunac to provide Council with a copy of the documents that he has.

Mr. Heady made a motion to bring the ordinance to their next meeting for first reading. Mr. White seconded the motion and it passed 5-0.

Mrs. Kim Delaney, Treasure Coast Regional Planning Council, gave a brief update on the Amtrak project. She said that the project continues to move forward. She also noted that at their Special Call meeting to be held next week she will be asking Council to pass a Resolution in support of the project. At that meeting she will give a brief Power Point presentation to accompany the Resolution. She said that there has been some great input from the public and the train stop location chosen for this area was the Old Train Station.

Mr. Heady asked if there would have to be any road closed in order to put the station there. Mrs. Delaney said that they would need to close one lane coming in from US1.

Ms. Florence Licata thanked Council for scheduling the Special Call meeting on August 23rd to discuss Airport matters. She hoped because of the importance of this meeting that it would be televised and replayed. She wants everyone to see what their concerns are. She said that they (concerned neighbors) will have their questions ready and submit them

hopefully one month in advance. She also welcomed Mrs. Barbara Drndak, Chairman of the Airport Commission, to help educate them about practices of the Airport. They are grateful and accept her offer and plan on meeting with her sometime in July.

Mr. Daige made a motion to grant Ms. Licata's wish that the Special Call meeting is played on the loop. He was told that no motion was needed and that there was no problem from staff with granting this request.

Mr. Heady hoped that the meeting date could be moved because he is unable to make the meeting on that date.

Mrs. Linda Hillman started off by saying that liars, cheats and thieves should not be allowed to represent their citizens. She then read a prepared speech (please see attached).

Dr. Faherty and Glen Heran gave a Power Point presentation (please see attached).

Mr. Daige asked when the Utility Commission last met. He was told last week.

Ms. Lenore Mustapick, 611 Holly Road, recalled that on July 4, 2007, she took her family to Turtle Beach and they noticed some gentlemen fishing. She watched them and witnessed them bringing in a huge Tiger Shark. She said that they cut up a Bonita Fish and used that as bait and hooked the shark then brought it up on the beach. She expressed that her children like to surf and go to the beach. The group fishing at the beach on the day that she witnessed the shark said that this was their second year of having a fishing tournament in this area. She said that they stopped talking to her once they realized she was taking photos and what her concerns were. Since then there have been three organized groups. She took her photos to the Indian River Shores Police Department and they told her that she needed to go before the Indian River County Commission, which she did. There was only one Commissioner who took notice and this has taken three years for her to get this far. She explained that the County posted a sign for three months saying no small boats were allowed. She asked the County if they would put up a sign saying "no chumming," but was told that they could not do that because of legal reasons. She expressed that for the past three years these groups have gotten so organized that they have an application on line and they will tell you where you can fish for sharks. She begged Council to please do an ordinance to protect the citizens who live here and have lived here for years. She said let these other people buy boats and go out in the deep waters where sharks should be.

Mrs. Pilar Turner commended Mr. Abell for asking that the presentation given by Dr. Faherty and Mr. Heran be also given to the Utilities and Finance Commission. She said that financial information should also be made available to the Utilities Commission so that they can see the total picture and then ask them (Utilities Commission) to make a recommendation to Council as to whether or not they felt the water and sewer rates should be reduced at this time.

Mr. Al Benkert stated that he has met with the County concerning shark fishing and they have no intention in doing anything against shark fishing. He said that personal liberty is fine until people start infringing on someone else's personal liberty. He said that shark fishermen are impinging on personal liberty. He asked how much of the beach do the fishermen want. He passed out a handout entitled "Shorebound Shark Fishing in Vero Beach" (please see attached). He would like to see a shark fishing ordinance passed in Vero Beach. He noted that Indian River Shores and Orchid are looking at doing the same thing in their area. It is not safe for their citizens and it is bad business. He again urged Council to pass a very strong no shark fishing ordinance in Vero Beach. If the City passes this, it will have a great affect in our community. It will keep the tournaments out of the area and the kids can still go fishing.

Mr. Heady asked where the City limits end at the ocean line. Mr. Vitunac answered three miles. Mr. Heady asked if there was any reason why they could not adopt an ordinance that would prevent chumming for sharks within the City limits. Mr. Vitunac explained that the State may have preempted the whole field of salt water fishing. If that is the case, he would like to get with County, and if they are not interested, have the City sponsor a special act in front of the legislature to get rid of it. If they are allowed to do an ordinance, then they will do one very quickly. He said part of their research would be to see if the State has preempted the field. They have found two cities so far in the State of Florida who have outlawed chum fishing and did it by special act because they found out that they didn't have the power to do it by Ordinance.

Mr. Heady commented that if they enact an Ordinance that says that there is no chumming within the City limits and put up signs on their beaches that say there are no chumming within their limits, they can enforce the Ordinance and just the fact that they enacted the ordinance will probably stop 99.9% of the chumming. He said as a legal matter whether or not they would prevail in Court on this issue is a different question. He felt that if they had an ordinance, it would stop chumming. There were shark fishermen speaking at tonight's meeting who said that they do not do that.

Mayor Sawnick reminded Council that they will be discussing this later on in the meeting under New Business.

Mr. Benkert pointed out that Volusia County has an ordinance and their ordinance works well. The County Attorney did some research and came up with an ordinance that basically says that the City and the County do have the right to legislate against shark fishing coming within their limits (three miles).

Mr. Vitunac felt that they could make it clear to the State that this has nothing to do with fishing, just outlawing chumming.

Mr. Benkert told Mr. Vitunac that he can use the word shark and in fact what they really are looking for is no shark fishing. The reason they are looking for that is because it sends a very clear simple message. He said that Volusia does have that in their ordinance, which has not been challenged in Court and is effective.

Mr. Daige made sure that Council was provided with the Volusia County Ordinance. He asked the City Attorney to bring up these ideas again when they discuss this matter under New Business.

9B-1) Request for Funding from the Tree and Beautification Commission – This item is moved up on the agenda.

Mr. Karl Zimmermann, Chairman of the Tree and Beautification Commission, explained that the Commission would like permission to expend funds from their account in the amount of up to \$225.00 to purchase Hibiscus Plants. The Hibiscus Plants will be used for a beautification project to replace the old plants and soil in the already existing large planters in Downtown Vero Beach. He said that the Downtown Association will be responsible for maintaining the plants and the Commission would make some suggestions on the proper care for the plants. Mr. Zimmermann made it clear that this money does not come from tax revenue, it comes from funds for beautification.

Mayor Sawnick made a motion to approve the request to allow the Tree and Beautification Commission to expend funds from their account to purchase Hibiscus Plants. Mr. White seconded the motion and it passed unanimously.

D. Adoption of Consent Agenda

Mr. Daige requested that item 2D-3) be pulled from the consent agenda.

Mr. Heady requested that items 2D1), 3) and 4) be pulled from the consent agenda.

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

1. Regular City Council Minutes – June 1, 2010

Mr. Heady pulled this item off of the consent agenda. He had some corrections that he wanted made to the minutes. He will ask that the Clerk make those corrections and then put the minutes back on the next agenda for approval.

2. Regular City Council Minutes – May 18, 2010

This item was approved under the consent agenda.

2. Monthly Capital Projects Status Reports

Mr. Daige referred to the Capital Projects Report for the Airport and wanted to know from the City Attorney if by approving the second paragraph, obstruction removal, are they approving to remove structures and land clearing or are they just approving moving to the next phase of the project.

Mr. Vitunac explained they are not approving anything. They are just accepting the monthly status report. If any department needs approval on something then they would have to come before Council and ask for it.

Mr. Daige made a motion to approve the Monthly Capital Projects Report. Mr. Sawnick seconded the motion and it passed unanimously.

4. SR A1A Landscape Median – Recommendation of Acceptance and Final Payment

Mr. Monte Falls, Public Work's Director, reported that this issue is not with the landscaping dying it is with the lack of maintenance. He said what they have done to remedy the situation is they have a contract with H&D Construction to do the work and install the landscaping. During the contract term, this contractor filed for bankruptcy. The provision of the contract provided with the City is a surety bond of 125% of the contract amount to protect the City if the contractor failed to produce. They have contacted the surety company and are working with them. This item before them is for final payment and one of the contract requirements. They have advised the surety company informally about two weeks ago that the contractor was not performing the work and asked them how they wanted to remedy that. Mr. Falls said that in conformance with the contract, that last Friday he sent the surety company by certified mail a written notice that if they don't perform the duties as set out in the contract they (the City) have a right to do the work that still needs to be done and then bill them. In the letter they were given until next week to respond and get the work done and if that does not happen then they would have the work done starting June 21st (by City employees) and bill them the cost incurred by the City.

Mr. Heady commented that what this is asking for is a recommendation and acceptance of final payment when clearly this company has not completed the job. He would have a problem paying out, even to the surety company a final payment.

Mr. Falls explained that all the work set out in the contract has been performed except for the maintenance. He said that if the contractor does not perform the work, they always have the option to go back to the surety company and they are responsible to pay all outstanding debts. He said because the contractor has filed for bankruptcy, the surety company is involved for final payment.

Mr. Heady understood that the surety company was going to be held responsible to all debts of the contract, but the surety company does not want to be responsible right now for taking care of the maintenance problem.

Mr. Vitunac said that in this case there are two separate issues, the final payment owed and the maintenance. He said if they failed to pay the final payment that is due it would jeopardize the performance of the payment bond. Mr. Heady said that it is not due until the terms of the contract are met and at this point those terms are not being met. Mr.

Vitunac explained that completion of the contract has to be done before the maintenance of what was completed can be undertaken. They were given a three day notice as of Friday and the City has not received a response back yet. They have a financially secured surety bond with a lot of money and this will be resolved. He said that there is no self-help provision.

Mr. Daige commented that right now this area is not being maintained at all. He asked why they should issue a final payment when the work is not done.

Mr. Falls stated that the location of this project is on State Road A1A between Causeway Boulevard and Riomar Drive. He said that final payment is made when the work is done. He said that there always is a one year maintenance period. The surety bond of 125% of the contract amount runs from the one year maintenance period. He wanted it made clear that all of the contract items have been completed and this money is owed for the work that was done.

Mayor Sawnick made a motion to accept the final payment. Mr. Abell seconded the motion.

Mr. Daige commented that what he just heard from Mr. Falls is that the work is completed, and the contractor is due final payment (bond company receives the money). He asked as this rolls forward the contractor goes out of business, so who pays for the maintenance.

Mr. Falls said that it will be paid by the surety bond. The surety bond gives the City the right to collect the money from the surety company. He wanted to make sure that in the motion they approve Change Order No. 2, for an increase of \$2,224.30, which results in a final contract amount of \$323,989.54; assess liquidated damages in the amount of \$18,903.28 (or a net amount of \$21,313.28 if Council approves the liquidated damages). Mayor Sawnick acknowledged that was part of his motion.

Mr. Heady did not mind taking the \$18,903.28 out because he believes that is due to the City, but he also thinks that what they bought is an acceptable product and right now it is not acceptable. Before he approves a final payment he wants to see that the property is acceptable, which it is not at this time.

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

At 7:30 p.m., Council took a five-minute break.

3. PUBLIC HEARINGS

- A) An Ordinance of the City of Vero Beach, Florida, requested by Vero Property Investment, LLC, to amend the Comprehensive Plan Future Land Use Map by changing the Land Use Designation from C, Commercial (up to 15 dwelling units/acre) to RH, Residential High (up to 15 dwelling units/acre)**

for the property generally located East of the Northeast corner of the Intersection of 21st Street (US Highway 1) and 10th Avenue, including all of the replat of Henning's Subdivision that lies North of 21st Street (US Highway 1) and a portion of Block 1, Citrus Park, containing 1.76 acres, more or less; and providing for an effective date.

The public hearing for this Ordinance will be heard on July 20, 2010.

- B) An Ordinance of the City of Vero Beach, Florida, requested by Vero Property Investment, LLC, to amend the Official Zoning Map by changing the Zoning Designation from C-1, Highway Oriented Commercial to RM-10/12, Medium and High Density Multiple-Family Residential District for the property generally located East of the Northeast Corner of the Intersection of 21st Street (US Highway 1) and 10th Avenue, including all of the replat of Henning's Subdivision that lies North of 21st Street (US Highway 1) and a portion of Block 1, Citrus Park, containing 1.76 acres, more of less; and providing for an effective date.**

The public hearing for this Ordinance will be heard on July 20, 2010.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) A Resolution authorizing the City of Vero Beach, Florida, to enter into a Joint Participation Agreement with the State of Florida, Department of Transportation, for Obstructions Removal (FDOT#420769-1-94-01)**

Mayor Sawnick read the Resolution by title only.

Mr. Eric Menger, Airport Director, reported that this project was originally approved by Council in the Airport's FY07 capital budget. It was proposed as one phase, but was broken into two phases due to reduced Federal and State funding. Phase 1 was the survey portion of this project and is now complete. Phase 2 will be the actual obstruction removal and/or mitigation of natural and man-made obstructions to runway approaches as requested by the Federal Aviation Administration. He recommended that Council authorize staff to proceed to Phase 2 of this project. The attached Joint Participation Agreement (JPA) is the first piece of the funding in the amount of \$25,000, which funds only 2.5% of the total estimated project cost. He said that another \$25,000 will come from the Airport, but no cost will be expended from the City's General Fund.

Mayor Sawnick made a motion to approve the Resolution and acceptance of the grant from FDOT. Mr. Abell seconded the motion.

Mr. White told Mr. Menger to work hard in getting Federal grant money to cover this project because this is a lot of money.

Mr. Menger said that 90% of the trees that they are looking at removing will be on Airport property. He will be talking to all of the property owners who will have to have trees removed from their property and there are about ten different property owners that will have to be notified. At this time he has not notified all of the property owners.

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

B) A Resolution of the City of Vero Beach, Florida, repealing the Rate Increases for Fiscal Year 2010, 2011, 2012, and 2013 Water and Sewer as described in Attachment "A" and "B" of Resolution 2009-31; providing for an effective date.

Mayor Sawnick read the Resolution by title only.

Mr. Rob Bolton, Water and Sewer Director, gave a Power Point presentation (please see attached) of his budget. He explained that they have passed rate increases that would have occurred over a five year period. Some Councilmembers were not happy about the rate increases and asked how they could be reduced or eliminated. He came before them with some capital projects that were not needed or were being put off, which has enabled him to lower the rates. He modified his capital plan and in modifying his capital plan and eliminating the proposed administration building the rates were able to be lowered. He said that the operating budget that he is showing them now is what he will be bringing before Council at their July budget hearings. He said that there are seven employees that will not be funded in this year's budget and they also were able to cut expenditures. He said that at the end of next year there will be an additional \$817,000 in his budget. He then briefly went through the budget.

Mayor Sawnick made a motion to approve the Resolution. Mr. White seconded the motion.

Mr. Daige mentioned that he worked hard along with staff to get these rates down. He asked the City Manager by doing this, will it have any negative effects on their water and sewer system. Mr. Gabbard answered no and that they will have a cash surplus for the next five years.

Mayor Sawnick added that they are always looking at ways to reduce costs, but still be able to maintain equipment. He is satisfied as to what staff has done.

Mr. White commended Mr. Bolton on ways to cut the budget to meet demands from City Council who have requested this. They were trying to lower rates because of the economy and Mr. Bolton has met the challenge. He then read an email from Mr. Bolton concerning repealing the rate increases (on file in the City Clerk's office).

Mr. Heady stated that this was the first time that he has seen any type of financial backup. He knows that they did spend a lot of money on consultants and the consultants brought

the study forward and everyone agreed that raising rates was what they needed to do in order to make ends meet. He said that with the projected revenues given to them, those revenues include the continuation of Indian River Shores and the County as their customers. He said one of the things that they all need to recognize is that Indian River Shores and the County are going to leave. He said that they are going to leave for various reasons and one of the reasons is because they refuse to meet with them, which he thinks is ridiculous. He asked Mr. Bolton if they borrowed money in March for the water and sewer.

Mr. Bolton answered no. He said that the last time they did any borrowing was for the SRF funds, which was around last August.

Mr. Heady explained that with borrowing this money there is debt to be repaid. He said if they continue with these decreases in the rates, that what they are going to do when Indian River County and Indian River Shores customers leave. He said that City residents are going to be left to pay a debt that has been incurred by the last Councils'. He said if you project out what these increases amount to and the decrease in revenues, he thinks they are in the \$13 million dollar range. If they keep these increases they can use this \$13 million dollars to decrease the debt so that when Indian River Shores and the County customers do leave, which they are going to do, the City taxpayers are not left with that debt. He noted that there have been no recommendations from the Utilities Commission or the Finance Commission on this. Mr. Heady continued by saying that the surpluses are down and there has been no consideration for the loss of customers. He mentioned cash reserves and said that they are not going to build up cash reserves. If they had the cash reserves available and the money in the bank he might think differently. He said at the end of five years, without the rate increase, they will probably be around fifty days in cash reserves. If they had to go to a bonding company they would be looking at 90 days cash reserves, so over the next five years they are not going to be able to accomplish what they need to accomplish in regards to cash reserves. The total amount of revenues that will be missing from the City is approximately \$13 million dollars and that is many years of surplus that they are throwing down the sewer. He understands there is an election coming up and he is the only one that doesn't have to run, but he also understands that financially there are responsible ways to act and eliminating this increase is financially irresponsible.

Mr. Abell wished Mr. Heady would catch up on his homework and meet with the City Manager and staff like everyone else does to find out what is going on.

Mr. Heady asked Mr. Abell to point out what he said that was incorrect.

Mr. Daige stated that it is their job to provide water and sewer to their customers and deliver a quality service, which they do. The City has to be competitive. He thinks the City Manager has met the challenge to not increase the rates and the Water & Sewer Director has made it clear where he was able to trim back his budget so these increases were not necessary. He was hoping that he had the votes from the rest of the Councilmembers to move this through.

Mr. White recalled that last year they started having discussions on all of these rate increases and he voted against the rate increase from the start. He noted that every Councilmember here is a City resident and has to pay electric, water, sewer, and garbage. He has talked to a lot of people who had concerns with them raising the electric and water and sewer rates so they did something about it. He asked Mr. Heady if he honestly thought that the County would come in and change their lines to what is being run now. Does he think that the County is going to pay to put a pipe underneath the Indian River Lagoon in order to feed those lines? He said after the County puts in this new infrastructure to handle the County residents and Indian River Shores, the rates will have to go up. He said that the whole picture needs to be looked at before decisions are made. He didn't understand why they were even having this discussion.

Mayor Sawnick made a motion to call the question. Mr. Daige seconded the motion and it passed 4-1 with Mr. Heady voting no.

The Clerk polled the Council on the motion and it passed 4-1 with Mr. Daige voting yes, Mr. Heady no, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

C) A Resolution of the City of Vero Beach, Florida, authorizing the City Manager to execute a Time Extension to the Local Agency Program Agreement dated 5/02/2005 with the State of Florida Department of Transportation relative to the State Road A1A Landscaping Enhancement Project; and providing for an Effective Date.

Mayor Sawnick read the Resolution by title only.

Mr. Falls explained that this was a bookkeeping matter that needs to be taken care of. He hopes to be finished with all the paperwork on this project by June 30th, but in the event they are not finished they will have to do an extension to the LAP agreement and since the Council will not be meeting again until July 20th, this will give authorization for the City Manager to sign the agreement.

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

Mr. Heady asked if this covers the entire City limits.

Mr. Falls explained that this only covers the area that they discussed earlier under item 2D-4) on the agenda.

The motion 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

- A) An Ordinance of the City of Vero Beach, Florida, amending Chapter 76, Historic Preservation, of the City of Vero Beach Code by revising or Creating New Definitions in Section 76.02; creating new Article VI, and Ad Valorem Tax Exemptions for Improvements to Historic Properties pursuant to Sections 196.1997 and 196.1998, Florida Statutes; providing for authorization; providing for eligibility and procedures for obtaining exemptions; providing for revocation of Tax Exemption; 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, explained that this Ordinance will enable the City Council to authorize ad valorem tax exemptions for improvements to historic properties. The Historic Preservation Commission (HPC) and the Planning and Zoning Board (PZB), both have recommended approval. The Planning and Zoning Board recommended that the City pursue obtaining a Certified Local Government designation by the Florida Division of Historic Resources to be eligible for historic preservation grants. He said that this may be something for them to look at in the future. The Ordinance would have two specific types of exemptions. They would be for 100 percent of the assessed value of all improvements to eligible historic properties for a period of ten years and 100 percent of the assessed value, as improved, for ten years, where the assessed value of the improvements to a historic property open to the public is equal to at least 50 percent of the total assessed value of the property as improved. The Florida Statutes allow local governing bodies to grant a tax exemption of up to 100 percent and for a period of up to ten years. Only properties designated as an historic site pursuant to Chapter 76, Historic Preservation, would be eligible for the tax exemption. Only improvements made on or after the date of the Ordinance and improvements approved under a development permit and, if required, a certificate of appropriateness, are eligible for tax exemption. Mr. McGarry briefly went over the process for seeking a tax exemption. Subsequent to the approval of the development permit and issuance of "certificate of appropriateness" the applicant may then file a "pre-construction application" to the Planning and Development Department, which after reviewed for eligibility and completeness, is submitted to the Division of Historical Resources of the Florida Department of State. After the Division has completed its review and forwarded its comments and recommendations to the Planning Director, a public hearing before the City Council will be scheduled. He said City Council is not bound by the recommendations from the Division. If granted, the applicant and City Council will execute the Historic Preservation Property Tax Exemption Covenant, which will be filed with the deed for the property in the official records of Indian River County prior to the effective date of the exemption.

Mr. White asked if the County has a similar ordinance. Mr. McGarry explained that now that the City is working on this Ordinance, he will write a letter for the Mayor's signature asking the County to look into doing something similar to the City's Ordinance. Mr. White then wondered if they should put a minimum expenditure on this. Mr. McGarry did not see the need to do that. Mr. White said he was talking about a low threshold and

not a high threshold. Mr. McGarry said that he would take a look at that and he will bring it up at the public hearing.

Mayor Sawnick made a motion to approve the Ordinance on first reading and set the public hearing for July 20, 2010. Mr. Daige seconded the motion.

Mayor Sawnick commented that if the Downtown Theater gets reopened it could possibly fall into this category.

Mr. Daige thought that this will be a big help for their community and he thanked Mr. McGarry for all of his hard work in developing this Ordinance.

Mr. Heady asked if there was a way to provide for a tax exemption for many more people than this would cover or there should be exemptions for improvements.

Mr. McGarry explained that this is only for historic properties. He said that the State Statutes govern what they are allowed and not allowed to do.

Mr. Heady commented that it seems to him that a tax exemption or improvements to property is something that would be desirable, but it would be much better if they provided for tax exemptions for anyone that wanted to go to any downtown property and renovate it, they should be given a tax exemption for ten years. He said let's see what we can do to really encourage some renovation downtown.

Mayor Sawnick agreed one-hundred percent with Mr. Heady and the comments he just made. He said it would be taken to the extreme, but he definitely will be looking into that and thanked him for his support.

The Clerk performed the roll call on the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

6. CITY CLERK'S MATTERS

A) Reappointments to Commission/Boards

Board of Building Appeals

Both Mr. Dean Luethje and Peter Robinson's terms on the Board of Building Appeals expire on June 15, 2010. Both members would like to be reappointed.

Mr. White made a motion to reappoint both Mr. Luethje and Mr. Robinson to the Board of Building Appeals. Mr. Abell seconded the motion and it passed unanimously.

Code Enforcement Board

There is a full member position open on the Code Enforcement Board.

Mr. White made a motion to appoint Mr. Rhett Wilson as the full member on the Code Enforcement Board. Mayor Sawnick seconded the motion and it passed unanimously.

Finance Commission

Mr. Tom Nason's term on the Finance Commission expired on May 5, 2010 and he would like to be reappointed.

Mr. White made a motion to reappoint Mr. Nason to the Finance Commission. Mr. Daige seconded the motion and it passed unanimously.

Mrs. Pilar Turner and Mr. Dan Snellings have resigned from the Finance Commission, which leaves a full and alternate position open.

Mr. White made a motion to nominate Mr. Bill Fish as the full member and Miss Laura Torres as the alternate member on the Finance Commission.

Mayor Sawnick disclosed that Miss Torres was his fiancé, but he has checked with the City Attorney who has told him that he still must vote on this issue.

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

Tree & Beautification Commission

Mr. Daniel Downey's term on the Tree & Beautification Commission expires on June 15, 2010. He would like to be reappointed to the Commission.

Mr. Abell made a motion to reappoint Mr. Downey to the Tree and Beautification Commission. Mr. White seconded the motion and it passed unanimously.

Utilities Commission

Both Mr. Don Hawkins and Mr. Jason Fykes terms on the Utilities Commission expire on June 15, 2010. Both members wish to be reappointed.

Mr. Abell made a motion to reappoint both Mr. Hawkins and Mr. Fykes to the Utilities Commission. Mr. White seconded the motion and it passed unanimously.

Veterans Memorial Island Sanctuary Advisory Committee

Mr. Joel Herman's term on the Veterans Memorial Island Sanctuary Advisory Committee expires on June 15, 2010. He would like to be reappointed to the Committee.

Mr. White made a motion to reappoint Mr. Joel Herman to the Veterans Memorial Island Sanctuary Advisory Committee. Mr. Daige seconded the motion and it passed unanimously.

Mr. White mentioned that they needed to look at a couple of other Commissions. One in particular was the Recreation Commission. It was noted that there are more County residents serving on that Commission than there are City residents. The Clerk was instructed to try to get some applications for the Recreation Commission and then bring the item back to Council.

7. CITY MANAGER'S MATTERS

A) Award of RFP No. 170-10/PJW – Unit 5 Heat Recovery Steam Generator Superheater Retrofit

Mr. Jim Stevens, Power Resources Director, reported that there have been two studies done on the Unit 5 Heat Recovery Steam Generator Superheater Retrofit and both recommended replacement.

Mayor Sawnick made a motion to approve the Award of RFP No. 170/10/PJW, for Unit 5 Heat Recovery Steam Generator, to Vogt Power International. Mr. White seconded the motion.

Mr. Heady referred to Unit 5 and asked how it was being used. Mr. Stevens said it is used just about every day. Mr. Heady then asked what is the cost per KWh on that Unit is to produce electric. Mr. Stevens wanted to know if he was asking for the cost to produce or the cost to sell. Mr. Stevens said that the production cost for Unit 5 is right around \$68.00 per mega-watt hour. Mr. Heady asked what does it cost to purchase under their bulk power agreement. Mr. Stevens explained that it depends on the need and demand for the purchase of power. Mr. Stevens said that the cost for last month, under the OUC contract, was \$49.00. Mr. Heady asked if this Unit was not available, then they would have to purchase power. Mr. Stevens said to serve their load they would have to put on Unit 4, which is much more expensive to run. Mr. Heady then asked what if Unit 4 was not available. Mr. Stevens said that they would have to put Unit 3 on. Mr. Heady asked what if no Units at the Plant were available. Mr. Stevens said then they would have to purchase power from the open market. Mr. Heady asked is there no contract from OUC to buy bulk power. Mr. Stevens said yes, they could buy up to 95 mega-watts. Mr. Heady then asked if in the purchase agreement that anything over 95 mega watts would be spot market prices. Mr. Stevens explained that they also have St. Lucie Stanton 1 and 2 power resources who are part of the agreement and it comes to about 145 mega watts. He said anything over 145 mega watts would be spot power.

Mayor Sawnick summarized things and said that they need to do this in order to keep their electric rates low at this time and help the needs of their customers.

Mr. Heady asked if the reason for this was because there has been a melt down on some of the tubes.

Mr. Stevens explained that there has not been a meltdown. He said that a thermal study was done and it was determined that several clips have broken and the tubes have expanded.

Mr. Daige commented in doing these repairs and updates the way they are designing the tubing systems they will actually be better for the Units. Mr. Stevens agreed. Mr. Daige said with the other Units they have he knows that there is constant upkeep to keep the generators ready to go. He asked Mr. Stevens since he has been employed with the City, has there been at any time when all the machines were down at once. Mr. Stevens answered no.

Mayor Sawnick made a motion to call the question. Mr. White seconded the motion and it passed 4-1 with Mr. Heady voting no.

Mayor Sawnick called for a vote on the motion to approve this request and it passed 4-1 with Mr. Heady voting no.

B) Award of Bid No. 230/10/JV – 19th Street Culvert Replacement at 20th Avenue Lateral E Canal

Mr. Falls explained that this project is for replacement of the failing 96” corrugated metal pipe at 19th Street where it crosses the 20th Avenue canal with a new 96” reinforced concrete pipe. The project also includes adding/upgrading sidewalks, guardrails, curbing, drainage and turning radii.

Mr. Daige made a motion to approve the Award of Bid No. 230-10/JV, for a 19th Street Culvert Replacement at 20th Avenue Lateral E Canal to SPS Contracting, Inc. Mr. White seconded the motion and it passed unanimously.

Mr. Daige expressed that this replacement is desperately needed.

Mayor Sawnick noted that on the first page under the City Manager’s recommendation that it should be SPS instead of SPC.

C) Dixon Downey Donation for Riverside Park

Mr. Falls explained that Mr. Downey was able to see Little Flower completed before he passed away. They have completed their final account of the Little Flower project with a total of \$253,239.48 being expended. This leaves a balance of \$148,864.52 from the original donation. To honor the legacy of Mr. Downey, he is recommending that the remaining \$148,864.52 be set aside in a fund preserving the capital and only making the interest available for future improvements.

Mr. White made a motion that Council establish a fund for the remainder of the Dixon Downey donation for improvements to Riverside Park, in the amount of \$148,864.52, by preserving the capital and using only the interest for future improvements to Riverside Park. Mr. Abell seconded the motion.

Mayor Sawnick noted that this was in the original contract when Mr. Downey made the donation.

Mr. Abell wanted to verify that the interest would be enough to pay for maintenance for Little Flower. Mr. Falls said that his recommendation was that they don't use the interest for maintenance, but only use it for capital improvements. He said that the maintenance needed will be covered in his budget under grounds maintenance.

Mr. White recalled that the Pavilion located at Riverside Park was also donated by Mr. Downey. He said that he still would like to see something with Mr. Downey's name on it at the Pavilion. Mr. Falls said that he would work on that and bring something back to Council.

The motion to approve this request passed 5-0.

D) Discussion of CCNA Committee Meetings (Rob Bolton)

Mr. Bolton recalled back in October that the CCNA (Consultants Competitive Negotiation Act) met roughly ten times and solicited for services. He said that there were six members appointed to the Committee. He went over the names of who the members were. He said that through the process they narrowed down who they felt the consultant should be and came before Council. They selected the firm and negotiated a contract and the Committee voted 4-2 to approve the contract. The members on the Committee that served as County representatives did not approve the contract. As a result of the County representatives not approving the contract, the Committee met again and the Chairman of the Committee asked the County representatives to call the Consultant to become more familiar with the contract. The Committee made it clear to the County representatives that while speaking with the Consultant, they were not to try to change the contract. As a result, the Chairman of the Committee called the Consultant and the Consultant informed him that he did meet with the County representatives and they were trying to change the scope of the work. The Chairman then went before the Town of Indian River Shores and recommended to them that they pull out and then a couple days later the County also pulled out. The Committee met one last time to approve the minutes and at that meeting there were four members present and the two absent members were the County representatives. The City was the only two remaining members on the Committee.

Mr. Daige attended both of those meetings and concurred with what the Water and Sewer Director just informed Council.

E) Discussion of Procedures for Processing Change of Use Applications and New Local Business Tax Applications

Mr. Gabbard explained that the new procedures for processing the change of use applications and new local business tax applications were requested by Mr. Daige.

Mr. McGarry explained that what he is going to do is first make some changes to the business tax form. He said that when they do administrative change of uses, which are generally done by the Planning Director, they will be reviewed and sent to the City Manager for his approval and with that approval there will be a three day effective review period. He will provide copies to the Council and they will have three days to review the forms before they become effective.

Mr. Daige said this is acceptable to him.

F) Discussion of Meeting with FP&L and Lakeland – John Lee

Mr. John Lee, Acting Electric Utilities Director, recalled that a letter was sent out to seven different utilities asking if they would be interested in some or all of the City's electric system. They received a response back from Florida Power and Light (FP&L) and they requested a great deal of information, which was sent to them. FP&L said that they would analyze that information and get back to the City once they have had a chance to look at all of the information. FP&L called back and invited some staff members and the Mayor to Juno Beach to talk with them. They met in FP&L's conference room at their facility. He said that there were five representatives from the City and five representatives from FP&L. He said what FP&L did was make clear that they went over all the documents sent to them, they went to the City website and looked at their budget and wanted to be sure that they understood how the City operates their system. They talked about this and everyone agreed that it was a common understanding and then the question came up as to what is the next step. FP&L said that what they needed to do was go back in their group and come up with what they thought was their next logical step and then come back before the City (City Council) and lay that step out. He said like most businesses they said that the month of June was going to be difficult because of vacations for families and those sorts of things, but they would get back to the City as soon as possible. Mr. Lee said that it was his understanding that FP&L has come back to them and they have set a July 20th date for FP&L to come before the Council and tell them what they believe the next logical step is. He said that was the essence of the meeting.

Mr. Lee informed Council that he attended another meeting in the City of Lakeland, Florida. The City Manager asked him if he would go over there with him and visit with Lakeland's Utility Committee. He said that Lakeland is similar to the City of Vero Beach because they have a large number of electric customers (a larger percentage of outside the City limit customers than they do inside the City limits). He explained that Lakeland takes a little different approach than they do. They have a Utilities Committee and all of the members of their City Commission meet with the Utilities Committee and discuss all their utility items. He said that at this meeting they were discussing their disaster preparedness plan and the cost of service study that could make a change in their rates.

They have a twelve member Committee, which consists of the City Commission and six people nominated from their customer base. They have a representative from their residential customer base, from their commercial customer base, and their industrial customer base. He said that they watched an almost two hour meeting where they discussed these two items and they were discussed at length and there was a healthy debate at the end of the meeting and then they voted on how to proceed. Mr. Lee said it was an interesting process because it was all done together. Then afterwards the City Commission meets formally to approve the items. He said only twice in history has there been a difference of opinion from the City Commission as opposed to the Utilities Committee. In both cases they went back to the Utilities Committee with new information and it was approved. Mr. Lee said that this was an interesting insight into how someone did it differently then what they did. After the meeting they were invited to meet with the Mayor, City Manager, and their Utilities Director to talk about some history and why they do it this way and to give them (Mr. Lee and Mr. Gabbard) some insight. This was a different model then he has ever seen, but he was very impressed with it. He brought back the presentations made at the meeting and copies will be provided to Council.

Mr. Gabbard added that the reason they went over to the City of Lakeland at this time was because of the actions in the Legislature this past session. He said that there were some initiatives by their local Delegation to place them under some regulations by the Public Service Commission. They were informed by FMPA and by a member of the Legislature that this is a model that might really serve the citizens well in Vero Beach because of the combined City Council and Utilities Commission. He said it was a very healthy process and they learned a great deal. He said that a House member in their District was instrumental in inviting them to come to Lakeland. He felt that if there is another Legislative initiative made that this may satisfy the Legislature that they are doing everything that they can because of this model that is working very well in Lakeland. He would give a copy of Lakeland's bylaws to the Council and they can discuss them at a future meeting.

Mr. Heady wondered where this item was on the agenda. He said that there was nothing on the agenda about this discussion. He appreciated the report, he was just trying to figure out where it was listed on the agenda. He said if they are going to discuss a particular item it would be easier to find if it was on the agenda.

Mr. White asked that the agenda be amended to include Lakeland.

Mr. Daige requested from the Clerk a tape of the last Lakeland Utilities Commission meeting and when they are scheduled to have their next meeting.

Mr. Gabbard then brought up the Resolution relating to Amtrak. He wanted to make sure that Council had a copy of it and if they have any questions to meet with him so they can be ready to vote on the Resolution at their Special Call meeting to be held on June 24th.

Mr. Heady requested that when the Clerk does the minutes that she could be fairly comprehensive of the report given by Mr. Lee on the FP&L meeting and the Lakeland meeting. He stated that there is no other written report from anyone on the FP&L meeting.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

- 1. Another reconsideration of date for presentation by Dr. Faherty and Glenn Heran – Requested by Brian Heady**
- 2. Still Waiting for written answers from City Manager – Requested by Brian Heady**
- 3. Missing report from City Manager requested by Councilmember Daige – Request from Brian Heady**
- 4. November Elections – Requested by Brian Heady**
- 5. Debate on Sale of Electric – Requested by Brian Heady**
- 6. 8/12/08 to be played and discussion to follow – Requested by Brian Heady**
- 7. Update on a Federal Lawsuit – Requested by Brian Heady**
- 8. Honest Services Fraud – Requested by Brian Heady**
- 9. Golf Course – Requested by Brian Heady**

These items were pulled off of the agenda by a 4-1 vote with Mr. Heady voting no.

10) City Manager to give update on Original Town – Requested by Ken Daige

Mr. Gabbard reported that there will be a meeting on Friday at the County Administration building to discuss the Go-Line buses. The Clerk noted that she would put a notice out for this meeting if there are two or more Councilmembers who would like to attend the meeting.

Mr. Falls wanted to bring up a couple of other items that disturbed Mrs. Hillman in her memo that was provided as backup material for this item. She had brought up speed limits and four way stops. He said that they will do the necessary traffic study and make an evaluation on the four way stops and get this information back to Council as soon as possible. In regards to the speed limits there have been requests from numerous neighborhoods around the City and the City has actually lowered the speed limit in one neighborhood already. He suggested instead of lowering the speed limit on a neighborhood by neighborhood basis, he thought it might make more sense to look at the neighborhoods Citywide and lower the speed limit on residential streets to 25 miles per hour. The current speed limit in residential areas is 30 miles per hour. If the Council is interested in doing this then he will look into it and bring something back to Council.

Mr. White made a motion to look into Citywide residential streets going down to 25 miles per hour. Mr. Abell seconded the motion.

Mayor Sawnick felt that it was good to lower the speed limits from a public safety standpoint.

Mr. Heady commented that if there is a problem with certain streets, why don't they correct the problem on these certain streets instead of changing the speed limit throughout the whole City. He said clearly there are a lot of streets in the City where 30 miles per hour is an appropriate speed limit. He said that unless they are looking to increase the revenue in the Police Department (speeding tickets), it seems to him if there is a problem with a particular street then the problem should be solved on that street.

Mayor Sawnick requested that Mr. Falls bring something back to Council and they can address the issue at that time.

Mr. Abell asked Mr. Heady if he knew what the Police Department gets for revenue for a speeding ticket. Mr. Heady was sure that Mr. Abell was going to tell him. Mr. Abell said that it was \$2.00.

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

Mr. Daige asked the City Manager if Police presence in the neighborhood has been increased. Mr. Gabbard said that it has. Mr. Daige then asked about the situation with the port-o-lets. Mr. Gabbard said that the County is looking at having a portable bathroom unit installed in this area. He said that this is one of the items that they will be discussing on Friday. He will report back to Council at their next meeting.

B. New Business

1. Request for Funding from the Tree and Beautification Commission

This item was heard earlier in the meeting.

2. Utilize the social networking site Twitter to update public regarding events, meetings – Requested by Mayor Sawnick

Mayor Sawnick put this item on the agenda for informational purposes.

Mr. White mentioned that last year or the year before, the Florida League of Cities brought up that there were some cities using Facebook and most of the cities have stopped using it because there have been some Sunshine Law violations because of it. He said that they need to get more information on this before they start utilizing the networking site Twitter.

Mayor Sawnick asked Council to look at the backup material that he provided and he will bring it back in the future.

Mr. Daige requested the City Clerk to contact the Florida League of Cities and get their thoughts on this. He was interested in knowing what is happening in the State of Florida because of the Sunshine Law. He also wanted to know how many other cities in their State were using Twitter/Facebook.

Mr. Heady asked as a City Councilmember, if he uses those kinds of websites and post comments regarding City business, does that become public record. Mr. Vitunac answered yes. Mr. Heady continued by saying that he has in his hand 176 comments that were posted on an internet site and the newspaper reports that those posts are by Councilmember Abell. He passed the editorial and remarks down to the Clerk to include with the minutes (attached to the original minutes). The remarks made by VBC6, which according to the editorial is Mr. Abell. He said that this document is now a public record because it has been given to the Clerk. He wanted to make sure that he was correct that anything that you post like this in a public forum, if you're a City Councilmember, the posts made would become a public record.

Mr. Vitunac did not think that was correct. He said that whatever correspondence that Council has with their relatives or friends is not public record.

Mr. Heady said that he was not talking about friends. He was talking about on a networking site when you post comments about the City.

Mr. Vitunac challenged Mr. Heady to prove that Mr. Abell wrote any of those things. He said the fact that Mr. Heady submitted these private emails does not make them public record.

Mr. Heady said that they are not private; they were on a public website.

Mr. Daige mentioned the pile of emails that were just given to the City Clerk claiming that the Vice Mayor made the posts. He said that there is no evidence that states that and he would like to ask the City Attorney how they can look into this legally and find out who the actual posting person is because it is a blog name.

Mr. Vitunac did not know how you would find out who a person is on a private newspaper website. He reiterated that things submitted do not automatically become public record if they do not have anything to do with public business.

Mayor Sawnick reminded Council that the item under discussion is whether or not the City should use Twitter as a tool to inform the public.

Mr. Abell commented that you cannot believe everything that you read. He said that they should see shortly a retraction from Mr. Milt Benjamin (32963 Newspaper), that he made

a serious mistake. Mr. Abell said that he does not know who this VBC6 is and he never has. He believes that anyone that uses the blog system is a coward.

Mr. Heady said that was fine. He was just pointing out some of the difficulties that could occur in using these kinds of sites for the City to put information on.

3. Request an area on City website so public can give input on upcoming budget – Requested by Mayor Sawnick

Mayor Sawnick made a motion to have an area on the website so people can post comments about the upcoming budget. This would include a person's name, address, and whether or not they are a City or County resident. Mr. Daige seconded the motion and it passed 4-1 with Mr. Heady voting no.

4. Discuss Shark Fishing Ordinance – Requested by Ken Daige

Mr. Daige would like Council to approve directing the City Attorney to work on a shark ordinance for them to review at their next meeting.

Mr. White commented that they have listened to both sides of the issue and he agrees that their main asset is their beaches and there should not be shark fishing within the City limits of Vero Beach. He agrees that the City should look into having a strict ordinance to protect their beaches.

Mr. Vitunac stated that he would bring an ordinance to City Council at their next meeting which will explain the difference between chumming and shark fishing. He said that they might also submit a special bill for the next Legislature.

Mr. White made a motion directing the City Attorney to bring back for discussion a draft ordinance that includes both shark fishing and chumming. Mr. Daige seconded the motion.

Mr. Abell asked when the shark fishing tournament takes place. He was told on July 1st. Mr. Abell said that they may need to do something in a hurry. He then went over the outcome of the County Commission meeting when this item was discussed. He had a thought to use their GIS Department to help with this. He asked if they could extend it within a mile of their public beaches and parks.

Mr. Vitunac commented that there are a lot of definitions which include what defines a park and what defines the beach. Also jurisdictions must be determined and what they are allowed to regulate. He will look at this comprehensively and speak to the County Attorney about trying to come up with some sort of ordinance that they could both use. He said it might be that the July tournament will be allowed, but they will solve this problem for the long run.

Mr. Abell thought that he (Mr. Vitunac) should see what can be done about the tournament.

Mayor Sawnick agreed that they needed to protect their City limits, even if the County does not want to do anything.

Mr. White read excerpts from the Volusia County Ordinance that was provided in their backup.

Mr. Vitunac thought that whatever restrictions that they place should apply to all their Parks and any beach jurisdiction within the City limits out for three miles.

The motion passed 5-0.

5. Water and Sewer Issues – Requested by Brian Heady

This item was removed from the agenda. The vote was 4-1 to remove the item from the agenda with Mr. Heady voting no.

6. Changing time of meeting – Item added on to the agenda by Brian Heady

Mr. Heady brought up the memo that he received from the Clerk with some future meeting dates and times. He referred to the City Council meeting on July 20th and asked who changed the time of the meeting.

Mayor Sawnick said that he changed the time of the meeting from 6:00 p.m. to 9:30 a.m. He said that he had the authority to change the time but he was told that Councilmember Heady objected so he knew this was going to come up.

Mr. Heady commented that the Mayor changed the time of the meeting without checking with any of the Councilmembers. He thought that if he (the Mayor) was going to change the time of a Council meeting that he should talk to the other Councilmembers about it.

Mr. White stated that he was polled about the meeting and understood that the reason for the change was because the Council had to be at City Hall the next day at 9:00 a.m. for budget hearings. Also, there is another meeting on that same day (July 20th) at 3:00 p.m., with FP&L. He said that was going to be a full week.

Mr. Heady agreed that it is going to be a full week whether they have the meeting at 9:30 a.m. or 6:00 p.m. If he (Mr. Heady) cannot attend the meeting at 9:30 a.m., then what they are doing is scheduling a regular City Council meeting at a time when a Councilmember has already scheduled other things.

Mayor Sawnick explained that the reason for changing the time of the meeting was to make sure that everyone was rested for their budget meetings starting the next day. He didn't have a problem if Council wanted to pick another time for the meeting.

Mr. Heady felt that they needed to have a majority vote to change the time of the meeting.

Mr. Vitunac commented that their Ordinance states that their Council meetings are generally held at 7:00 p.m. He said that the Council can set other times for their meetings.

Mr. Heady said the “Council” can set the times of the meeting, not the “Mayor.” He did not want to change the time the meeting is set for, which is currently at 6:00 p.m. He wanted it to stay at that time unless the Council takes a vote and changes it. He said that if they are going to change it to 9:30 a.m., then they are changing the time to when one Councilmember has previously scheduled something else. He said that is why they schedule meetings in advance.

Mr. Abell felt that the meeting was a month away so Mr. Heady should be able to work this out.

Mayor Sawnick would like to have a full Council present for the meeting.

Mr. White made a motion that they meet at 9:30 a.m. for the July 20th City Council meeting. This would be changing the time from 6:00 p.m. to 9:30 a.m. The reason for the change is because they have a meeting with FP&L at 3:00 p.m. on that same day and then they have to be at City Hall for the next three days for budget hearings. Mr. Abell seconded the motion. The motion passed 4-1 with Mr. Heady voting no.

Mr. Heady brought up the Special Call meeting scheduled for August 23rd, which is a date that he was already committed. He can be available after 4:00 p.m. on that date or some alternate dates would be August 16th, 17th, 18th, 26th or 27th. The Clerk will poll the Council in changing the date of the Special Call meeting.

10. INDIVIDUAL COUNCILMEMBERS’ MATTERS

A. Mayor Kevin Sawnick’s Matters

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

Mayor Sawnick reported that he attended the meeting held with FP&L, Coffee with the Council that was held at Mulligans restaurant and on June 24th Council will be holding their Quarterly budget meeting. He said that the next Mayor’s beach cleanup will be on June 27th. He then asked Council if they received the memo that he provided comparing Vero Beach with surrounding counties for water services. Council said that they received the information.

Mayor Sawnick commented to Mr. Heady that he mentioned Indian River County and Indian River Shores leaving Vero Beach utilities. He asked Mr. Heady to forward to

Council any information that he has on that issue. He also mentioned that Mr. Heady talked about tax exemptions for downtown businesses. He said that is something that he would like to see and is glad that he has support on the Council for it. He would do some further research on the matter. He appreciated that Mr. Heady brought it up.

3. Comments

B. Vice Mayor Sabin Abell's Matters

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

Mr. Abell attended the first meeting concerning Amtrak, Coffee with the Council, and met with the Chairman of the Airport Commission.

3. Comments

C. Councilmember Tom White's Matters

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

Mr. White reported on the Treasure Coast Regional League of Cities meeting and the Municipal Insurance Trust meeting that he attended.

3. Comments

D. Councilmember Brian Heady's Matters

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

1. FPL, Lakeland, and public business in the public eye

Mr. Lee has given a report on the FP&L meeting and the Lakeland meeting, which is covered in the minutes under item 7-F.

2. Liars, Cheats and Thieves

3. Bad Information=bad decisions

Mr. Heady commented that this is something that he has been saying over and over. He said if they receive bad information, little information, or no information that the only thing they are going to do is make bad decisions.

4. Correspondence

E. Councilmember Ken Daige's Matters

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

Mr. Daige read a prepared statement outlining his Committee Reports (please see attached).

- 3. Comments**

- 1. Meeting with FP&L – June 3, 2010**

This item was heard earlier in the meeting.

- 11. ADJOURNMENT**

Mayor Sawnick made a motion to adjourn tonight's meeting at 9:35 p.m. Mr. White seconded the motion and it passed unanimously.

/tv

CITY OF VERO BEACH, FLORIDA
JUNE 15, 2010 6:00 P.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

1. CALL TO ORDER

A. Roll Call

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

B. Invocation

The invocation was given by Pastor Jim Gallagher of Calvary Chapel of Vero Beach.

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

Mayor Sawnick requested that item 9B-1) "Request for Funding from the Tree and Beautification Commission" be moved up on the agenda and heard before items under Resolutions for Adoption without Public Hearing are discussed.

Mr. Heady did not have a problem with moving that item up on the agenda, but suggested that as soon as Mr. Zimmermann arrives for the meeting that his matter be heard. Council had no problems with that.

Mr. Abell made a motion that they delete the proposed presentation by Dr. Stephen Faherty and Mr. Glen Heran. He said that it would normally go before the Utilities Commission and he thinks that it is inappropriate that it comes before Council before being presented to the Utilities Commission. Also, in the backup material provided by Dr. Faherty, electric is mentioned and the Council cannot discuss that because of the "Heady lawsuit." Mr. White seconded the motion.

Mr. Heady asked if the presentation that was going to be given by Dr. Faherty and Mr. Heran was printed on the agenda. He could see that it was not. He was surprised that Mr. Abell wanted to remove an item from Public Comment. He said that it is the public that wants to comment.

Mayor Sawnick said there is a motion and second on the floor. He noted that they have received a copy of the presentation that Dr. Faherty and Mr. Heran would like to present tonight. However, their request to be on the agenda was received after the deadline for the agenda had closed. So Council is aware of the presentation being made, but it is not on the agenda. He suggested limiting the presentation to five minutes. He asked Mr. Abell and Mr. White if they would accept that as part of the motion.

Mr. White stated that if Mr. Abell would amend his motion to allow the presentation to be made, but limiting it to five minutes, that he would second the amendment.

Mr. Abell explained that if they make the presentation then they have to use different rates because the rates are inaccurate. He reiterated that this item needs to go before the Utilities Commission.

Mr. Heady stated that under Public Comment that Dr. Faherty and Mr. Heran are allowed to make their presentation. The fact that some Councilmembers don't like them making it is unfortunate. He said that with respect to limitations, you can't have one meeting and decide that what you want to do is place time limits on certain citizens who wish to speak. Another thing was that Mr. Abell said that the presentation was about water and sewer rates and there is an item on tonight's agenda about water and sewer rates. He thought that it made sense if citizens of this community had some information for this Council that they (Council) listen to the information that they have to present. He knows in the past that staff has given him information that was not totally accurate and it seems to him that they are going down the wrong path and they need to allow the citizens to speak. They cannot treat one person different from how they treat someone else or they are setting themselves up for another lawsuit.

Mr. Daige understood that they received a copy of the presentation and Dr. Faherty sent an email to the City Clerk after the agenda had already been posted. He reviewed the presentation and believes that they can stay within the time frame. It is public comment and he hoped that Dr. Faherty and Mr. Heran could do their presentation within a timely fashion.

Mr. Heady asked Dr. Faherty and Mr. Heran how long they thought that their presentation would take.

Mayor Sawnick called the question.

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

Mr. White commented that after reviewing the agenda package he knows that they have a large business meeting. He thinks that it would be important for them to get their business out of the way first. He noted that over the last couple of meetings that Public Comment has taken two to three hours and he would suggest either moving Public

Comment to the end of the agenda or place a time limit on people wishing to speak under Public Comment if they (Council) wish to keep it where it is.

Mayor Sawnick expressed that it is his discretion to limit someone and Council can always override his decision.

Mr. White thought that it was important for them to make this decision so anyone in the audience wishing to speak will know if they will be heard in the beginning or at the end of the meeting.

Mr. Daige felt that Dr. Faherty and Mr. Heran would be respectful of the time.

Dr. Faherty and Mr. Heran both agreed that their presentation would take no longer than ten minutes.

Mr. Heady commented on how long they have been discussing limiting this presentation.

Mr. White made a motion to remove items 9A-1, 2, 4, 5, 6, 7, and 8 off of the agenda. Mayor Sawnick seconded the motion. The motion passed 4-1 with Mr. Heady voting no.

Mr. Daige made a motion to remove 9A-3, and 9A-9 off of the agenda. Mayor Sawnick seconded the motion and it passed 4-1 with Mr. Heady voting no.

Mr. Abell made a motion to pull item 9B-5) off of the agenda. Mayor Sawnick seconded the motion.

Mr. Heady stated under discussion that all of the items that he put on the agenda have been removed.

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

The City Clerk removed items 3-A) and 3-B) off of the agenda. They will be heard at the July 20, 2010 City Council meeting.

Mr. Heady made a motion to add under New Business discussion of the memo that they received on some upcoming meeting dates. Mr. Daige seconded the motion and it passed unanimously.

Mayor Sawnick made a motion to adopt the agenda as amended. Mr. White seconded the motion and it passed 5-0.

B. Proclamations

1. Korean War Veterans Day – June 25, 2010

Mayor Sawnick read and presented the proclamation.

C. Public Comment

Mr. Joseph Cantarella (spelling may not be correct), Mr. Lee Cantarella, and Miss Meredith Hickman all asked to speak about shark fishing.

Mr. Joseph Cantarella explained that fisherman do fish for sharks from the beach. He wanted to clear up some of the misconceptions that he has heard so much about. There never has been use of chum when they shark fish. This is a red heron to pass a blanket law on this. He said that the beach is not just for swimmers, but also for fishermen. There are facts according to the Florida Museum History that the shark attacks that occur are not related to fishermen.

Mr. Lee Cantarella went over the shark tournament that they hold every year and have done so for the last five years. He has read some articles in TCPalm about chumming the waters and it was directed at them. He said for the five years that they have held their tournaments, they have never chummed the waters. One thing they do is tag over 100 sharks to determine their age growth, etc, and send it to NOAA and have all the facts to see where the sharks are moving to and what they are eating.

Miss Meredith Hickman commented that she has grown up in Vero Beach and there are minimal things for young people to do in this community and fishing is one of the honest activities that they enjoy. She said that it is part of Florida culture. She asked Council to look objectively at the facts and to educate themselves about shark fishing.

Dr. Guy Hickman explained that the reason why there are shark fishermen at the beach is because there are sharks at the beach. There is a shark tournament held every year and something for young people to do in Vero Beach is to go fishing. They don't want anyone to get hurt, but shark fishing on the beach is not bringing sharks to the beach. They are already there. They do not chum. There are very few things for young people to do in Vero Beach and this is something they get excited about. If laws want to be put in to keep people from chumming that is fine. But don't take fishing away.

Mr. White asked how close to guarded beaches do they fish.

Mr. Cantarella explained that they fish at peak fishing hours, which is early in the morning and late in the evening. They do not fish in guarded beaches.

Mr. Abell asked how far away from the beach are you fishing (guarded beach). Mr. Cantarella said that they fish at Turtle Beach, which has no lifeguards.

Mr. Heady thanked these individuals for bringing the other side of this issue up. He agreed that they were there because the fish are there. He said that maybe they could work on doing away with chumming.

Mrs. Olska Forbes, owner and operator of Greenhouse Café, explained that she was at tonight's meeting because she was visited at the restaurant last week by an inspector who told her that in order to serve people with pets that she would have to have the City pass a dog friendly ordinance for dining. She asked the City Council to consider adopting a dog friendly ordinance for their community. She noted that there are a lot of other cities who have this ordinance already in place.

Mr. Vitunac explained to Mrs. Forbes that this item has come up twice in the past and has not passed. He invited her to his office to look at the documents that they have.

Mrs. Forbes said that she has seen some of those documents and understands what is required of the restaurant owner who operates under the ordinance. She felt that most of the guidelines were common sense.

Mr. Daige made it clear that if this ordinance passes it is up to each individual restaurant owner as to whether they want to operate under it or not. He wants to help people promote their businesses. He will work with staff and Mrs. Forbes on this matter.

Mayor Sawnick told Mrs. Forbes that they would get back with her concerning the ordinance.

Mr. White noted that Mrs. Forbes approached him about this and Council and staff did discuss it. He asked Mr. Vitunac to provide Council with a copy of the documents that he has.

Mr. Heady made a motion to bring the ordinance to their next meeting for first reading. Mr. White seconded the motion and it passed 5-0.

Mrs. Kim Delaney, Treasure Coast Regional Planning Council, gave a brief update on the Amtrak project. She said that the project continues to move forward. She also noted that at their Special Call meeting to be held next week she will be asking Council to pass a Resolution in support of the project. At that meeting she will give a brief Power Point presentation to accompany the Resolution. She said that there has been some great input from the public and the train stop location chosen for this area was the Old Train Station.

Mr. Heady asked if there would have to be any road closed in order to put the station there. Mrs. Delaney said that they would need to close one lane coming in from US1.

Ms. Florence Licata thanked Council for scheduling the Special Call meeting on August 23rd to discuss Airport matters. She hoped because of the importance of this meeting that it would be televised and replayed. She wants everyone to see what their concerns are. She said that they (concerned neighbors) will have their questions ready and submit them hopefully one month in advance. She also welcomed Mrs. Barbara Drndak, Chairman of the Airport Commission, to help educate them about practices of the Airport. They are grateful and accept her offer and plan on meeting with her sometime in July.

Mr. Daige made a motion to grant Ms. Licata's wish that the Special Call meeting is played on the loop. He was told that no motion was needed and that there was no problem from staff with granting this request.

Mr. Heady hoped that the meeting date could be moved because he is unable to make the meeting on that date.

Mrs. Linda Hillman started off by saying that liars, cheats and thieves should not be allowed to represent their citizens. She then read a prepared speech (please see attached).

Dr. Faherty and Glen Heran gave a Power Point presentation (please see attached).

Mr. Daige asked when the Utility Commission last met. He was told last week.

Ms. Lenore Mustapick, 611 Holly Road, recalled that on July 4, 2007, she took her family to Turtle Beach and they noticed some gentlemen fishing. She watched them and witnessed them bringing in a huge Tiger Shark. She said that they cut up a Bonita Fish and used that as bait and hooked the shark then brought it up on the beach. She expressed that her children like to surf and go to the beach. The group fishing at the beach on the day that she witnessed the shark said that this was their second year of having a fishing tournament in this area. She said that they stopped talking to her once they realized she was taking photos and what her concerns were. Since then there have been three organized groups. She took her photos to the Indian River Shores Police Department and they told her that she needed to go before the Indian River County Commission, which she did. There was only one Commissioner who took notice and this has taken three years for her to get this far. She explained that the County posted a sign for three months saying no small boats were allowed. She asked the County if they would put up a sign saying "no chumming," but was told that they could not do that because of legal reasons. She expressed that for the past three years these groups have gotten so organized that they have an application on line and they will tell you where you can fish for sharks. She begged Council to please do an ordinance to protect the citizens who live here and have lived here for years. She said let these other people buy boats and go out in the deep waters where sharks should be.

Mrs. Pilar Turner commended Mr. Abell for asking that the presentation given by Dr. Faherty and Mr. Heran be also given to the Utilities Commission. She said that financial information should also be made available to the Utilities Commission so that they can see the total picture and then ask them (Utilities Commission) to make a recommendation to Council as to whether or not they felt the water and sewer rates should be reduced at this time.

Mr. Al Benkert stated that he has met with the County concerning shark fishing and they have no intention in doing anything against shark fishing. He said that personal liberty is fine until people start infringing on someone else's personal liberty. He said that shark fishermen are impinging on personal liberty. He asked how much of the beach do the fishermen want. He passed out a handout entitled "Shorebound Shark Fishing in Vero

Beach” (please see attached). He would like to see a shark fishing ordinance passed in Vero Beach. He noted that Indian River Shores and Orchid are looking at doing the same thing in their area. It is not safe for their citizens and it is bad business. He again urged Council to pass a very strong no shark fishing ordinance in Vero Beach. If the City passes this, it will have a great affect in our community. It will keep the tournaments out of the area and the kids can still go fishing.

Mr. Heady asked where the City limits end at the ocean line. Mr. Vitunac answered three miles. Mr. Heady asked if there was any reason why they could not adopt an ordinance that would prevent chumming for sharks within the City limits. Mr. Vitunac explained that the State may have preempted the whole field of salt water fishing. If that is the case, he would like to get with County, and if they are not interested, have the City sponsor a special act in front of the legislature to get rid of it. If they are allowed to do an ordinance, then they will do one very quickly. He said part of their research would be to see if the State has preempted the field. They have found two cities so far in the State of Florida who have outlawed chum fishing and did it by special act because they found out that they didn’t have the power to do it by Ordinance.

Mr. Heady commented that if they enact an Ordinance that says that there is no chumming within the City limits and put up signs on their beaches that say there are no chumming within their limits, they can enforce the Ordinance and just the fact that they enacted the ordinance will probably stop 99.9% of the chumming. He said as a legal matter whether or not they would prevail in Court on this issue is a different question. He felt that if they had an ordinance, it would stop chumming. There were shark fishermen speaking at tonight’s meeting who said that they do not do that.

Mayor Sawnick reminded Council that they will be discussing this later on in the meeting under New Business.

Mr. Benkert pointed out that Volusia County has an ordinance and their ordinance works well. The County Attorney did some research and came up with an ordinance that basically says that the City and the County do have the right to legislate against shark fishing coming within their limits (three miles).

Mr. Vitunac felt that they could make it clear to the State that this has nothing to do with fishing, just outlawing chumming.

Mr. Benkert told Mr. Vitunac that he can use the word shark and in fact what they really are looking for is no shark fishing. The reason they are looking for that is because it sends a very clear simple message. He said that Volusia does have that in their ordinance, which has not been challenged in Court and is effective.

Mr. Daige made sure that Council was provided with the Volusia County Ordinance. He asked the City Attorney to bring up these ideas again when they discuss this matter under New Business.

9B-1) Request for Funding from the Tree and Beautification Commission – This item us moved up on the agenda.

Mr. Karl Zimmermann, Chairman of the Tree and Beautification Commission, explained that the Commission would like permission to expend funds from their account in the amount of up to \$225.00 to purchase Hibiscus Plants. The Hibiscus Plants will be used for a beautification project to replace the old plants and soil in the already existing large planters in Downtown Vero Beach. He said that the Downtown Association will be responsible for maintaining the plants and the Commission would make some suggestions on the proper care for the plants. Mr. Zimmermann made it clear that this money does not come from tax revenue, it comes from funds for beautification.

Mayor Sawnick made a motion to approve the request to allow the Tree and Beautification Commission to expend funds from their account to purchase Hibiscus Plants. Mr. White seconded the motion and it passed unanimously.

D. Adoption of Consent Agenda

Mr. Daige requested that item 2D-3) be pulled from the consent agenda.

Mr. Heady requested that items 2D1), 3) and 4) be pulled from the consent agenda.

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

1. Regular City Council Minutes – June 1, 2010

Mr. Heady pulled this item off of the consent agenda. He had some corrections that he wanted made to the minutes. He will ask that the Clerk make those corrections and then put the minutes back on the next agenda for approval.

2. Regular City Council Minutes – May 18, 2010

This item was approved under the consent agenda.

2. Monthly Capital Projects Status Reports

Mr. Daige referred to the Capital Projects Report for the Airport and wanted to know from the City Attorney if by approving the second paragraph, obstruction removal, are they approving to remove structures and land clearing or are they just approving moving to the next phase of the project.

Mr. Vitunac explained they are not approving anything. They are just accepting the monthly status report. If any department needs approval on something then they would have to come before Council and ask for it.

Mr. Daige made a motion to approve the Monthly Capital Projects Report. Mr. Sawnick seconded the motion and it passed unanimously.

4. SR A1A Landscape Median – Recommendation of Acceptance and Final Payment

Mr. Monte Falls, Public Work's Director, reported that this issue is not with the landscaping dying it is with the lack of maintenance. He said what they have done to remedy the situation is they have a contract with H&D Construction to do the work and install the landscaping. During the contract term, this contractor filed for bankruptcy. The provision of the contract provided with the City is a surety bond of 125% of the contract amount to protect the City if the contractor failed to produce. They have contacted the surety company and are working with them. This item before them is for final payment and one of the contract requirements. They have advised the surety company informally about two weeks ago that the contractor was not performing the work and asked them how they wanted to remedy that. Mr. Falls said that in conformance with the contract, that last Friday he sent the surety company by certified mail a written notice that if they don't perform the duties as set out in the contract they (the City) have a right to do the work that still needs to be done and then bill them. In the letter they were given until next week to respond and get the work done and if that does not happen then they would have the work done starting June 21st (by City employees) and bill them the cost incurred by the City.

Mr. Heady commented that what this is asking for is a recommendation and acceptance of final payment when clearly this company has not completed the job. He would have a problem paying out, even to the surety company a final payment.

Mr. Falls explained that all the work set out in the contract has been performed except for the maintenance. He said that if the contractor does not perform the work, they always have the option to go back to the surety company and they are responsible to pay all outstanding debts. He said because the contractor has filed for bankruptcy, the surety company is involved for final payment.

Mr. Heady understood that the surety company was going to be held responsible to all debts of the contract, but the surety company does not want to be responsible right now for taking care of the maintenance problem.

Mr. Vitunac said that in this case there are two separate issues, the final payment owed and the maintenance. He said if they failed to pay the final payment that is due it would jeopardize the performance of the payment bond. Mr. Heady said that it is not due until the terms of the contract are met and at this point those terms are not being met. Mr. Vitunac explained that completion of the contract has to be done before the maintenance of what was completed can be undertaken. They were given a three day notice as of Friday and the City has not received a response back yet. They have a financially secured surety bond with a lot of money and this will be resolved.

Mr. Daige commented that right now this area is not being maintained at all. He asked why they should issue a final payment when the work is not done.

Mr. Falls stated that the location of this project is on State Road A1A between Causeway Boulevard and Riomar Drive. He said that final payment is made when the work is done. He said that there always is a one year maintenance period. The surety bond of 125% of the contract amount runs from the one year maintenance period. He wanted it made clear that all of the contract items have been completed and this money is owed for the work that was done.

Mayor Sawnick made a motion to accept the final payment. Mr. Abell seconded the motion.

Mr. Daige commented that what he just heard from Mr. Falls is that the work is completed, and the contractor is due final payment (bond company receives the money). He asked as this rolls forward the contractor goes out of business, so who pays for the maintenance.

Mr. Falls said that it will be paid by the surety bond. The surety bond gives the City the right to collect the money from the surety company. He wanted to make sure that in the motion they approve Change Order No. 2, for an increase of \$2,224.30, which results in a final contract amount of \$323,989.54; assess liquidated damages in the amount of \$18,903.28 (or a net amount of \$21,313.28 if Council approves the liquidated damages). Mayor Sawnick acknowledged that was part of his motion.

Mr. Heady did not mind taking the \$18,903.28 out because he believes that is due to the City, but he also thinks that what they bought is an acceptable product and right now it is not acceptable. Before he approves a final payment he wants to see that the property is acceptable, which it is not at this time.

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

At 7:30 p.m., Council took a five-minute break.

3. PUBLIC HEARINGS

- A) An Ordinance of the City of Vero Beach, Florida, requested by Vero Property Investment, LLC, to amend the Comprehensive Plan Future Land Use Map by changing the Land Use Designation from C, Commercial (up to 15 dwelling units/acre) to RH, Residential High (up to 15 dwelling units/acre) for the property generally located East of the Northeast corner of the Intersection of 21st Street (US Highway 1) and 10th Avenue, including all of the replat of Henning's Subdivision that lies North of 21st Street (US Highway 1) and a portion of Block 1, Citrus Park, containing 1.76 acres, more or less; and providing for an effective date.**

The public hearing for this Ordinance will be heard on July 20, 2010.

- B) An Ordinance of the City of Vero Beach, Florida, requested by Vero Property Investment, LLC, to amend the Official Zoning Map by changing the Zoning Designation from C-1, Highway Oriented Commercial to RM-10/12, Medium and High Density Multiple-Family Residential District for the property generally located East of the Northeast Corner of the Intersection of 21st Street (US Highway 1) and 10th Avenue, including all of the replat of Henning's Subdivision that lies North of 21st Street (US Highway 1) and a portion of Block 1, Citrus Park, containing 1.76 acres, more or less; and providing for an effective date.**

The public hearing for this Ordinance will be heard on July 20, 2010.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

- A) A Resolution authorizing the City of Vero Beach, Florida, to enter into a Joint Participation Agreement with the State of Florida, Department of Transportation, for Obstructions Removal (FDOT#420769-1-94-01)**

Mayor Sawnick read the Resolution by title only.

Mr. Eric Menger, Airport Director, reported that this project was originally approved by Council in the Airport's FY07 capital budget. It was proposed as one phase, but was broken into two phases due to reduced Federal and State funding. Phase 1 was the survey portion of this project and is now complete. Phase 2 will be the actual obstruction removal and/or mitigation of natural and man-made obstructions to runway approaches as requested by the Federal Aviation Administration. He recommended that Council authorize staff to proceed to Phase 2 of this project. The attached Joint Participation Agreement (JPA) is the first piece of the funding in the amount of \$25,000, which funds only 2.5% of the total estimated project cost. He said that another \$25,000 will come from the Airport, but no cost will be expended from the City's General Fund.

Mayor Sawnick made a motion to approve the Resolution and acceptance of the grant from FDOT. Mr. Abell seconded the motion.

Mr. White told Mr. Menger to work hard in getting Federal grant money to cover this project because this is a lot of money.

Mr. Menger said that 90% of the trees that they are looking at removing will be on Airport property. He will be talking to all of the property owners who will have to have trees removed from their property and there are about ten different property owners that will have to be notified. At this time he has not notified all of the property owners.

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

B) A Resolution of the City of Vero Beach, Florida, repealing the Rate Increases for Fiscal Year 2010, 2011, 2012, and 2013 Water and Sewer as described in Attachment “A” and “B” of Resolution 2009-31; providing for an effective date.

Mayor Sawnick read the Resolution by title only.

Mr. Rob Bolton, Water and Sewer Director, gave a Power Point presentation (please see attached) of his budget. He explained that they have passed rate increases that would have occurred over a five year period. Some Councilmembers were not happy about the rate increases and asked how they could be reduced or eliminated. He came before them with some capital projects that were not needed or were being put off, which has enabled him to lower the rates. He modified his capital plan and in modifying his capital plan and eliminating the proposed administration building the rates were able to be lowered. He said that the operating budget that he is showing them now is what he will be bringing before Council at their July budget hearings. He said that there are seven employees that will not be funded in this year’s budget and they also were able to cut expenditures. He said that at the end of next year there will be an additional \$817,000 in his budget. He then briefly went through the budget.

Mayor Sawnick made a motion to approve the Resolution. Mr. White seconded the motion.

Mr. Daige mentioned that he worked hard along with staff to get these rates down. He asked the City Manager by doing this, will it have any negative effects on their water and sewer system. Mr. Gabbard answered no and that they will have a cash surplus for the next five years.

Mayor Sawnick added that they are always looking at ways to reduce costs, but still be able to maintain equipment. He is satisfied as to what staff has done.

Mr. White commended Mr. Bolton on ways to cut the budget to meet demands from City Council who have requested this. They were trying to lower rates because of the economy and Mr. Bolton has met the challenge. He then read an email from Mr. Bolton concerning repealing the rate increases (on file in the City Clerk’s office).

Mr. Heady stated that this was the first time that he has seen any type of financial backup. He knows that they did spend a lot of money on consultants and the consultants brought the study forward and everyone agreed that raising rates was what they needed to do in order to make ends meet. He said that with the projected revenues given to them, those revenues include the continuation of Indian River Shores and the County as their customers. He said one of the things that they all need to recognize is that Indian River Shores and the County are going to leave. He said that they are going to leave for various reasons and one of the reasons is because they refuse to meet with them, which he thinks

is ridiculous. He asked Mr. Bolton if they borrowed money in March for the water and sewer.

Mr. Bolton answered no. He said that the last time they did any borrowing was for the SRF funds, which was around last August.

Mr. Heady explained that with borrowing this money there is debt to be repaid. He said if they continue with these decreases in the rates, that what they are going to do when Indian River County and Indian River Shores customers leave. He said that City residents are going to be left to pay a debt that has been incurred by the last Councils'. He said if you project out what these increases amount to and the decrease in revenues, he thinks they are in the \$13 million dollar range. If they keep these increases they can use this \$13 million dollars to decrease the debt so that when Indian River Shores and the County customers do leave, which they are going to do, the City taxpayers are not left with that debt. He noted that there have been no recommendations from the Utilities Commission or the Finance Commission on this. Mr. Heady continued by saying that the surpluses are down and there has been no consideration for the loss of customers. He mentioned cash reserves and said that they are not going to build up cash reserves. If they had the cash reserves available and the money in the bank he might think differently. He said at the end of five years, without the rate increase, they will probably be around fifty days in cash reserves. If they had to go to a bonding company they would be looking at 90 days cash reserves, so over the next five years they are not going to be able to accomplish what they need to accomplish in regards to cash reserves. The total amount of revenues that will be missing from the City is approximately \$13 million dollars and that is many years of surplus that they are throwing down the sewer. He understands there is an election coming up and he is the only one that doesn't have to run, but he also understands that financially there are responsible ways to act and eliminating this increase is financially irresponsible.

Mr. Abell wished Mr. Heady would catch up on his homework and meet with the City Manager and staff like everyone else does to find out what is going on.

Mr. Heady asked Mr. Abell to point out what he said that was incorrect.

Mr. Daige stated that it is their job to provide water and sewer to their customers and deliver a quality service, which they do. The City has to be competitive. He thinks the City Manager has met the challenge to not increase the rates and the Water & Sewer Director has made it clear where he was able to trim back his budget so these increases were not necessary. He was hoping that he had the votes from the rest of the Councilmembers to move this through.

Mr. White recalled that last year they started having discussions on all of these rate increases and he voted against the rate increase from the start. He noted that every Councilmember here is a City resident and has to pay electric, water, sewer, and garbage. He has talked to a lot of people who had concerns with them raising the electric and water and sewer rates so they did something about it. He asked Mr. Heady if he honestly

thought that the County would come in and change their lines to what is being run now. Does he think that the County is going to pay to put a pipe underneath the Indian River Lagoon in order to feed those lines? He said after the County puts in this new infrastructure to handle the County residents and Indian River Shores, the rates will have to go up. He said that the whole picture needs to be looked at before decisions are made. He didn't understand why they were even having this discussion.

Mayor Sawnick made a motion to call the question. Mr. Daige seconded the motion and it passed 4-1 with Mr. Heady voting no.

The Clerk polled the Council on the motion and it passed 4-1 with Mr. Daige voting yes, Mr. Heady no, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

C) A Resolution of the City of Vero Beach, Florida, authorizing the City Manager to execute a Time Extension to the Local Agency Program Agreement dated 5/02/2005 with the State of Florida Department of Transportation relative to the State Road A1A Landscaping Enhancement Project; and providing for an Effective Date.

Mayor Sawnick read the Resolution by title only.

Mr. Falls explained that this was a bookkeeping matter that needs to be taken care of. He hopes to be finished with all the paperwork on this project by June 30th, but in the event they are not finished they will have to do an extension to the LAP agreement and since the Council will not be meeting again until July 20th, this will give authorization for the City Manager to sign the agreement.

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

Mr. Heady asked if this covers the entire City limits.

Mr. Falls explained that this only covers the area that they discussed earlier under item 2D-4) on the agenda.

The motion 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

A) An Ordinance of the City of Vero Beach, Florida, amending Chapter 76, Historic Preservation, of the City of Vero Beach Code by revising or Creating New Definitions in Section 76.02; creating new Article VI, and Ad Valorem Tax Exemptions for Improvements to Historic Properties pursuant to Sections 196.1997 and 196.1998, Florida Statutes; providing for authorization; providing for eligibility and procedures for obtaining

exemptions; providing for revocation of Tax Exemption; 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, explained that this Ordinance will enable the City Council to authorize ad valorem tax exemptions for improvements to historic properties. The Historic Preservation Commission (HPC) and the Planning and Zoning Board (PZB), both have recommended approval. The Planning and Zoning Board recommended that the City pursue obtaining a Certified Local Government designation by the Florida Division of Historic Resources to be eligible for historic preservation grants. He said that this may be something for them to look at in the future. The Ordinance would have two specific types of exemptions. They would be for 100 percent of the assessed value of all improvements to eligible historic properties for a period of ten years and 100 percent of the assessed value, as improved, for ten years, where the assessed value of the improvements to a historic property open to the public is equal to at least 50 percent of the total assessed value of the property as improved. The Florida Statutes allow local governing bodies to grant a tax exemption of up to 100 percent and for a period of up to ten years. Only properties designated as an historic site pursuant to Chapter 76, Historic Preservation, would be eligible for the tax exemption. Only improvements made on or after the date of the Ordinance and improvements approved under a development permit and, if required, a certificate of appropriateness, are eligible for tax exemption. Mr. McGarry briefly went over the process for seeking a tax exemption. Subsequent to the approval of the development permit and issuance of "certificate of appropriateness" the applicant may then file a "pre-construction application" to the Planning and Development Department, which after reviewed for eligibility and completeness, is submitted to the Division of Historical Resources of the Florida Department of State. After the Division has completed its review and forwarded its comments and recommendations to the Planning Director, a public hearing before the City Council will be scheduled. He said City Council is not bound by the recommendations from the Division. If granted, the applicant and City Council will execute the Historic Preservation Property Tax Exemption Covenant, which will be filed with the deed for the property in the official records of Indian River County prior to the effective date of the exemption.

Mr. White asked if the County has a similar ordinance. Mr. McGarry explained that now that the City is working on this Ordinance, he will write a letter for the Mayor's signature asking the County to look into doing something similar to the City's Ordinance. Mr. White then wondered if they should put a minimum expenditure on this. Mr. McGarry did not see the need to do that. Mr. White said he was talking about a low threshold and not a high threshold. Mr. McGarry said that he would take a look at that and he will bring it up at the public hearing.

Mayor Sawnick made a motion to approve the Ordinance on first reading and set the public hearing for July 20, 2010. Mr. Daise seconded the motion.

Mayor Sawnick commented that if the Downtown Theater gets reopened it could possibly fall into this category.

Mr. Daige thought that this will be a big help for their community and he thanked Mr. McGarry for all of his hard work in developing this Ordinance.

Mr. Heady asked if there was a way to provide for a tax exemption for many more people than this would cover.

Mr. McGarry explained that this is only for historic properties. He said that the State Statutes govern what they are allowed and not allowed to do.

Mr. Heady commented that it seems to him that a tax exemption or improvements to property is something that would be desirable, but it would be much better if they provided for tax exemptions for anyone that wanted to go to any downtown property and renovate it, they should be given a tax exemption for ten years. He said let's see what we can do to really encourage some renovation downtown.

Mayor Sawnick agreed one-hundred percent with Mr. Heady and the comments he just made. He said it would be taken to the extreme, but he definitely will be looking into that and thanked him for his support.

The Clerk performed the roll call on the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

6. CITY CLERK'S MATTERS

A) Reappointments to Commission/Boards

Board of Building Appeals

Both Mr. Dean Luethje and Peter Robinson's terms on the Board of Building Appeals expire on June 15, 2010. Both members would like to be reappointed.

Mr. White made a motion to reappoint both Mr. Luethje and Mr. Robinson to the Board of Building Appeals. Mr. Abell seconded the motion and it passed unanimously.

Code Enforcement Board

There is a full member position open on the Code Enforcement Board.

Mr. White made a motion to appoint Mr. Rhett Wilson as the full member on the Code Enforcement Board. Mayor Sawnick seconded the motion and it passed unanimously.

Finance Commission

Mr. Tom Nason's term on the Finance Commission expired on May 5, 2010 and he would like to be reappointed.

Mr. White made a motion to reappoint Mr. Nason to the Finance Commission. Mr. Daige seconded the motion and it passed unanimously.

Mrs. Pilar Turner and Mr. Dan Snellings have resigned from the Finance Commission, which leaves a full and alternate position open.

Mr. White made a motion to nominate Mr. Bill Fish as the full member and Miss Laura Torres as the alternate member on the Finance Commission.

Mayor Sawnick disclosed that Miss Torres was his fiancé, but he has checked with the City Attorney who has told him that he still must vote on this issue.

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

Tree & Beautification Commission

Mr. Daniel Downey's term on the Tree & Beautification Commission expires on June 15, 2010. He would like to be reappointed to the Commission.

Mr. Abell made a motion to reappoint Mr. Downey to the Tree and Beautification Commission. Mr. White seconded the motion and it passed unanimously.

Utilities Commission

Both Mr. Don Hawkins and Mr. Jason Fykes terms on the Utilities Commission expire on June 15, 2010. Both members wish to be reappointed.

Mr. Abell made a motion to reappoint both Mr. Hawkins and Mr. Fykes to the Utilities Commission. Mr. White seconded the motion and it passed unanimously.

Veterans Memorial Island Sanctuary Advisory Committee

Mr. Joel Herman's term on the Veterans Memorial Island Sanctuary Advisory Committee expires on June 15, 2010. He would like to be reappointed to the Committee.

Mr. White made a motion to reappoint Mr. Joel Herman to the Veterans Memorial Island Sanctuary Advisory Committee. Mr. Daige seconded the motion and it passed unanimously.

Mr. White mentioned that they needed to look at a couple of other Commissions. One in particular was the Recreation Commission. It was noted that there are more County residents serving on that Commission than there are City residents. The Clerk was

instructed to try to get some applications for the Recreation Commission and then bring the item back to Council.

7. CITY MANAGER'S MATTERS

A) Award of RFP No. 170-10/PJW – Unit 5 Heat Recovery Steam Generator Superheater Retrofit

Mr. Jim Stevens, Power Resources Director, reported that there have been two studies done on the Unit 5 Heat Recovery Steam Generator Superheater Retrofit and both recommended replacement.

Mayor Sawnick made a motion to approve the Award of RFP No. 170/10/PJW, for Unit 5 Heat Recovery Steam Generator, to Vogt Power International. Mr. White seconded the motion.

Mr. Heady referred to Unit 5 and asked how it was being used. Mr. Stevens said it is used just about every day. Mr. Heady then asked what is the cost per KWh on that Unit is to produce electric. Mr. Stevens wanted to know if he was asking for the cost to produce or the cost to sell. Mr. Stevens said that the production cost for Unit 5 is right around \$68.00 per mega-watt hour. Mr. Heady asked what does it cost to purchase under their bulk power agreement. Mr. Stevens explained that it depends on the need and demand for the purchase of power. Mr. Stevens said that the cost for last month, under the OUC contract, was \$49.00. Mr. Heady asked if this Unit was not available, then they would have to purchase power. Mr. Stevens said to serve their load they would have to put on Unit 4, which is much more expensive to run. Mr. Heady then asked what if Unit 4 was not available. Mr. Stevens said that they would have to put Unit 3 on. Mr. Heady asked what if no Units at the Plant were available. Mr. Stevens said then they would have to purchase power from the open market. Mr. Heady said that there is no contract from OUC to buy bulk power. Mr. Stevens said yes, they could buy up to 95 mega-watts. Mr. Heady then asked if in the purchase agreement that anything over 95 mega watts would be spot market prices. Mr. Stevens explained that they also have St. Lucie Stanton 1 and 2 power resources who are part of the agreement and it comes to about 145 mega watts. He said anything over 145 mega watts would be spot power.

Mayor Sawnick summarized things and said that they need to do this in order to keep their electric rates low at this time and help the needs of their customers.

Mr. Heady asked if the reason for this was because there has been a melt down on some of the tubes.

Mr. Stevens explained that there has not been a meltdown. He said that a thermal study was done and it was determined that several clips have broken and the tubes have expanded.

Mr. Daige commented in doing these repairs and updates the way they are designing the tubing systems they will actually be better for the Units. Mr. Stevens agreed. Mr. Daige said with the other Units they have he knows that there is constant upkeep to keep the generators ready to go. He asked Mr. Stevens since he has been employed with the City, has there been at any time when all the machines were down at once. Mr. Stevens answered no.

Mayor Sawnick made a motion to call the question. Mr. White seconded the motion and it passed 4-1 with Mr. Heady voting no.

Mayor Sawnick called for a vote on the motion to approve this request and it passed 4-1 with Mr. Heady voting no.

B) Award of Bid No. 230/10/JV – 19th Street Culvert Replacement at 20th Avenue Lateral E Canal

Mr. Falls explained that this project is for replacement of the failing 96” corrugated metal pipe at 19th Street where it crosses the 20th Avenue canal with a new 96” reinforced concrete pipe. The project also includes adding/upgrading sidewalks, guardrails, curbing, drainage and turning radii.

Mr. Daige made a motion to approve the Award of Bid No. 230-10/JV, for a 19th Street Culvert Replacement at 20th Avenue Lateral E Canal to SPS Contracting, Inc. Mr. White seconded the motion and it passed unanimously.

Mr. Daige expressed that this replacement is desperately needed.

Mayor Sawnick noted that on the first page under the City Manager’s recommendation that it should be SPS instead of SPC.

C) Dixon Downey Donation for Riverside Park

Mr. Falls explained that Mr. Downey was able to see Little Flower completed before he passed away. They have completed their final account of the Little Flower project with a total of \$253,239.48 being expended. This leaves a balance of \$148,864.52 from the original donation. To honor the legacy of Mr. Downey, he is recommending that the remaining \$148,864.52 be set aside in a fund preserving the capital and only making the interest available for future improvements.

Mr. White made a motion that Council establish a fund for the remainder of the Dixon Downey donation for improvements to Riverside Park, in the amount of \$148,864.52, by preserving the capital and using only the interest for future improvements to Riverside Park. Mr. Abell seconded the motion.

Mayor Sawnick noted that this was in the original contract when Mr. Downey made the donation.

Mr. Abell wanted to verify that the interest would be enough to pay for maintenance for Little Flower. Mr. Falls said that his recommendation was that they don't use the interest for maintenance, but only use it for capital improvements. He said that the maintenance needed will be covered in his budget under grounds maintenance.

Mr. White recalled that the Pavilion located at Riverside Park was also donated by Mr. Downey. He said that he still would like to see something with Mr. Downey's name on it at the Pavilion. Mr. Falls said that he would work on that and bring something back to Council.

The motion to approve this request passed 5-0.

D) Discussion of CCNA Committee Meetings (Rob Bolton)

Mr. Bolton recalled back in October that the CCNA (Consultants Competitive Negotiation Act) met roughly ten times and solicited for services. He said that there were six members appointed to the Committee. He went over the names of who the members were. He said that through the process they narrowed down who they felt the consultant should be and came before Council. They selected the firm and negotiated a contract and the Committee voted 4-2 to approve the contract. The members on the Committee that served as County representatives did not approve the contract. As a result of the County representatives not approving the contract, the Committee met again and the Chairman of the Committee asked the County representatives to call the Consultant to become more familiar with the contract. The Committee made it clear to the County representatives that while speaking with the Consultant, they were not to try to change the contract. As a result, the Chairman of the Committee called the Consultant and the Consultant informed him that he did meet with the County representatives and they were trying to change the scope of the work. The Chairman then went before the Town of Indian River Shores and recommended to them that they pull out and then a couple days later the County also pulled out. The Committee met one last time to approve the minutes and at that meeting there were four members present and the two absent members were the County representatives. The City was the only two remaining members on the Committee.

Mr. Daige attended both of those meetings and concurred with what the Water and Sewer Director just informed Council.

E) Discussion of Procedures for Processing Change of Use Applications and New Local Business Tax Applications

Mr. Gabbard explained that the new procedures for processing the change of use applications and new local business tax applications were requested by Mr. Daige.

Mr. McGarry explained that what he is going to do is first make some changes to the business tax form. He said that when they do administrative change of uses, which are generally done by the Planning Director, they will be reviewed and sent to the City

Manager for his approval and with that approval there will be a three day effective review period. He will provide copies to the Council and they will have three days to review the forms before they become effective.

Mr. Daige said this is acceptable to him.

F) Discussion of Meeting with FP&L and Lakeland – John Lee

Mr. John Lee, Acting Electric Utilities Director, recalled that a letter was sent out to seven different utilities asking if they would be interested in some or all of the City's electric system. They received a response back from Florida Power and Light (FP&L) and they requested a great deal of information, which was sent to them. FP&L said that they would analyze that information and get back to the City once they have had a chance to look at all of the information. FP&L called back and invited some staff members and the Mayor to Juno Beach to talk with them. They met in FP&L's conference room at their facility. He said that there were five representatives from the City and five representatives from FP&L. He said what FP&L did was make clear that they went over all the documents sent to them, they went to the City website and looked at their budget and wanted to be sure that they understood how the City operates their system. They talked about this and everyone agreed that it was a common understanding and then the question came up as to what is the next step. FP&L said that what they needed to do was go back in their group and come up with what they thought was their next logical step and then come back before the City (City Council) and lay that step out. He said like most businesses they said that the month of June was going to be difficult because of vacations for families and those sorts of things, but they would get back to the City as soon as possible. Mr. Lee said that it was his understanding that FP&L has come back to them and they have set a July 20th date for FP&L to come before the Council and tell them what they believe the next logical step is. He said that was the essence of the meeting.

Mr. Lee informed Council that he attended another meeting in the City of Lakeland, Florida. The City Manager asked him if he would go over there with him and visit with Lakeland's Utility Committee. He said that Lakeland is similar to the City of Vero Beach because they have a large number of electric customers (a larger percentage of outside the City limit customers than they do inside the City limits). He explained that Lakeland takes a little different approach than they do. They have a Utilities Committee and all of the members of their City Commission meet with the Utilities Committee and discuss all their utility items. He said that at this meeting they were discussing their disaster preparedness plan and the cost of service study that could make a change in their rates. They have a twelve member Committee, which consists of the City Commission and six people nominated from their customer base. They have a representative from their residential customer base, from their commercial customer base, and their industrial customer base. He said that they watched an almost two hour meeting where they discussed these two items and they were discussed at length and there was a healthy debate at the end of the meeting and then they voted on how to proceed. Mr. Lee said it was an interesting process because it was all done together. Then afterwards the City

Commission meets formally to approve the items. He said only twice in history has there been a difference of opinion from the City Commission as opposed to the Utilities Committee. In both cases they went back to the Utilities Committee with new information and it was approved. Mr. Lee said that this was an interesting insight into how someone did it differently than what they did. After the meeting they were invited to meet with the Mayor, City Manager, and their Utilities Director to talk about some history and why they do it this way and to give them (Mr. Lee and Mr. Gabbard) some insight. This was a different model than he has ever seen, but he was very impressed with it. He brought back the presentations made at the meeting and copies will be provided to Council.

Mr. Gabbard added that the reason they went over to the City of Lakeland at this time was because of the actions in the Legislature this past session. He said that there were some initiatives by their local Delegation to place them under some regulations by the Public Service Commission. They were informed by FMPA and by a member of the Legislature that this is a model that might really serve the citizens well in Vero Beach because of the combined City Council and Utilities Commission. He said it was a very healthy process and they learned a great deal. He said that a House member in their District was instrumental in inviting them to come to Lakeland. He felt that if there is another Legislative initiative made that this may satisfy the Legislature that they are doing everything that they can because of this model that is working very well in Lakeland. He would give a copy of Lakeland's bylaws to the Council and they can discuss them at a future meeting.

Mr. Heady wondered where this item was on the agenda. He said that there was nothing on the agenda about this discussion. He appreciated the report, he was just trying to figure out where it was listed on the agenda. He said if they are going to discuss a particular item it would be easier to find if it was on the agenda.

Mr. White asked that the agenda be amended to include Lakeland.

Mr. Daige requested from the Clerk a tape of the last Lakeland Utilities Commission meeting and when they are scheduled to have their next meeting.

Mr. Gabbard then brought up the Resolution relating to Amtrak. He wanted to make sure that Council had a copy of it and if they have any questions to meet with him so they can be ready to vote on the Resolution at their Special Call meeting to be held on June 24th.

Mr. Heady requested that when the Clerk does the minutes that she could be fairly comprehensive of the report given by Mr. Lee on the FP&L meeting and the Lakeland meeting.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

- 1. Another reconsideration of date for presentation by Dr. Faherty and Glenn Heran – Requested by Brian Heady**
- 2. Still Waiting for written answers from City Manager – Requested by Brian Heady**
- 3. Missing report from City Manager requested by Councilmember Daige – Request from Brian Heady**
- 4. November Elections – Requested by Brian Heady**
- 5. Debate on Sale of Electric – Requested by Brian Heady**
- 6. 8/12/08 to be played and discussion to follow – Requested by Brian Heady**
- 7. Update on a Federal Lawsuit – Requested by Brian Heady**
- 8. Honest Services Fraud – Requested by Brian Heady**
- 9. Golf Course – Requested by Brian Heady**

These items were pulled off of the agenda by a 4-1 vote with Mr. Heady voting no.

10) City Manager to give update on Original Town – Requested by Ken Daige

Mr. Gabbard reported that there will be a meeting on Friday at the County Administration building to discuss the Go-Line buses. The Clerk noted that she would put a notice out for this meeting if there are two or more Councilmembers who would like to attend the meeting.

Mr. Falls wanted to bring up a couple of other items that disturbed Mrs. Hillman in her memo that was provided as backup material for this item. She had brought up speed limits and four way stops. He said that they will do the necessary traffic study and make an evaluation on the four way stops and get this information back to Council as soon as possible. In regards to the speed limits there have been requests from numerous neighborhoods around the City and the City has actually lowered the speed limit in one neighborhood already. He suggested instead of lowering the speed limit on a neighborhood by neighborhood basis, he thought it might make more sense to look at the neighborhoods Citywide and lower the speed limit on residential streets to 25 miles per hour. The current speed limit in residential areas is 30 miles per hour. If the Council is interested in doing this then he will look into it and bring something back to Council.

Mr. White made a motion to look into Citywide residential streets going down to 25 miles per hour. Mr. Abell seconded the motion.

Mayor Sawnick felt that it was good to lower the speed limits from a public safety standpoint.

Mr. Heady commented that if there is a problem with certain streets, why don't they correct the problem on these certain streets instead of changing the speed limit

throughout the whole City. He said clearly there are a lot of streets in the City where 30 miles per hour is an appropriate speed limit. He said that unless they are looking to increase the revenue in the Police Department (speeding tickets), it seems to him if there is a problem with a particular street then the problem should be solved on that street.

Mayor Sawnick requested that Mr. Falls bring something back to Council and they can address the issue at that time.

Mr. Abell asked Mr. Heady if he knew what the Police Department gets for revenue for a speeding ticket. Mr. Heady was sure that Mr. Abell was going to tell him. Mr. Abell said that it was \$2.00.

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

Mr. Daige asked the City Manager if Police presence in the neighborhood has been increased. Mr. Gabbard said that it has. Mr. Daige then asked about the situation with the port-o-lets. Mr. Gabbard said that the County is looking at having a portable bathroom unit installed in this area. He said that this is one of the items that they will be discussing on Friday. He will report back to Council at their next meeting.

B. New Business

1. Request for Funding from the Tree and Beautification Commission

This item was heard earlier in the meeting.

2. Utilize the social networking site Twitter to update public regarding events, meetings – Requested by Mayor Sawnick

Mayor Sawnick put this item on the agenda for informational purposes.

Mr. White mentioned that last year or the year before, the Florida League of Cities brought up that there were some cities using Facebook and most of the cities have stopped using it because there have been some Sunshine Law violations because of it. He said that they need to get more information on this before they start utilizing the networking site Twitter.

Mayor Sawnick asked Council to look at the backup material that he provided and he will bring it back in the future.

Mr. Daige requested the City Clerk to contact the Florida League of Cities and get their thoughts on this. He was interested in knowing what is happening in the State of Florida because of the Sunshine Law. He also wanted to know how many other cities in their State were using Twitter/Facebook.

Mr. Heady asked as a City Councilmember, if he uses those kinds of websites and post comments regarding City business, does that become public record. Mr. Vitunac answered yes. Mr. Heady continued by saying that he has in his hand 176 comments that were posted on an internet site and the newspaper reports that those posts are by Councilmember Abell. He passed the editorial and remarks down to the Clerk to include with the minutes (attached to the original minutes). The remarks made by VBC6, which according to the editorial is Mr. Abell. He said that this document is now a public record because it has been given to the Clerk. He wanted to make sure that he was correct that anything that you post like this in a public forum, if you're a City Councilmember, the posts made would become a public record.

Mr. Vitunac did not think that was correct. He said that whatever correspondence that Council has with their relatives or friends is not public record.

Mr. Heady said that he was not talking about friends. He was talking about on a networking site when you post comments about the City.

Mr. Vitunac challenged Mr. Heady to prove that Mr. Abell wrote any of those things. He said the fact that Mr. Heady submitted these private emails does not make them public record.

Mr. Heady said that they are not private; they were on a public website.

Mr. Daige mentioned the pile of emails that were just given to the City Clerk claiming that the Vice Mayor made the posts. He said that there is no evidence that states that and he would like to ask the City Attorney how they can look into this legally and find out who the actual posting person is because it is a blog name.

Mr. Vitunac did not know how you would find out who a person is on a private newspaper website. He reiterated that things submitted do not automatically become public record if they do not have anything to do with public business.

Mayor Sawnick reminded Council that the item under discussion is whether or not the City should use Twitter as a tool to inform the public.

Mr. Abell commented that you cannot believe everything that you read. He said that they should see shortly a retraction from Mr. Milt Benjamin (32963 Newspaper), that he made a serious mistake. Mr. Abell said that he does not know who this VBC6 is and he never has. He believes that anyone that uses the blog system is a coward.

Mr. Heady said that was fine. He was just pointing out some of the difficulties that could occur in using these kinds of sites for the City to put information on.

3. Request an area on City website so public can give input on upcoming budget – Requested by Mayor Sawnick

Mayor Sawnick made a motion to have an area on the website so people can post comments about the upcoming budget. This would include a person's name, address, and whether or not they are a City or County resident. Mr. Daige seconded the motion and it passed 4-1 with Mr. Heady voting no.

4. Discuss Shark Fishing Ordinance – Requested by Ken Daige

Mr. Daige would like Council to approve directing the City Attorney to work on a shark ordinance for them to review at their next meeting.

Mr. White commented that they have listened to both sides of the issue and he agrees that their main asset is their beaches and there should not be shark fishing within the City limits of Vero Beach. He agrees that the City should look into having a strict ordinance to protect their beaches.

Mr. Vitunac stated that he would bring an ordinance to City Council at their next meeting which will explain the difference between chumming and shark fishing. He said that they might also submit a special bill for the next Legislature.

Mr. White made a motion directing the City Attorney to bring back for discussion a draft ordinance that includes both shark fishing and chumming. Mr. Daige seconded the motion.

Mr. Abell asked when the shark fishing tournament takes place. He was told on July 1st. Mr. Abell said that they may need to do something in a hurry. He then went over the outcome of the County Commission meeting when this item was discussed. He had a thought to use their GIS Department to help with this. He asked if they could extend it within a mile of their public beaches and parks.

Mr. Vitunac commented that there are a lot of definitions which include what defines a park and what defines the beach. Also jurisdictions must be determined and what they are allowed to regulate. He will look at this comprehensively and speak to the County Attorney about trying to come up with some sort of ordinance that they could both use. He said it might be that the July tournament will be allowed, but they will solve this problem for the long run.

Mr. Abell thought that he (Mr. Vitunac) should see what can be done about the tournament.

Mayor Sawnick agreed that they needed to protect their City limits, even if the County does not want to do anything.

Mr. White read excerpts from the Volusia County Ordinance that was provided in their backup.

Mr. Vitunac thought that whatever restrictions that they place should apply to all their Parks and any beach jurisdiction within the City limits out for three miles.

The motion passed 5-0.

5. Water and Sewer Issues – Requested by Brian Heady

This item was removed from the agenda. The vote was 4-1 to remove the item from the agenda with Mr. Heady voting no.

6. Changing time of meeting – Item added on to the agenda by Brian Heady

Mr. Heady brought up the memo that he received from the Clerk with some future meeting dates and times. He referred to the City Council meeting on July 20th and asked who changed the time of the meeting.

Mayor Sawnick said that he changed the time of the meeting from 6:00 p.m. to 9:30 a.m.

Mr. Heady commented that the Mayor changed the time of the meeting without checking with any of the Councilmembers. He thought that if he (the Mayor) was going to change the time of a Council meeting that he should talk to the other Councilmembers about it.

Mr. White stated that he was polled about the meeting and understood that the reason for the change was because the Council had to be at City Hall the next day at 9:00 a.m. for budget hearings. Also, there is another meeting on that same day (July 20th) at 3:00 p.m., with FP&L. He said that was going to be a full week.

Mr. Heady agreed that it is going to be a full week whether they have the meeting at 9:30 a.m. or 6:00 p.m. If he (Mr. Heady) cannot attend the meeting at 9:30 a.m., then what they are doing is scheduling a regular City Council meeting at a time when a Councilmember has already scheduled other things.

Mayor Sawnick explained that the reason for changing the time of the meeting was to make sure that everyone was rested for their budget meetings starting the next day. He didn't have a problem if Council wanted to pick another time for the meeting.

Mr. Heady felt that they needed to have a majority vote to change the time of the meeting.

Mr. Vitunac commented that their Ordinance states that their Council meetings are generally held at 7:00 p.m. He said that the Council can set other times for their meetings.

Mr. Heady said the "Council" can set the times of the meeting, not the "Mayor." He did not want to change the time the meeting is set for, which is currently at 6:00 p.m. He wanted it to stay at that time unless the Council takes a vote and changes it. He said that

if they are going to change it to 9:30 a.m., then they are changing the time to when one Councilmember has previously scheduled something else. He said that is why they schedule meetings in advance.

Mr. Abell felt that the meeting was a month away so Mr. Heady should be able to work this out.

Mayor Sawnick would like to have a full Council present for the meeting.

Mr. White made a motion that they meet at 9:30 a.m. for the July 20th City Council meeting. This would be changing the time from 6:00 p.m. to 9:30 a.m. The reason for the change is because they have a meeting with FP&L at 3:00 p.m. on that same day and then they have to be at City Hall for the next three days for budget hearings. Mr. Abell seconded the motion. The motion passed 4-1 with Mr. Heady voting no.

Mr. Heady brought up the Special Call meeting scheduled for August 23rd, which is a date that he was already committed. He can be available after 4:00 p.m. on that date or some alternate dates would be August 16th, 17th, 18th, 26th or 27th. The Clerk will poll the Council in changing the date of the Special Call meeting.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

A. Mayor Kevin Sawnick's Matters

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

Mayor Sawnick reported that he attended the meeting held with FP&L, Coffee with the Council that was held at Mulligans restaurant and on June 24th Council will be holding their Quarterly budget meeting. He said that the next Mayor's beach cleanup will be on June 27th. He then asked Council if they received the memo that he provided comparing Vero Beach with surrounding counties for water services. Council said that they received the information.

Mayor Sawnick commented to Mr. Heady that he mentioned Indian River County and Indian River Shores leaving Vero Beach utilities. He asked Mr. Heady to forward to Council any information that he has on that issue. He also mentioned that Mr. Heady talked about tax exemptions for downtown businesses. He said that is something that he would like to see and is glad that he has support on the Council for it. He would do some further research on the matter. He appreciated that Mr. Heady brought it up.

- 3. Comments**

B. Vice Mayor Sabin Abell's Matters

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

Mr. Abell attended the first meeting concerning Amtrak, Coffee with the Council, and met with the Chairman of the Airport Commission.

3. Comments

C. Councilmember Tom White's Matters

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

Mr. White reported on the Treasure Coast Regional League of Cities meeting and the Municipal Insurance Trust meeting that he attended.

3. Comments

D. Councilmember Brian Heady's Matters

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

1. FPL, Lakeland, and public business in the public eye

Mr. Lee has given a report on the FP&L meeting and the Lakeland meeting, which is covered in the minutes under item 7-F.

2. Liars, Cheats and Thieves

3. Bad Information=bad decisions

Mr. Heady commented that this is something that he has been saying over and over. He said if they receive bad information, little information, or no information that the only thing they are going to do is make bad decisions.

4. Correspondence

E. Councilmember Ken Daige's Matters

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

Mr. Daige read a prepared statement outlining his Committee Reports (please see attached).

3. Comments

1. Meeting with FP&L – June 3, 2010

This item was heard earlier in the meeting.

11. ADJOURNMENT

Mayor Sawnick made a motion to adjourn tonight's meeting at 9:35 p.m. Mr. White seconded the motion and it passed unanimously.

/tv

6-A)

MEMORANDUM

TO: Mayor Kevin Sawnick and
City Councilmembers

FROM: Tammy K. Vock, MMC *Tammy*
City Clerk

DATE: June 9, 2010

SUBJECT: Reappointments to Commission/Boards

Board of Building Appeals

Both Mr. Dean Luethje and Peter Robinson's terms on the Board of Building Appeals expire on June 15, 2010. Both members would like to be reappointed.

Applications on File:

None

Code Enforcement Board

There is an alternate position open on the Code Enforcement Board.

Applications on File:

Rhett Wilson
Ulysses G. Moore

Finance Commission

Mr. Tom Nason's term on the Finance Commission expired on May 5, 2010. He would like to be reappointed to the Finance Commission.

Mrs. Pilar Turner has resigned from the Finance Commission which leaves an alternate position open.

Applications on File:

Laura Torres
Peter Gorry
Rhett Wilson
Bill Fish

Tree & Beautification Commission

Mr. Daniel Downey's term on the Tree & Beautification Commission expires on June 15, 2010. He would like to be reappointed to the Commission.

Applications on File:

Ulysses Moore

Utilities Commission

Both Mr. Don Hawkins and Mr. Jason Fykes terms on the Utilities Commission expire on June 15, 2010. Both members wish to be reappointed.

Applications on File:

Peter Gorry

Veterans Memorial Island Sanctuary Advisory Committee

Mr. Joel Herman's term on the Veterans Memorial Island Sanctuary Advisory Committee expires on June 15, 2010. He would like to be reappointed to the Committee.

Applications on File:

None

VERO BEACH TREE AND BEAUTIFICATION COMMISSION

The Vero Beach Tree and Beautification Commission held 42 meetings from 2006 through May, 2010.

Mr. Dan Downey had nine (9) excused absences.

VETERANS MEMORIAL ISLAND SANCTUARY ADVISORY COMMITTEE

The Veterans Memorial Island Sanctuary Advisory Committee held 47 meetings from 2006 through May, 2010.

Mr. Joe Herman had seven (7) excused absences.

UTILITIES COMMISSION

The Utilities Commission held 39 meetings from 2006 through May, 2010.

Mr. Don Hawkins had one (1) excused absence and one (1) unexcused absence.

Mr. Jason Fykes had six (6) excused absences and two (2) unexcused absences.

FINANCE COMMISSION

The Finance Commission held 13 meetings from 2006 through May, 2010.

Mr. Tom Nason had three (3) excused absences and two (2) unexcused absences.

Mrs. Pilar Turner had five (5) excused absences.

Missed Meetings

5/21/2010

ID	Board/Commission	Name	Missed Meeting Dates	Excused	Unexcused
415	Finance/Auditor	Tom Nason	5/29/2008	X	
714	Finance	Tom Nason	6/17/2009		X
613	Finance	Tom Nason	6/17/2009		X
709	Finance	Tom Nason	7/14/2009	X	
621	Finance	Tom Nason	7/14/2009	X	

Missed Meetings

5/20/2010

ID	Board/Commission	Name	Missed Meeting Dates	Excused	Unexcused
417	Finance/Auditor	Pilar Turner	5/29/2008	X	
430	Finance/Auditor	Pilar Turner	6/17/2008	X	
560	Finance	Pilar Turner	3/27/2009	X	
713	Finance	Pilar Turner	6/17/2009	X	
614	Finance	Pilar Turner	6/17/2009	X	

ID	Board	Name	Date Appointed	Expired	Date Resigned	Membership
16	Building Appeal	Peter Robinson	5/16/1978	6/15/2010		
15	Building Appeal	Dean Luethje	5/16/1978	6/15/2010		
65	Tree	Daniel Downey, III	10/4/2005	6/15/2010		
74	Utilities	Jason Fykes	5/1/2007	6/15/2010		Moved to Full Position on 2/16/10
72	Utilities	Don Hawkins	7/18/2006	6/15/2010		
106	VMI	Joel Herman	9/16/2003	6/15/2010		

Missed Meetings

5/20/2010

ID	Board/Commission	Name	Missed Meeting Dates	Excused	Unexcused
72	Tree	Dan Downey	11/16/2006	X	
70	Tree	Dan Downey	12/21/2006	X	
320	Tree	Daniel Downey	3/5/2007	X	
14	Tree	Daniel Downey	3/15/2007	X	
361	Tree	Dan Downey	12/12/2007	X	
407	Tree	Dan Downey	5/15/2008	X	
546	Tree	Dan Downey	2/19/2009	X	
619	Tree	Dan Downey	7/16/2009	X	
759	Tree	Daniel Downey	3/18/2010	X	

Missed Meetings

5/20/2010

ID	Board/Commission	Name	Missed Meeting Dates	Excused	Unexcused
337	Utilities	Jason Fykes	8/14/2007	X	
389	Utilities	Jason Fykes	2/12/2008	X	
403	Utilities	Jason Fykes	4/8/2008	X	
401	Utilities	Jason Fykes	5/13/2008		X
501	Utilities	Jason Fykes	12/9/2008	X	
615	Utilities	Jason Fykes	6/17/2009	X	
678	Utilities	Jason Fykes	10/9/2009	X	
739	Utilities	Jason Fykes	1/19/2010		X

Missed Meetings

5/20/2010

ID	Board/Commission	Name	Missed Meeting Dates	Excused	Unexcused
604	Utilities	Don Hawkins	5/12/2009		X
737	Utilities	Don Hawkins	1/19/2010	X	

Missed Meetings

5/20/2010

ID	Board/Commission	Name	Missed Meeting Dates	Excused	Unexcused
349	VMI	Joel Herman	10/3/2007	X	
399	VMI	Joel Herman	5/7/2008	X	
485	VMI	Joel Herman	10/1/2008	X	
603	VMI	Joel Herman	5/6/2009	X	
571	VMI	Joel Herman	5/6/2009	X	
679	VMI	Joel Herman	10/7/2009	X	
782	VMI	Joel Herman	5/5/2010	X	

Date Appointed: _____

Date Interviewed: _____

**CITY OF VERO BEACH
APPLICATION FOR COMMISSION/BOARD APPOINTMENT**

DATE: 10 May '10

NAME: William E. Fish

ADDRESS: 2236 Buena Vista Blvd.

Zip Code 32960

TELEPHONE: 562-3608
(Home)

299-4005
(Business) Cell



CITY RESIDENT:

COUNTY RESIDENT: _____

(All applicants must have lived in Indian River County for at least one "1" year)

No person serving as a Commission or Board member may simultaneously serve as an Advisory Board member, or Elected Official, of any other local government, unless approved by Council.

HOW LONG HAVE YOU BEEN A RESIDENT OF THE CITY/COUNTY? 10+ yrs

ARE YOU A FULL TIME RESIDENT OR PART TIME? FT

PLEASE LIST RELATIVES PRESENTLY EMPLOYED BY THE CITY:

None

PLEASE GIVE A BRIEF STATEMENT AS TO WHY YOU WISH TO SERVE ON A PARTICULAR COMMISSION/BOARD.

Having been on Council I have recent City Financial experience. I have served the city previously on Board of Adjustment. I wish to participate in the operation of the City.

PLEASE LIST EDUCATION EXPERIENCE, INCLUDING HIGH SCHOOL AND COLLEGE (if applicable).

BS - Kent State U.

MBA - University of New Hampshire

PLEASE LIST CURRENT EMPLOYER OR BUSINESS. IF RETIRED, PLEASE LIST ANY BUSINESS EXPERIENCE THAT MAY BE APPLICABLE.

Retired Industrial Engineer - major projects have to be financially justified and the project had to provide this and design the project - My last position doing this was with Textron 96-98 Two years on Florida League of Cities Finance + Taxal committee

PLEASE LIST ANY LICENSES YOU PRESENTLY HOLD:

Substitute Teaching License in both St Lucie + Indian River School Districts

PLEASE LIST ANY ORGANIZATIONS OF WHICH YOU ARE CURRENTLY A MEMBER:

Vero Beach Lions Club

PLEASE LIST ANY OTHER BOARDS THAT YOU CURRENTLY SIT ON:

PLEASE LIST ANY REFERENCES:

Tom White, Sabe A bell

PLEASE PUT A CHECK NEXT TO THE COMMISSION/BOARD THAT YOU WOULD LIKE TO SERVE ON. IF YOU ARE INTERESTED IN MORE THAN ONE COMMISSION/BOARD PLEASE NUMBER YOUR CHOICES IN ORDER OF PREFERENCE.

- AIRPORT COMMISSION _____
- ARCHITECTURAL REVIEW COMMISSION _____
- BOARD OF ADJUSTMENT * _____
- BOARD OF BUILDING APPEALS * _____
- CODE ENFORCEMENT BOARD * _____
- FINANCE COMMISSION * _____ ✓
- FIRE PENSION BOARD * _____
- MARINE COMMISSION _____
- PLANNING & ZONING BOARD * _____
- POLICE PENSION BOARD * _____
- RECREATION COMMISSION _____
- TREE & BEAUTIFICATION COMMISSION _____
- UTILITIES COMMISSION _____
- VETERANS MEMORIAL ISLAND SANCTUARY ADVISORY COMMITTEE _____

(please list name of Committee)

To the best of my knowledge, everything that I have stated on this application is true. I realize that false or dishonest answers to any questions may be cause for immediate removal.

Applicants Signature:
William E. Fisk

Please return completed application to the City Clerk's office at P.O. Box 1389, Vero Beach, Florida 32961-1389.

Note: Applications will be kept on file for 24 months from the date that they are submitted. The applicant is responsible for submitting an updated application to the City Clerk's office if still interested in serving on a Commission or Board after that period of time.

Members of Boards and Commissions with an asterisk next to them are required to fill out a Financial Disclosure Form.

Date Appointed: _____

Date Interviewed: Jan 20 2009



**CITY OF VERO BEACH
APPLICATION FOR COMMISSION/BOARD APPOINTMENT**

DATE: 10-5-09

NAME: LAURA TORRES

ADDRESS: 2146 20th Ave

VERO Beach, FL Zip Code 32960

EMAIL: LAURADTORRES@Gmail.com

TELEPHONE: 352-514-7977
(Home) (Business)

CITY RESIDENT: X COUNTY RESIDENT _____

(All applicants must have lived in Indian River County for at least one (1) year)

No person serving as a Commission or Board member may simultaneously serve as an Advisory Board member, or Elected Official, of any other local government, unless approved by Council.

HOW LONG HAVE YOU BEEN A RESIDENT OF THE CITY/COUNTY? 17 years

ARE YOU A FULL TIME RESIDENT OR PART TIME? Full

PLEASE LIST RELATIVES PRESENTLY EMPLOYED BY THE CITY:

PLEASE GIVE A BRIEF STATEMENT AS TO WHY YOU WISH TO SERVE ON A PARTICULAR COMMISSION/BOARD.

So I can use my experience in Business and my Background in math to help serve the city of VERO Beach.

PLEASE LIST EDUCATION EXPERIENCE, INCLUDING HIGH SCHOOL AND COLLEGE (if applicable).

VERO Beach H.S. 2000, University of Florida B.S
Mathematics 2005, University of Florida M.S.
Outreach Engineering Management

PLEASE LIST CURRENT EMPLOYER OR BUSINESS. IF RETIRED, PLEASE LIST ANY BUSINESS EXPERIENCE THAT MAY BE APPLICABLE.

LIBERTY medical supply/medco Health Solutions
Business systems Analyst

PLEASE LIST ANY LICENSES YOU PRESENTLY HOLD:

PLEASE LIST ANY ORGANIZATIONS OF WHICH YOU ARE CURRENTLY A MEMBER:

JUNIOR League of INDIAN RIVER COUNTY

PLEASE LIST ANY OTHER BOARDS THAT YOU CURRENTLY SIT ON:

None

PLEASE LIST ANY REFERENCES:

Ken SAWNICK - VERO BEACH CITY COUNCIL
Charles VITUNAC - VERO BEACH CITY ATTORNEY

PLEASE PUT A CHECK NEXT TO THE COMMISSION/BOARD THAT YOU WOULD LIKE TO SERVE ON. IF YOU ARE INTERESTED IN MORE THAN ONE COMMISSION/BOARD PLEASE NUMBER YOUR CHOICES IN ORDER OF PREFERENCE.

- AIRPORT COMMISSION _____
- BOARD OF ADJUSTMENT _____
- BOARD OF BUILDING APPEALS _____
- CODE ENFORCEMENT BOARD _____
- FINANCE COMMISSION X
- FIRE PENSION BOARD _____
- MARINE COMMISSION _____
- PLANNING & ZONING BOARD _____
- POLICE PENSION BOARD _____
- RECREATION COMMISSION _____
- TREE and BEAUTIFICATION COMMISSION _____
- UTILITIES COMMISSION _____
- _____ _____
(please list name of Committee)

To the best of my knowledge, everything that I have stated on this application is true. I realize that false or dishonest answers to any questions may be cause for immediate removal.

Applicant's Signature

James Ferris 10/5/9

Please return completed application to the City Clerk's office at P.O. Box 1389, Vero Beach, Florida 32961-1389.

NOTE: Applications will be kept on file for 24 months from the date that they are submitted. The applicant is responsible for submitting an updated application to the City Clerk's office if still interested in serving on a Commission or Board after that period of time.

Date Appointed: _____

Date Interviewed: Jan 2010 ▲



**CITY OF VERO BEACH
APPLICATION FOR COMMISSION/BOARD APPOINTMENT**

DATE: _____

NAME: PETER E. GORRY

ADDRESS: 10 SEA GULL AVE

VERO BEACH Zip Code 32960

TELEPHONE: 772-567-8830 OEK 908-208-3010
(Home) (Business)

CITY RESIDENT: ✓ COUNTY RESIDENT: _____

(All applicants must have lived in Indian River County for at least one "1" year)

No person serving as a Commission or Board member may simultaneously serve as an Advisory Board member, or Elected Official, of any other local government, unless approved by Council.

HOW LONG HAVE YOU BEEN A RESIDENT OF THE CITY/COUNTY? 13 mos

ARE YOU A FULL TIME RESIDENT OR PART TIME? FULL

PLEASE LIST RELATIVES PRESENTLY EMPLOYED BY THE CITY:

NA

PLEASE GIVE A BRIEF STATEMENT AS TO WHY YOU WISH TO SERVE ON A PARTICULAR COMMISSION/BOARD.

CONCERNED REGARDING CITY OF VERO BEACH FINANCES
(GENERAL & ENTERPRISE FUNDS)

PLEASE LIST EDUCATION EXPERIENCE, INCLUDING HIGH SCHOOL AND COLLEGE (if applicable).

ST. JOHNS (WASH DC); RENSSLAER POLYTECHNIC INST (TRIA, NY);
PACE UNIVERSITY (NY) MB; CAMBRIDGE UNIV (UK) INTERNATIONAL
LABOR SYMPOSIUM; INTERNATIONAL LAW ANNUAL CONFERENCE (LONDON);
BROOKINGS INSTITUTE (WASH DC) POLITICAL SCIENCE / LABOR COURSES

PLEASE LIST CURRENT EMPLOYER OR BUSINESS. IF RETIRED, PLEASE LIST ANY BUSINESS EXPERIENCE THAT MAY BE APPLICABLE.

DISTRICT MANAGER PLANT OPERATIONS; HUMAN RESOURCES/BUDGET
DIVISION MANAGER AT&T; LABOR RELATIONS DIRECTOR, AT&T;
SPECIAL PROJECTS DIRECTOR, MERGERS & ACQUISITIONS, AT&T
SHAPE CONSULTANTS (OWNER) HUMAN RESOURCES ANALYSIS

PLEASE LIST ANY LICENSES YOU PRESENTLY HOLD:

PLEASE LIST ANY ORGANIZATIONS OF WHICH YOU ARE CURRENTLY A MEMBER:

PLEASE LIST ANY OTHER BOARDS THAT YOU CURRENTLY SIT ON:

MEMBER, BOARD OF TRUSTEES, CENTENARY COLLEGE
OF NEW JERSEY

PLEASE LIST ANY REFERENCES:

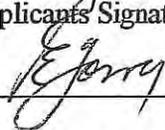
(908-8521400) DR BARBARA KAYNE LEWTHWAITE, PRES CENTENARY COLLEGE
DONALD SMITH, VP HUMAN RESOURCES, ALASKA RR
DONSMITH@WORLDNET.ATT.NET
CHARLES WILSON, VA CITY COUNCILMAN (321-3297)
ORVAL SHELTON (CONSTRUCTION) 567-8830

PLEASE PUT A CHECK NEXT TO THE COMMISSION/BOARD THAT YOU WOULD LIKE TO SERVE ON. IF YOU ARE INTERESTED IN MORE THAN ONE COMMISSION/BOARD PLEASE NUMBER YOUR CHOICES IN ORDER OF PREFERENCE.

- AIRPORT COMMISSION _____
- ARCHITECTURAL REVIEW COMMISSION _____
- BOARD OF ADJUSTMENT * _____
- BOARD OF BUILDING APPEALS * _____
- CODE ENFORCEMENT BOARD * _____
- FINANCE COMMISSION * _____ 1
- FIRE PENSION BOARD * _____
- MARINE COMMISSION _____
- PLANNING & ZONING BOARD * _____
- POLICE PENSION BOARD * _____
- RECREATION COMMISSION _____
- TREE & BEAUTIFICATION COMMISSION _____
- UTILITIES COMMISSION _____ 2
- VETERANS MEMORIAL ISLAND SANCTUARY ADVISORY COMMITTEE _____
- _____

(please list name of Committee)

To the best of my knowledge, everything that I have stated on this application is true. I realize that false or dishonest answers to any questions may be cause for immediate removal.

Applicants Signature:


Please return completed application to the City Clerk's office at P.O. Box 1389, Vero Beach, Florida 32961-1389.

Note: Applications will be kept on file for 24 months from the date that they are submitted. The applicant is responsible for submitting an updated application to the City Clerk's office if still interested in serving on a Commission or Board after that period of time.

Members of Boards and Commissions with an asterisk next to them are required to fill out a Financial Disclosure Form.

Date Appointed: _____

Date Interviewed: Jan 2010

**CITY OF VERO BEACH
APPLICATION FOR COMMISSION/BOARD APPOINTMENT**

DATE: 10/14/09

NAME: ULYSSES G. MOORE

ADDRESS: 829 22ND PLACE

VERO BEACH Zip Code 32960

EMAIL: 1939@Comcast.net

TELEPHONE: 305-240-0256
(Home) (Business)

CITY RESIDENT: Yes COUNTY RESIDENT ~~Yes~~

(All applicants must have lived in Indian River County for at least one (1) year)

No person serving as a Commission or Board member may simultaneously serve as an Advisory Board member, or Elected Official, of any other local government, unless approved by Council.

HOW LONG HAVE YOU BEEN A RESIDENT OF THE CITY COUNTY? 2 yrs

ARE YOU A FULL TIME RESIDENT OR PART TIME? FULL

PLEASE LIST RELATIVES PRESENTLY EMPLOYED BY THE CITY:

NONE

PLEASE GIVE A BRIEF STATEMENT AS TO WHY YOU WISH TO SERVE ON A PARTICULAR COMMISSION/BOARD.

Zoning & Planning I have been a masonry contractor for 25 yrs. Saw from Alex Gray and saw a zoning change in so zoning difficult area good & had 45 yrs

PLEASE LIST EDUCATION EXPERIENCE, INCLUDING HIGH SCHOOL AND COLLEGE (if applicable).

High school N.C.C.E.R. MASONRY teacher, D.O.C teacher 2 yrs 25 MASONRY CONTRACTOR

PLEASE LIST CURRENT EMPLOYER OR BUSINESS. IF RETIRED, PLEASE LIST ANY BUSINESS EXPERIENCE THAT MAY BE APPLICABLE.

25 yrs masonry contractor

(2 yr Indian River Correctional Institution)
CURRENT

PLEASE LIST ANY LICENSES YOU PRESENTLY HOLD:

Masonry, Key Largo, Manatee County

PLEASE LIST ANY ORGANIZATIONS OF WHICH YOU ARE CURRENTLY A MEMBER:

N.C.C.E.R

PLEASE LIST ANY OTHER BOARDS THAT YOU CURRENTLY SIT ON:

PLEASE LIST ANY REFERENCES:

Kevin Jawnick
Ed Merlett, WARDEN 778-2795

PLEASE PUT A CHECK NEXT TO THE COMMISSION/BOARD THAT YOU WOULD LIKE TO SERVE ON. IF YOU ARE INTERESTED IN MORE THAN ONE COMMISSION/BOARD PLEASE NUMBER YOUR CHOICES IN ORDER OF PREFERENCE.

- AIRPORT COMMISSION _____
- BOARD OF ADJUSTMENT _____
- BOARD OF BUILDING APPEALS _____
- CODE ENFORCEMENT BOARD ② _____
- FINANCE COMMISSION _____
- FIRE PENSION BOARD _____
- MARINE COMMISSION _____
- PLANNING & ZONING BOARD ① _____
- POLICE PENSION BOARD _____
- RECREATION COMMISSION _____
- TREE and BEAUTIFICATION COMMISSION ③ _____
- UTILITIES COMMISSION _____

(please list name of Committee)

To the best of my knowledge, everything that I have stated on this application is true. I realize that false or dishonest answers to any questions may be cause for immediate removal.

Applicant's Signature



Please return completed application to the City Clerk's office at P.O. Box 1389, Vero Beach, Florida 32961-1389.

NOTE: Applications will be kept on file for 24 months from the date that they are submitted. The applicant is responsible for submitting an updated application to the City Clerk's office if still interested in serving on a Commission or Board after that period of time.

Date Appointed: _____

Date Interviewed: Jan 2010

**CITY OF VERO BEACH
APPLICATION FOR COMMISSION/BOARD APPOINTMENT**

DATE: 7/29/2009

NAME: Rhett Wilson

ADDRESS: 1090 Windsong Way

Vero Beach FL Zip Code 32963

EMAIL: rwilson1964@msn.com

TELEPHONE: 772-539-1853
(Home) (Business)

CITY RESIDENT: yes COUNTY RESIDENT yes

(All applicants must have lived in Indian River County for at least one (1) year)

No person serving as a Commission or Board member may simultaneously serve as an Advisory Board member, or Elected Official, of any other local government, unless approved by Council.

HOW LONG HAVE YOU BEEN A RESIDENT OF THE CITY/COUNTY? 4 yrs

ARE YOU A FULL TIME RESIDENT OR PART TIME? Yes

PLEASE LIST RELATIVES PRESENTLY EMPLOYED BY THE CITY:

none

PLEASE GIVE A BRIEF STATEMENT AS TO WHY YOU WISH TO SERVE ON A PARTICULAR COMMISSION/BOARD.

I wish to become active in a city I care for and wish it to remain vibrant but with a small town appeal. Having lived in Coral Springs I am aware of how we should not grow.

PLEASE LIST EDUCATION EXPERIENCE, INCLUDING HIGH SCHOOL AND COLLEGE (if applicable).

Attended Northeastern University in Boston receiving a BS in Operations Management Summa Cum laude, then attended New England



School of Law.

PLEASE LIST CURRENT EMPLOYER OR BUSINESS. IF RETIRED, PLEASE LIST ANY BUSINESS EXPERIENCE THAT MAY BE APPLICABLE.

Semi retired to Vero Beach from Boston, Currently managing
and selling commercial insurance for the Tom Collins
Insurance Agency

PLEASE LIST ANY LICENSES YOU PRESENTLY HOLD:

2-20 Insurance Agent

PLEASE LIST ANY ORGANIZATIONS OF WHICH YOU ARE CURRENTLY A MEMBER:

USAA for ex-military

PLEASE LIST ANY OTHER BOARDS THAT YOU CURRENTLY SIT ON:

none

PLEASE LIST ANY REFERENCES:

Provided upon request

PLEASE PUT A CHECK NEXT TO THE COMMISSION/BOARD THAT YOU WOULD LIKE TO SERVE ON. IF YOU ARE INTERESTED IN MORE THAN ONE COMMISSION/BOARD PLEASE NUMBER YOUR CHOICES IN ORDER OF PREFERENCE.

- AIRPORT COMMISSION _____
- BOARD OF ADJUSTMENT _____
- BOARD OF BUILDING APPEALS 4
- CODE ENFORCEMENT BOARD 3
- FINANCE COMMISSION 2
- FIRE PENSION BOARD _____
- MARINE COMMISSION _____
- PLANNING & ZONING BOARD 1 ✓
- POLICE PENSION BOARD _____
- RECREATION COMMISSION _____
- TREE and BEAUTIFICATION COMMISSION _____
- UTILITIES COMMISSION _____

(please list name of Committee)

To the best of my knowledge, everything that I have stated on this application is true. I realize that false or dishonest answers to any questions may be cause for immediate removal.

Applicant's Signature



Please return completed application to the City Clerk's office at P.O. Box 1389, Vero Beach, Florida 32961-1389.

NOTE: Applications will be kept on file for 24 months from the date that they are submitted. The applicant is responsible for submitting an updated application to the City Clerk's office if still interested in serving on a Commission or Board after that period of time.

COUNCIL AGENDA REPORT
MEETING OF JUNE 15, 2010

TO: The Honorable Mayor and Members of the City Council

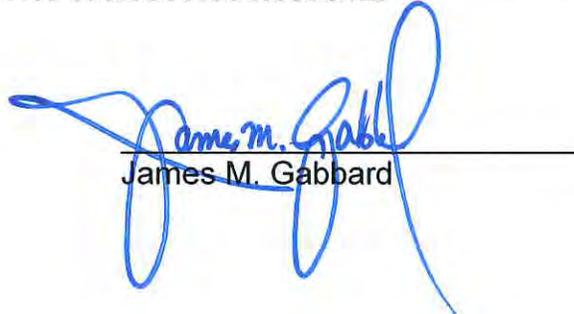
FROM: James M. Gabbard, City Manager

DATE: June 3, 2010

SUBJECT: **AWARD OF RFP NO. 170-10/PJW – UNIT 5 HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT**

Attached is a memorandum from Jim Stevens, dated June 3, 2010, which provides information and a recommendation on the above-referenced subject.

It is the recommendation of the City Manager's Office that Council approve the Award of RFP No. 170-10/PJW, for Unit 5 Heat Recovery Steam Generator, to Vogt Power International, in the amount of \$1,281,540.00. Funding will be from Account No. 403.5000.531.697312.



James M. Gabbard

:jav
Attachments

xc: Jim Stevens
John Lee
John O'Brien
Stephen J. Maillet

MEMO
VERO BEACH MUNICIPAL POWER PLANT



DATE: June 3, 2010
TO: James Gabbard
City Manager
THROUGH: John Lee
Acting Utilities Director
FROM: Jim Stevens 
Director of Power Resources
SUBJECT: *Unit 5 Heat Recovery Steam Generator Superheater Tube Replacement*

This memo pertains to the award of RFP No. 170-10/PJW the Unit 5 Heat Recovery Steam Generator superheater module (3 modules) retrofit.

At the June 1st City Council meeting this agenda item was approved with a 2 -1 vote but could not be authorized based on the ruling that whenever only three (3) Councilmen are present it takes a unanimous vote for approval.

Staff recommends this item be brought back to the City Council on June 15th in order to proceed with this work. Vogt has been contacted and has agreed to extend their submitted proposal from June 8, 2010 until June 22, 2010.

The quoted cost for the project referenced in the bid documents submitted is \$1,281,540.00. This project requires an eight (8) month lead time in order to fabricate the superheater modules. Failure to approve this budgeted item will result in an increased cost of the project materials and could potentially result in an increased cost of \$8,000 per day for Unit non-availability.

Work will be performed during the February scheduled outage of the Vero Beach Combined Cycle unit. We have differed this project every year since 2003.

Funding for this project will come from capital budget item FY 2010 Account # 403.5000.531.697312.

Please advise if there are any questions concerning this matter.



May 24, 2010

City of Vero Beach
3455 Airport West Drive
Vero Beach, FL 32960

Attention: Manager of Purchasing

Reference: Heat Recovery Steam Generator Superheater Retrofit 170-10/PJW
Vogt Power International Inc. Proposal No. V69054, Rev. 2

Dear Manager of Purchasing:

Vogt Power International Inc. (VPI) greatly appreciates your invitation to provide this proposal to the City of Vero Beach for design, material supply, fabrication, delivery, and installation of high pressure superheater (HPSH) components for one (1) HRSG originally supplied to the Vero Beach Municipal Power Plant under Henry Vogt Machine Company job number 17328.

In response to your request for quotation, we are pleased to enclose for your information and review our proposal number V69054, Revision 2, dated May 24, 2010. Revisions to the attached documents reflect conversations between VPI and the City of Vero Beach regarding the 'Variances' submitted with our revision 1 proposal. Every concerted effort has been made to satisfy your requirements and provide you with a timely and cost effective product.

Please keep in mind that our company has been in operation for over 125 years with experience ranging from coal fired boilers to the largest HRSGs of our time. We have sold over 650 HRSGs and are ISO 9001:2008 certified. Our service and reputation are unmistakable.

The City of Vero Beach is a very important customer to VPI, and we would welcome the opportunity to discuss our proposal with you in more detail.

Once again, we would like to take this opportunity to thank you for your interest in our company. We trust that if you have any questions concerning our proposal, you will not hesitate to contact us.

Respectfully,

A handwritten signature in black ink, appearing to read 'Amy Goss', is written over a light blue horizontal line.

Amy Goss
Product Manager of HRSG Retrofits
Vogt Power Aftermarket Products & Services
Email: AGoss@VogtPower.com
Phone: 502-899-4652
Fax: 502-891-1960

A Babcock Power Inc Company

Vogt Power International Inc
4000 Dupont Circle
Louisville, Kentucky 40207 USA

Telephone: 502-899-4500
Fax: 502-891-1960
www.vogtpower.com

DRUG-FREE WORKPLACE COMPLIANCE FORM

IDENTICAL TIE BIDS

Preference shall be given to business with drug-free workplace programs. Whenever two or more Bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or Contractual services, a Bid received from a business that certifies that it has implemented a drug-free Work place program shall be given preference in the award process. Established procedures for processing tie Bids will be followed if none of the tied vendors has a drug-free Workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or Contractual services that are under Bid a copy of the statement specified in Subsection 1.
4. In the statement specified in Subsection 1, notify the employees that, as a condition of working on the commodities or Contractual services that are under Bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any State for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employer's community by, any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through the implementation of this section. As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.



VENDOR'S SIGNATURE

BID PROPOSAL
RFP NO:170-10/PJW
HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

To: The City Manager
City of Vero Beach
P.O. Box 1389
Vero Beach, Florida 32961

The Undersigned Proposer has carefully examined the Contract Documents and visually examined any and all Work Sites. The undersigned is familiar with the nature and extent of the Work and any local conditions that may in any manner affect the Work to be done, and the equipment, materials and labor required, but excluding conditions not reflected in information provided by the City, and further subject to express clauses contained elsewhere in the Contract Documents.

The undersigned agrees to do all the Work in accordance with the Contract Documents and according to the standards of quality and performance established by the City, for the unit prices as provided in the attached Bid Schedule, for each of the items or combination of items stipulated. It is understood that certain quantities shown in the Bid Schedule are approximate only, subject to increases and decreases, and for the purpose of Proposal comparisons for determination of low Proposer. It is further understood that payment will be in accordance with actual quantities placed in the construction as more specifically provided in the Contract Documents. The undersigned further agrees as follows:

1. To do any Work, not covered by the Bid Schedule, which may be ordered by the City in accordance with provisions contained in the Contract Documents upon authorization by the City Council, and to accept as full compensation therefore such prices as may be agreed upon, in writing, by the City and the Contractor in accordance with Article 6, of the General Conditions.
2. To begin and complete Work as required in the Notice to Proceed, provided such Notice to Proceed does not conflict with the agreed Contract Documents.
3. To allow the City of Vero Beach to reduce invoices per fines in the amount and under the conditions specified in the Contract Documents.
4. To keep in force all insurance and bonding requirements as set forth in the Contract Documents for the duration of the Contract and to give thirty (30) days notice of expiration of insurance and/or bonding.

Dated this 24th day of May, 2010.

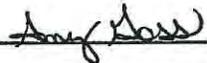
Respectfully submitted

Proposer Vogt Power International Inc.

Address: 4000 Dupont Circle

Louisville, KY 40207

City, State and Zip Code



QUESTIONNAIRE

The undersigned guarantees the truth and accuracy of all statements and answers herein contained.

1. How many years has your organization been in business as a supplier of these materials/services?

Vogt Power International Inc. (VPI) was incorporated under the laws of the state of Delaware on December 13, 2002. Prior to that an affiliated company, Vogt-NEM, Inc., supplied HRSGs since 1996. Vogt-NEM, Inc. bought the assets of the Henry Vogt Machine Company, which was one of the original companies in the HRSG business beginning in the early 1960s.

2. What is the last project of this nature that you have completed?

Supply of design, materials, and fabrication of components required for HRSG modifications to meet desired thermal and emissions performance based on operation with a new gas turbine. This included addition of, replacement of, and/or modifications to the inlet transition duct, distribution grid, duct burner system, heat transfer surface, CO system, SCR system, partial economizer bypass system, platforms, expansion joints, and casing seals.

3. Have you ever failed to complete Work awarded to you; if so, where and why?

No.

4. Name three (3) individuals or corporations for which you have performed Work of this size and nature to which you refer:

Montgomery Power Partners (Jeff Maida) Phone (713) 560-6640

Calpine Corporation (Gene Fahey) Phone (831) 385-7942

Dupont-Sabine River Works (Ed Gormley) Phone (409) 886-6775

5. Have you personally inspected the proposed Work and have you a complete plan for its performance?

VPI's Construction Manager has been to the jobsite for the construction walkdown. In addition, we will have an Engineering site visit during order execution for the purpose of gathering information and/or checking preliminary designs (e.g., for consideration of pipe routing, etc.).

6. Will you sublet any part of this Work? If so, give details:

VPI will use fabricators and vendors for supply of components. VPI presumes that such suppliers fall outside the restrictions of the subletting requirements within the Customer's Instructions to Proposers and General Conditions. VPI will however subcontract the installation services and the steam blow-related activities.

7. What equipment do you own that is available for the Work?

Computers and other office equipment

8. What equipment will you purchase for the proposed Work?

None

9. What equipment will you rent for the proposed Work?

None, however our subcontractors may rent equipment, such as cranes, for performance of the work.

10. Minority Business Statement:

Is your firm a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985? No.

11. State the true, exact, correct, and complete name of the partnership, corporation, limited liability company, or trade name under which you do business, and the address of the place of business. (If a partnership, state the name of all partners. If a corporation, state the name of the President and Secretary. If a Limited Liability Company, state the names of all members. If a trade name, state the names of the individuals who do business under the trade name.)

Vogt Power International Inc.

(Correct Name of Proposer)

a. The business is a Sole Proprietorship, Partnership, Corporation, or Limited Liability Company.

Corporation

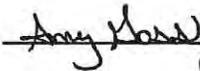
b. The address and phone number of principal place of business is

4000 Dupont Circle Louisville, KY 40207

c. The names of the partners, corporate officers, members, or individuals doing business under a trade name, are as follows:

President – Stephen Kapsalis

Secretary – William Ferguson



(Proposer)

Aftermarket Technical and Commercial Proposal



A Babcock Power Inc. Company

**Vogt Power International Inc.
4000 Dupont Circle
Louisville, Kentucky 40207 USA**

Vogt Power International Inc. proposes to furnish to:

**Vero Beach Municipal Power Plant
Vero Beach, FL**

For the Project:

**HPSH Retrofit
Proposal Ref. Number: V69054, Rev.2**

the equipment and services as described in the following pages.

Customer: Vero Beach Municipal Power Plant
Plant ID: 17328
VPI Ref. No.: V69054, Rev.2
Project: HPSH Retrofit
Date: May 24, 2010
Validity Date: June 8, 2010

1 INTRODUCTION 1-2

1.1 HRSG WALKDOWN 1-2

1.2 QUALITY 1-2

1.3 PROJECT SCHEDULE..... 1-2

2 SCOPE OF SUPPLY 2-1

2.1 SCOPE TABLE..... 2-1

2.2 OTHER CUSTOMER-SUPPLIED ITEMS 2-4

2.3 TERMINAL POINTS 2-5

3 MAJOR COMPONENT DESCRIPTION 3-1

3.1 PRESSURE PARTS 3-1

3.2 NON-PRESSURE PARTS 3-1

3.3 FABRICATION..... 3-1

4 DEMOLITION AND ERECTION 4-1

4.1 GENERAL 4-1

4.2 DEMOLITION AND DISMANTLING 4-1

4.3 REINSTALLATION OF EQUIPMENT, TESTING, AND STEAM BLOW 4-2

4.4 COMPLETION..... 4-2

4.5 HAZARDOUS MATERIALS 4-3

4.6 CLARIFICATIONS..... 4-3

5 COMMERCIAL..... 5-1

5.1 PRICING..... 5-1

5.2 PROGRESS MILESTONE PAYMENT SCHEDULE 5-1

5.3 LIQUIDATED DAMAGES 5-2

5.4 DELAYS AND PROJECT STANDBY CHARGES..... 5-2

5.5 TERMS AND CONDITIONS..... 5-2

6 EXPERIENCE LIST 6-1

7 APPENDICES 7-1

7.1 APPENDIX-1 EXCEPTIONS & CLARIFICATIONS TO CUSTOMER RFP/SPECIFICATION .. 7-1

7.2 APPENDIX-2 PRELIMINARY PROJECT SCHEDULE..... 7-2

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Vogt Power International - Louisville, Kentucky, USA
Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 1-1
Date: May 24, 2010

1 INTRODUCTION

Vogt Power International Inc. greatly appreciates your invitation to provide this proposal for design, material supply, fabrication, delivery, and installation of high pressure superheater (HPSH) components for one (1) HRSG originally supplied to the Vero Beach Municipal Power Plant under Henry Vogt Machine Company job number 17328.

For the purposes of this Proposal, "Customer" is defined as meaning Vero Beach Municipal Power Plant, and "VPI" is Vogt Power International Inc.

The components being proposed were identified in the Thermal Study report prepared for the Customer by VPI in April of 2009 under VPI project number V25306. VPI cannot account for HRSG issues or design features which are not known or have not been expressly provided, and our proposal pricing and schedule do not account for any matters or parameters that have not already been identified or been made known to us. In the event that VPI discovers (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract; or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Contract, VPI will give prompt notice of such condition and VPI shall be entitled to make a claim for a change to the Contract in accordance with Section 6, of the General Conditions, Changes In Scope Of Work; Extra Work.

In addition, the Customer provided specification documents to VPI on March 10, March 18, March 23, and April 1, 2010. Information regarding resolution of VPI's exceptions and clarifications to the specification documents is provided in Appendix 1. Included therein are the required signed copies of the Addenda documents.

1.1 HRSG Walkdown

VPI shall visit the jobsite within 3-6 weeks after receipt of the purchase order, on a date to be agreed upon by VPI and the Customer, for an external walkdown in order to gather information and/or check preliminary designs (e.g., for consideration of pipe routing).

1.2 Quality

VPI is an ISO 9001:2008 certified company for the design, production, supply & installation of components in the field of energy technology.

1.3 Project Schedule

A Preliminary Project Schedule is located in Appendix 2.

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Vogt Power International - Louisville, Kentucky, USA
Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 1-2
Date: May 24, 2010

2 SCOPE OF SUPPLY

2.1 Scope Table

VPI will supply the following services and equipment for one (1) HRSG at the Customer's facility:

Item	Scope of Supply	Furnished By VPI	Furnished By Customer	Existing	Option	N/A
I.	Heat Transfer Components, Casing, and Structural Steel					
1.	Three (3) HPSH module harps	X				
2.	All other heat transfer modules			X		
3.	HPSH bare tube and sidewall baffles	X				
4.	All other heating surface baffling			X		
5.	Casing, insulation, and liner material, as required to close the HRSG access window created during installation	X				
6.	Remainder of HRSG casing for heat transfer surface			X		
7.	Bellows seals, as required for HPSH inlet, outlet, drain, and interconnecting piping casing penetrations	X				
8.	Structural supports for the VPI-supplied components	X				
9.	Other structural steel			X		
10.	Prime painting of VPI-supplied casing external surfaces required to close the HRSG access window created during installation	X				
11.	Prime painting of VPI-supplied external structural supports	X				
12.	Foundation design					X
II.	HRSG Piping					
1.	Inlet piping to connect the new HPSH3 module to the existing HP drum nozzles	X				
2.	Crossovers to connect the new HPSH3 module to the new HPSH2 module	X				
3.	Piping to connect the new HPSH2 module to the attemperator inlet header	X				

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Vogt Power International - Louisville, Kentucky, USA
Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 2-1
Date: May 24, 2010

Item	Scope of Supply	Furnished By VPI	Furnished By Customer	Existing	Option	N/A
4.	Piping as required to modify the attemperator inlet header and attemperator loop to accommodate the new HPSH arrangement (quantity to be determined by VPI)	X				
5.	Remaining attemperator piping			X		
6.	Piping to connect the attemperator outlet header to the new HPSH1 module	X				
7.	Outlet piping to connect the new HPSH1 module to the existing HP steam outlet header	X				
8.	Remaining HP system outlet piping			X		
9.	Vent piping to connect the new HPSH components with the existing HPSH vent piping	X				
10.	Drain piping to connect the new HPSH and attemperator components with the existing HPSH drain piping	X				
11.	Redesign of HPSH drain piping				Option 1	
12.	Remaining HRSG piping			X		
13.	Pipe supports, as required for the VPI-supplied piping	X				
14.	Insulation and lagging, as applicable, for external piping and valves	X				
III.	Valves					
1.	Manual HPSH module drain valves	X				
2.	Actuated HPSH module drain valves in lieu of manual HPSH module drain valves				Option 1	
3.	Actuated attemperator drain valves	X				
4.	Other valves, including attemperator			X		
IV.	Instrumentation & Controls					
1.	Attemperator drain thermowell	X				
2.	Attemperator drain thermocouple	X				
3.	All other instrumentation & controls			X		

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Vogt Power International - Louisville, Kentucky, USA

Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 2-2
Date: May 24, 2010

Item	Scope of Supply	Furnished By VPI	Furnished By Customer	Existing	Option	N/A
V.	Platforms & Ladders					
1.	Ladder & platform for access to VPI-supplied attemperator drain valves, thermowell, and thermocouple				Option 2	
2.	Other platforms & ladders			X		
VI.	Construction & Field Services					
3.	Building/construction permits, if required		X			
4.	Removal & reinstallation of building and/or roof materials, electrical components, heat tracing, instrumentation & tubing, and control elements, as required for VPI's subcontractor(s) to gain adequate access to the HRSG		X			
5.	Removal & reinstallation of external piping insulation and lagging, as required for VPI's subcontractor(s) to gain adequate access to the HRSG	X				
6.	Mechanical construction/erection services for demolition and installation of HRSG components, as described herein	X				
7.	Hole watch, as needed	X				
8.	Oxygen sniffing equipment and readings, as needed	X				
9.	Foundation and civil work					X
10.	Commissioning & startup		X			
11.	Shop hydrostatic test	X				
12.	Site hydrostatic/"in-service pressure" test, as applicable	X				
13.	Steam blow-related activities	X (T&M)				
14.	Operation of the gas turbine for the steam blow(s)		X			
15.	Touch-up and finish painting	X				
16.	General cleaning of the internal and external areas used by VPI	X				
VII.	Site Materials, Services & Work					
1.	Electrical power for welders and other equipment		X			

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Vogt Power International - Louisville, Kentucky, USA
Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 2-3
Date: May 24, 2010

Item	Scope of Supply	Furnished By VPI	Furnished By Customer	Existing	Option	N/A
2.	Welding machines	X				
3.	Supply and disposal of demineralized water for site hydrostatic/"in-service" pressure test (per ABMA standards)		X			
4.	Pumps and piping for site hydrostatic/"in-service" pressure test		X			
5.	Construction and tool trailer(s)	X				
6.	Trailer setup area		X			
7.	Office space for VPI project and construction management while onsite		X			
8.	Laydown/storage areas		X			
9.	Disposal dumpsters for use by installation personnel		X			
10.	Offsite disposal of removed components & construction debris		X			
11.	Hookups for contractors' trailer(s)		X			
12.	Telephone lines to contractors' trailer(s)		X			
13.	Portable sanitary facilities	X				
14.	Potable water		X			
15.	Drainage		X			
16.	Compressed air for contractors' use		X			
17.	Parking		X			
18.	Security		X			
VIII.	Other					
1.	Applicable Code documentation for VPI-supplied components	X				

2.2 Other Customer-Supplied Items

- All utilities required during installation and commissioning.
- All necessary control, field instruments, etc. required to complete the system not supplied by VPI.
- All electrical wiring, conduit, cable trays, etc. required to tie in the system.
- All piping required to complete the installation outside the scope specified herein.
- Plant and equipment lighting.
- Other items required to make the HRSG operational but not included in VPI's scope specified herein.
- Plant safety orientation.
- Lock-out and tag-out of equipment.
- Plant security and work permits.
- Any required notifications to Customer's insurance carrier regarding changes to the HRSG.

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Vogt Power International - Louisville, Kentucky, USA
Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 2-4
Date: May 24, 2010

2.3 Terminal Points

VPI's terminal points are as indicated below, however VPI reserves the right to re-use existing material within those terminal points (e.g., piping, valves, etc.) in its design.

2.3.1 Casing

Within one (1) foot of the HRSG casing modified to gain top access to the module harps or to penetrate the bottom casing for the drain line.

2.3.2 Pressure Parts

- At the weld connecting the piping to the HP drum saturated steam nozzle outlet.
- Upstream of the first bend in the HPSH outlet piping downstream of the heating surface.
- At the weld connecting the vent connections for the VPI-supplied HPSH piping components to the existing vent system.
- At the weld connecting the outlet of the second drain valve to the existing drain system.
- At the location of the existing connection of the attemperator spray water piping to the attemperator.

2.3.3 Baffles

At the point of contact with the components to which the baffles are attached.

2.3.4 Pipe Supports

The mounting surfaces of the new pipe supports.

2.3.5 Structural Steel

The mounting points of the new steel to the existing HRSG structural members.

2.3.6 Electrical/Pneumatic

All VPI-supplied controls, instrumentation, and power connections will be provided with tubing and wiring connections only. All interconnecting wiring and tubing is by the Customer.

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Vogt Power International - Louisville, Kentucky, USA
Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 2-5
Date: May 24, 2010

3 MAJOR COMPONENT DESCRIPTION

This section is included to briefly describe the equipment and the components supplied. It is not intended to replace the scope of supply section of this proposal.

Equipment quoted is based on preliminary design. VPI reserves the right to change the design of the equipment if it is determined to constitute an improvement over former practice.

3.1 Pressure Parts

3.1.1 Heating Surface

All VPI-supplied heating surfaces will be constructed of module "harps", each consisting of two rows of finned tubes welded to top and bottom headers. The harps are designed for single pass flow on the gas side and single or multi-pass flow on the waterside. The module harps will be equipped with low point drains for a "fully drainable" design.

3.1.2 Interconnecting Piping

The HPSH piping will be selected based on steam design pressure and temperature. VPI-supplied piping will be provided with the required supports.

An option is also being provided herein for redesign of the HPSH module drain piping, which will include enlarging of the drain lines and supply of actuated drain valves in lieu of manual drain valves.

3.2 Non-Pressure Parts

3.2.1 Ductwork and Casing

VPI will design and furnish casing components to repair the HRSG casing removed for access to the module harps being replaced. The casing is fabricated from carbon steel plate. The replacement casing panel(s) will be pre-insulated and prefabricated to the maximum extent possible.

Internal insulation will be designed to provide an acceptable average casing surface temperature per OSHA requirements. Select, small, localized areas can be expected to exceed the design skin temperature requirement. These areas would include casing test or instrumentation connections, support attachment points for flow distribution devices, and similar areas. The VPI design will minimize on a practical basis the skin temperature excursion.

3.3 Fabrication

3.3.1 Codes and Standards

The equipment supplied will be designed, manufactured, tested, and will be in accordance with the approved applicable addendum of the following codes and standards or their international equivalent:

- ASME Boiler and Pressure Vessel Code, Section I, VIII, IX, "Power Boilers"

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Vogt Power International - Louisville, Kentucky, USA

Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 3-1
Date: May 24, 2010

- American National Standards Institute (ANSI)
- American Society for Testing and Materials (ASTM)
- Environmental Protection Agency (EPA)
- Institute of Electrical and Electronic Engineers (IEEE)
- American Iron and Steel Institute (AISI)
- National Electrical Manufacturers Association (NEMA)
- National Fire Protection Association (NFPA)
- Occupational Safety & Health Act (OSHA)
- Scientific Apparatus Manufacturers Association (SAMA)
- Instrument Society of America (ISA)
- Boiler Water Requirements and Associated Steam Purity for Commercial Boilers, American Boiler Manufacturers Association (ABMA)
- HRSG Performance Testing (ANSI/ASME PTC 4.4)
- Steel Structures Painting Council (SSPC)
- National Electric Code (NEC)
- American Welding Society (AWS)
- American Institute of Steel Construction (AISC)
- American Society of Civil Engineers (ASCE)
- American Petroleum Institute (API)

3.3.2 World-wide Sourcing of Components and Labor

The basis for this proposal is for all the design, materials, and labor associated with this contract to be procured from any place in the world. VPI has extensive experience with pressure part and steelwork fabrication in different parts of the world and has a long list of proven suppliers. Workshops issued with an order for the fabrication of pressure parts are audited before these orders are issued and must adhere to rigorous quality plans and standards.

3.3.3 Inspection and Shop Certificates

The Customer has the right to inspect the HRSG components during fabrication to ensure that all materials are in accordance with the contract and to assure that proper fabrication procedures are used.

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Vogt Power International - Louisville, Kentucky, USA
Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 3-2
Date: May 24, 2010

4 DEMOLITION AND ERECTION

4.1 General

VPI's erection subcontractor(s) will mobilize approximately one week prior to the start of the outage. The outside construction and tool trailers will be set up, construction equipment and machinery will be brought in and set up, construction materials will be received and, if possible, most worker safety training will be carried out prior to the shutdown.

VPI subcontractor(s) will perform demolition, installation, and cleanup services as described herein. These services will be provided by qualified subcontractor(s). The following is a list of the subcontractors that VPI would potentially utilize during execution of the proposed project. VPI's pricing and schedule are predicated on use of any of the subcontractors listed therein. In the absence of express written notification of subcontractor disapproval from the Customer prior to Contract award, VPI shall be entitled to an equitable adjustment to the Contract Price and time of performance for any resulting impact arising from or relating to any disapproval.

- TEi Construction Services
- Titan Contracting and Leasing Company
- Enerfab
- Bluewater Energy Solutions
- Arthur T. Astle & Associates, Inc. (ATA&A)

Depending on the final choice of erection subcontractor(s), VPI will work 6 to 7 days per week during the outage, 1 shift per day at 10 hours per shift. A VPI technical site representative will generally be onsite or readily available during most all of these working hours. Holidays during the outage will not be worked. Specific holidays will be defined after selection of the erection subcontractor(s).

4.2 Demolition and Dismantling

The Customer will remove sections of the roof and/or building (including electrical, lighting, etc.) to provide adequate access to all working areas. In addition, the Customer will remove HRSG instrumentation & tubing, heat tracing, control elements, and electrical connections, as needed for removal and re-installation of VPI-supplied components.

VPI's subcontractor(s) will perform the following:

- Remove any additional exterior obstructions on the HRSG (e.g., structurals, platforms, ladders, piping insulation and lagging, external piping, etc.), as required to gain adequate access to the HRSG.
- Remove casing, internal insulation and expanded metal to gain access to the HPSH module harps.
- Detach the connections for the inlet, outlet, interconnecting, vent, and drain piping.
- Remove the baffles, bumpers, or any other internal obstructions between the existing HPSH module harps and the accessway created above.
- Remove the existing HPSH module harps.

All components permanently removed by VPI will be discarded in dumpsters provided by the Customer.

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Vogt Power International - Louisville, Kentucky, USA
Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 4-1
Date: May 24, 2010

4.3 Reinstallation of Equipment, Testing, and Steam Blow

VPI's subcontractor(s) will perform the following:

- Install the new HPSH module harps.
- Reinstall bumpers, baffles, supports, and any other internal obstructions that were previously removed.
- Install crossover connections, superheater inlet and outlet connections, attemperator loop piping, vents, and drain lines. Bellows seals will be installed on the HPSH piping casing penetrations.
- Install pre-insulated/prefabricated casing panel(s) to close the HRSG access window that was created to gain access to the modules.
- Install any new structural supports and reinstall all previously-removed structurals, platforms, ladders, and external piping.
- Perform any hydrostatic/"in-service" pressure testing required by the Authorized Inspector.
- Install insulation and lagging on external piping, as applicable.
- Apply touch-up and finish paint.

After mechanical installation, VPI's subcontractor(s) will perform a steam blow. The steam blow scope of work (which will be performed on a time and material basis) includes but may not be limited to the following:

- Design of temporary blow equipment (will be performed offsite prior to outage)
- Field labor personnel to install & remove temporary blow equipment
- VPI technical advisor during steam blow-related work
- VPI steam blow subcontractor technical field service advisor
- Temporary large bore exit piping
- New tie-in piping
- Valves
- Flanged fittings
- Standard target inserter
- Brass targets
- Quench assemblies
- Exhausters
- Consumables

The Customer will be responsible for re-installation of HRSG instrumentation & tubing, heat tracing, control elements, electrical connections, and roof/building materials.

4.4 Completion

To ensure timely completion, a punchlist must jointly be generated prior to the completion of the installation. Input to this punchlist will be by the Customer, VPI and the erection subcontractor(s). VPI requires Customer's complete cooperation in the timely reviewing of all items pertaining to the completion of the unit.

Upon completion of the unit, the worksite shall be cleaned and returned as close as reasonably possible to its former condition. Some touch-up painting, insulation work, and removal of temporary steam blow equipment not affecting operational turnover may be completed after turnover/startup of the unit. All such work shall be completed within 30 days after turnover/startup of the unit.

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Vogt Power International - Louisville, Kentucky, USA
Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 4-2
Date: May 24, 2010

4.5 Hazardous Materials

It shall be the responsibility of Customer to provide VPI and its subcontractor(s) with written documentation that the work performed will not expose personnel to levels at or above the action levels established by OSHA if any hazardous substances may be present. If VPI encounters, at the project site, toxic substances, hazardous waste (as such terms may be defined in any Federal, State or local statute or ordinance or regulations issued thereunder), which require special handling and/or disposal, the Customer shall immediately take whatever precautions are required to legally eliminate such hazardous conditions and properly handle and dispose of such substances or wastes so that the work under the contract may safely proceed. If any such toxic substances, hazardous substances, or hazardous wastes cause an increase in VPI's cost of, or the time required for, performance of any part of the work under this contract, an equitable adjustment shall be made in the price and the schedule. The Customer agrees to properly dispose of all hazardous waste produced or generated in the course of VPI's work at the project site. The plant owner shall indemnify VPI for any and all claims, without limitation to attorneys and consultant fees and expenses, arising out of or relating to the presence of any such toxic or hazardous substances or hazardous wastes which are: (i) present on the site prior to the commencement of VPI's work or (ii) improperly handled or disposed of by the Customer, or (iii) brought to the site or produced thereon by parties other than VPI or its subcontractor(s).

If insulation/refractory removal or restoration is within or added to VPI's scope of work, the Customer will provide VPI with written authorization of removal and attest that the insulation or refractory is free of asbestos and/or any hazardous material as defined by State or Federal law and OSHA prior to work commencement.

4.6 Clarifications

- The site immediately adjacent to the HRSG and building must be available for the sole use of VPI and its erection subcontractor(s), and of sufficient space for effective use of cranes and/or manlifts for the duration of work on each unit.
- The laydown areas shall be well drained.
- Roadways in and around the work area and laydown yard will be adequate for travel by cranes and trailers and shall be maintained free of dust, mud and/or snow by the Customer.
- All materials and services supplied by the Customer will be on site and available as needed by VPI to complete the defined work without delays.
- VPI's proposed pricing and schedule are based on the following assumptions. If changes to any of the assumed conditions causes an increase in VPI's cost of, or the time required for, performance of any part of the work under this contract, an equitable adjustment shall be made to the price and/or schedule.
 - Safety requirements are per OSHA standards.
 - VPI will be given free access to the work area and will not be delayed by the Customer or by other contractors/suppliers that may be working on the project site.
 - Owner will provide cutting and welding permits, if required, in a timely manner. (VPI defines a timely manner as one half hour after requesting the permit.)
 - There will be no restrictions on using cutting torches and/or arc gougers in and around the work area.
 - The project site does not contain any environmentally sensitive areas or items of a similar nature.
 - Any information furnished by the Customer regarding site conditions is accurate and complete.

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Vogt Power International - Louisville, Kentucky, USA
Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev 2
Page No.: 4-3
Date: May 24, 2010

5 COMMERCIAL

5.1 Pricing

VPI's price for the scope of supply as described herein for one (1) unit is:

Description	Price (US Dollars)
Base Scope: Design, material supply, fabrication, delivery, and installation of high pressure superheater components. <i>Note that the price shown reflects the agreed discount of \$28,330 (i.e., the price paid by the Customer for VPI Thermal Study number V25306).</i>	\$1,073,970 + Steam blow-related activities at VPI's cost +15%
Optional Adder #1 to Base Scope: Adder for design, material supply, fabrication, delivery, and installation of redesigned high pressure superheater drains, including motor-operated drain valves.	+ \$20,220
Optional Adder #2 to Base Scope: Adder for design, material supply, fabrication, delivery, and installation of ladder and platform for access to VPI-supplied attemperator drain valves, thermocouple, and thermowell.	+ \$37,350

- VPI's price is based solely on our proposal and identified scope.
- VPI's pricing as stated does not include any performance or payment bonds. If the Customer requires VPI to provide any performance or payments bonds, the Customer will reimburse VPI for all premiums, costs and fees associated with issuing the bond(s).
- The duration of the steam blow process can vary greatly. It is for this reason that VPI will provide steam blow-related activities on a time and material basis. VPI's estimate of the price to the Customer for the steam blow work is \$150,000. This is an estimate only. The assumed duration for the site steam blow-related activities is 14 days, which is based on the following assumed schedule of work:
 - 4 days for installation and set up of temporary steam blow components and equipment. (Some of this work will be completed in parallel with the HPSH mechanical installation work.)
 - 6 days for performance of the steam blow(s).
 - 4 days for removal of the temporary steam blow components and equipment.
- Bid validity: Pricing for this proposal is based on a complete and undivided purchase order release to VPI with finalized Terms & Conditions that have been mutually negotiated between VPI and the Customer on or before June 8, 2010.
- VPI retains the right to withdraw this proposal at any time before formal contract acceptance.
- Shipping shall be FOB jobsite.

5.2 Progress Milestone Payment Schedule

No.	Payment Milestones	%	Est. Date
1.	Upon receipt of Order or Notice to Proceed, whichever occurs first.	10%	06/08/10
2.	Upon VPI placement of order for harp fabrication.	10%	08/10/10
3.	Upon delivery of bare tubes to the fabrication shop.	20%	11/02/10
4.	Upon shipment of harps (or being ready to ship if Customer delays project).	25%	01/31/11
5.	Upon completion of mechanical installation work by VPI (not including steam blow-related activities).	35%	02/27/11

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Vogt Power International - Louisville, Kentucky, USA

Document Title: Aftermarket Technical and Commercial Proposal
 Customer: Vero Beach Municipal Power Plant
 Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
 Page No.: 5-1
 Date: May 24, 2010

No.	Payment Milestones	%	Est. Date
6.	VPI will submit invoice(s) to the Customer for the steam blow-related scope of work upon VPI's receipt of charges for the work.		

5.2.1 Conditions for Payment Terms

1. Dates given in the progress payment schedule are estimated dates only. Actual invoices will be sent with reasonable proof of completion of each milestone.
2. Payment terms shall be net thirty (30) days from date of invoice. All amounts not paid within stated terms are subject to a finance charge of 1.5% per month or 18% per annum.
3. Payment terms are based upon current schedule of deliverables. Should schedule change, VPI reserves the right to review applicable terms.

5.3 Liquidated Damages

If mechanical installation work prior to the start of steam blow-related activities is not completed within 28 consecutive calendar days after VPI's subcontractor commences site work, provided that VPI's subcontractor is permitted unrestricted access during such period and that such delay is not otherwise excused by the terms of the Contract, VPI shall pay to the Customer as liquidated damages and not as a penalty \$8,000 per day of late completion as the sole and exclusive liability for such failure to achieve the work completion date. Some touch-up painting, insulation work and other work of a punch list nature, not affecting operational turnover, may be completed later and would not give rise to liability for liquidated damages for late completion, or any other damages. Notwithstanding the foregoing, liquidated damages shall be assessed against VPI only if VPI's unexcused delay is the sole cause of delay in the completion of the Customer's outage, and in the event that there is no concurrent delay in any other aspect of the outage that will be taking place. In any event, VPI's maximum liability for liquidated damages for work completion for which liquidated damages are payable shall not exceed 10% of the Contract price.

5.4 Delays and Project Standby Charges

The proposal pricing reflects delivery and installation of equipment by March 21, 2011. Customer requests for delays of shipment and/or postponement of installation beyond this date may result in extra charges for storage, handling, project management, etc.

5.5 Terms and Conditions

VPI's exceptions and clarification (i.e., variances) to the Customer-supplied Terms and Conditions are provided within Appendix 1.

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Vogt Power International - Louisville, Kentucky, USA
Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 5-2
Date: May 24, 2010

6 EXPERIENCE LIST

VPI is an Original Equipment Manufacturer of horizontal type HRSGs and has many repowering projects on vertical type HRSGs. VPI has hundreds of HRSGs in service. VPI also provides turnkey services for repair and retrofit of HRSGs. Below is a reference list of Aftermarket projects that VPI has recently conducted on HRSGs.

1998-2008 VPI Aftermarket Experience (Abbreviated)

Client	Location	Boiler Manufacturer	Scope
Arizona Public Service	Phoenix, AZ	GE	<ul style="list-style-type: none"> • Turnkey retrofit of a vertical HRSG • Site supervision & project management
Bechtel	South America	Vogt	<ul style="list-style-type: none"> • Replacement economizer
Beaver Station-PGE	Portland, OR	GE	<ul style="list-style-type: none"> • Turnkey retrofit of six (6) vertical HRSGs
BP Amoco	Alvin, TX	Vogt	<ul style="list-style-type: none"> • Replacement of superheater & economizer
Calpine – Androscoggin Energy	Jay, ME	Nooter Eriksen	<ul style="list-style-type: none"> • Turnkey redesign/replacement of three (3) economizer headers • Site supervision & project management
Calpine – Greenleaf II	Yuba City, CA	Deltak	<ul style="list-style-type: none"> • Turnkey retrofit & installation of water preheater and LP EVAP modules
Calpine – Tiverton	Tiverton, RI	Nooter Eriksen	<ul style="list-style-type: none"> • Turnkey retrofit of three (3) reheat attemperator piping systems • Site supervision & project management
CIPCO	Creston, Iowa	Vogt	<ul style="list-style-type: none"> • Replacement of superheater & economizer • Project management
ConocoPhillips	Rodeo, CA	Vogt	<ul style="list-style-type: none"> • SCR retrofits (3 units) • Site supervision
Dominion Generation – Chesterfield	Chester, VA	Vogt	<ul style="list-style-type: none"> • Turnkey re-insulation of inlet duct, basement section, and attic sections • Turnkey reinforcement of bottom base beam • Site supervision & project management
Dow Chemical Company	Texas City, TX	Vogt	<ul style="list-style-type: none"> • Turnkey retrofit & installation of nine (9) economizer modules • Site supervision & project management
Dow Chemical Company	Freeport, TX	Vogt	<ul style="list-style-type: none"> • Supply of SCR system components and required HRSG modifications to incorporate the SCR system
Dow Chemical Company	Freeport, TX	Vogt	<ul style="list-style-type: none"> • HRSG modifications to accommodate the addition of a Gas Turbine DLN system
El Paso Natural Gas	Farmington, NM	Vogt	<ul style="list-style-type: none"> • Turnkey retrofit of economizer • Site supervision & project management
General Electric Company	Dabhol, India	Vogt	<ul style="list-style-type: none"> • Replacement of expansion bellows • Site supervision & project management

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Vogt Power International - Louisville, Kentucky, USA

Document Title: Aftermarket Technical and Commercial Proposal

Customer: Vero Beach Municipal Power Plant

Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev. 2

Page No.: 6-1

Date: May 24, 2010

Client	Location	Boiler Manufacturer	Scope
Motiva Enterprises	Port Arthur, TX	Vogt	<ul style="list-style-type: none"> • Turnkey SCR retrofit • Site supervision
Praxair	Texas City, TX	Deltak	<ul style="list-style-type: none"> • Turnkey retrofit & installation of six (6) economizer modules • Site supervision & project management
Proctor & Gamble - Oxnard	Oxnard, CA	Vogt	<ul style="list-style-type: none"> • Turnkey retrofit of one (1) HRSG for CO catalyst system addition • Turnkey upgrade of the existing SCR system.
Reedy Creek Utilities	Orlando, FL	Vogt	<ul style="list-style-type: none"> • Addition of CO Catalyst System • Project management • Site technical advisor
Reliant Energy	Houston, TX	GE	<ul style="list-style-type: none"> • Economizer retrofit on eight (8) vertical HRSGs • Project management
SIGEN S.A.	Santiago, Chile	Vogt	<ul style="list-style-type: none"> • Emergency retrofit of module support system
Texas Petrochemicals Corp.	Houston, TX	ATS	<ul style="list-style-type: none"> • Turnkey retrofit • Redesign of HRSG • Replacement/Addition of heating surface • Site supervision & project management
Texas Petrochemicals Corp.	Houston, TX	Vogt	<ul style="list-style-type: none"> • Turnkey replacement economizer • Site supervision & project management
Turlock Irrigation District – Almond Power	Turlock, CA	Deltak	<ul style="list-style-type: none"> • Computer Flow Modeling Study (i.e., CFD) • Turnkey installation of inlet duct distribution grid to improve the flow distribution on the existing SCR catalyst blocks.
TransCanada – Ocean State Power	Harrisville, RI	Vogt	<ul style="list-style-type: none"> • Redesign of HPEV piping • Site supervision & project management
University of Texas	Austin, TX	Vogt	<ul style="list-style-type: none"> • Turnkey replacement of all heating surface • Site supervision & project management
University of Texas	Austin, TX	Vogt	<ul style="list-style-type: none"> • Complete plant assessment & efficiency study

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Vogt Power International - Louisville, Kentucky, USA

Document Title: Aftermarket Technical and Commercial Proposal

Customer: Vero Beach Municipal Power Plant

Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2

Page No.: 6-2

Date: May 24, 2010

7 APPENDICES

7.1 APPENDIX-1 EXCEPTIONS & CLARIFICATIONS TO CUSTOMER RFP/SPECIFICATION

Below is a list of the RFP and Specifications documents that were provided by the Customer and reviewed by VPI. Attached is a completed copy of the Customer's "Variances" form and revised copies of the RFP and Specifications documents reflecting discussions between VPI and the Customer. VPI is not responsible for Specifications not provided.

VPI's exceptions and clarifications to the following documents have been discussed with the Customer. The resolved items are reflected in the attached documents.

- City of Vero Beach Heat Recovery Steam Generator Superheater Retrofit RFP No. 170-10/PJW, dated March 2010 (revised May 2010), including:
 - Request for Proposal
 - Instructions to Proposers
 - General Conditions
 - Supplementary General Conditions
 - Bid Proposal
 - Form of Agreement, including Notary forms
 - Affidavit
 - Scope of Work
 - Type III Insurance Required, Revised 02/13/02
- COVB Bid 170-10/PJW, Addendum No.1 to City of Vero Beach Bid, Heat Recovery Steam Generator Superheater Retrofit, dated March 10, 2010.

Also attached are signed copies of each addendum to the RFP, as revised.

VPI had no comments, exceptions, or clarifications regarding the following Customer-provided specification documents:

- Drug Free Compliance
- Addendum No. 2 To COVB RFP 170-10/PJW, Heat Recovery Steam Generator Superheater Retrofit, dated March 17, 2010.
- Addendum No. 3 To COVB RFP 170-10/PJW, Heat Recovery Steam Generator Superheater Retrofit, dated March 23, 2010.
- Addendum No. 4 To COVB RFP 170-10/PJW, Heat Recovery Steam Generator Superheater Retrofit, dated April 1, 2010.
- SSPC-SP 11: Surface Preparation Specification No.11, Power Tool Cleaning to Bare Metal
- SSPC-SP 3: Surface Preparation Specification No.3, Power Tool Cleaning
- Intertherm 751CSA: Heat Resistant Cold Spray Aluminum
- BAR-RUST 321: Multi-Purpose Epoxy Mastic
- DEVTHANE 379UVA: Aliphatic Urethane Gloss Enamel

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Vogt Power International - Louisville, Kentucky, USA

Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 7-1
Date: May 24, 2010

CITY OF VERO BEACH

VARIANCES

State any variances to the specifications, terms, conditions, or any part of these documents, in the space provided below or reference in the space provided below all variances contained on any of the pages of the Request for Bid, attachments or bid pages. No variances by the bidder will be deemed to be part of the submitted bid unless each variance is listed and contained within the bid documents and referenced in the space provided below. If no statement is contained in the below space, it shall be implied by the bidder that your bid complies with the full and complete scope of the original bid request.

¶ Reference	Comment/Exception
N/A	All variances submitted with Vogt Power proposal number V69054, Rev.1, dated April 6, 2010 have been discussed with the City of Vero Beach. The attached documents reflect resolution of those variances.

CITY OF VERO BEACH

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

RFP NO. 170-10/PJW

PREPARED BY

PURCHASING DIVISION

MAYOR – KEVIN SAWNICK

VICE MAYOR – SABIN C. ABELL, JR.

COUNCIL MEMBERS

KEN DAIGE

BRIAN T. HEADY

THOMAS P. WHITE

CHARTER OFFICERS

CITY MANAGER – JAMES GABBARD

CITY CLERK - TAMMY VOCK

CITY ATTORNEY – CHARLES VITUNAC

MARCH 2010 (Revised May 2010)

TABLE OF CONTENTS

SECTION	PAGE NO.
Request for Proposal	1
Instructions to Proposers	
1. General	3
2. Examination of Site and Contract Documents	3
3. Interpretations, Inconsistencies and Addenda	3
4. Preparation of Bids/Proposals	3
5. Proposal Pricing	4
6. Submission of Bids/Proposals	4
7. Familiarity with Laws	5
8. Rejection of Bids/Proposals	5
9. Withdrawals and Modifications	5
10. Contract Award	5
11. Subletting or Assigning of Contract	6
12. Patent Fees, Royalties and Licenses	6
13. Liens	7
14. Financial Statement	7
15. Public Entity Crimes	6 - 7
16. Variances	7
General Conditions	
1. Definition of Terms	8 - 9
2. Control, Supervision and Inspection of the Work	10
3. Superintendents	10
4. Subcontractors	10
5. Employees	11
6. Changes in Scope of Work; Extra Work	11
7. Omitted Work	11
8. Termination of Contract	12
9. Gratuities	12
10. Safety, Maintaining the Site	12
11. Loss Control / Safety	12
12. Suspension of work	13
13. Royalties and Patents	13
14. Indemnification	13

TABLE OF CONTENTS (Continued)

SECTION	PAGE NO.
General Conditions (continued)	
15. Insurance	14
16. Interpretation of Specifications	14
17. Disputed Work	14
18. No Waiver of Legal Rights	14
19. Defective Work	15
20. Tools & Equipment	16
21. Testing.....	16
22. Permits and Fees.....	16
23. Miscellaneous.....	16 - 18
Supplementary General Conditions	
1. Modifications	19
2. Conflicts	19
3. Force Majeure	19
4. Applicable Standards.....	20
5. Security of Work Area	20
6. Quality of Items and Workmanship	20
7. Materials Disposal and Cleanup.....	21
8. Contractor Safety.....	21
9. Miscellaneous.....	21
10. Inspection	21
Drug-Free Compliance	22
Bid Proposal	23
Bid Schedule.....	24 - 25
Questionnaire	26 - 27
Form of Agreement.....	29 - 33

TABLE OF CONTENTS (Continued)

SECTION	PAGE NO.
Affidavit	34
Scope of Work	35 - 36
Attachments: Insurance Requirements	

CITY OF VERO BEACH, FLORIDA

**REQUEST FOR PROPOSAL
RFP NO. 170-10/PJW**

Sealed Bids/Proposals will be received by the Manager of Purchasing, 3455 Airport West Drive, Vero Beach, Florida, 32960, until 2:00 p.m., Friday, April 9, 2010, and subsequently opened in a meeting to be held in the T&D Conference Room for the following:

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

Proposal Documents may be obtained from Manager of Purchasing, (772) 978-5470.

All Bids/Proposals shall be submitted in duplicate on the Bid Proposal forms provided within the Specifications.

Bids/Proposals must be sealed and plainly marked " **HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT RFP 170-10/PJW**" 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

The City reserves the right to delay awarding of the Contract for a period of sixty (60) days after Proposal Due Date, to waive informalities in any Proposal, or reject any or all Bids/Proposals in whole or in part with or without cause and/or to accept the Proposal 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 Proposal or Proposal-related documents, the provisions of Chapter 2, Vero Beach Code concerning Bidding Procedures and this Request for Proposal shall control in this order.

CITY OF VERO BEACH, FLORIDA

INSTRUCTIONS TO PROPOSERS

1. GENERAL

The following instructions are given for the purpose of guiding Proposers in properly preparing their Bids or proposals. These Instructions and the Request for Proposal shall be binding on all Proposers, and incorporated into and made part of the Contract.

2 EXAMINATION OF SITE AND CONTRACT DOCUMENTS

The Proposer is required, before submitting his Proposal, to visit the Site of the proposed Work and familiarize himself with the nature and the extent of the Work and any surface conditions that may in any manner affect the Work to be done, and the equipment, materials, and labor required, and the cost thereof. The Proposer is also required to examine carefully any and all Contract Documents, and ignorance on the part of the Proposer will in no way relieve him of the obligations and responsibilities assumed under the Contract. No information derived from maps, Drawings, Specifications, or from the City, shall relieve the Contractor from any risk or from fulfilling all terms of the Contract, except to the extent of express statements and depictions made therein. In the event that Proposer discovers (1) subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract Documents, Proposer will give prompt notice of such condition and Proposer shall be entitled to make a claim for a change to the Contract in accordance with Section 6, of the General Conditions, Changes In Scope Of Work; Extra Work.

3. INTERPRETATIONS, INCONSISTENCIES AND ADDENDA

The Proposer must request interpretations or clarifications regarding the Contract Documents and any Specifications received prior to Proposal Opening, in writing from the Manager of Purchasing. To be considered, such request must be received at least four (4) days prior to Proposal Opening. The Manager of Purchasing will notify all prospective Proposers of any and all interpretations and supplemental instructions. These notices shall be in the form of written Addenda. The failure of any Proposer to receive any such Addenda sent to the address of the Proposer on record shall not relieve the Proposer from the obligation to comply with the terms of the Addenda in addition to all other Contract Documents, should the Proposer submit a Proposal and become the Contract Awardee. All Addenda received by Proposer shall become a part of the Contract Documents. Neither party shall be bound by any oral interpretations or clarifications.

4. PREPARATION OF BIDS/PROPOSALS

All Bids/Proposals shall include the Bid Proposal and such other forms and statements, such as the Questionnaire, Bid Bond, and Sworn Statement, as are herein provided or otherwise required. The Bid Schedule must have all blank spaces filled in with a price for each lump sum item and for every item for which a quantity is given. All Bids/Proposals must be typed or in ink and submitted in duplicate.

One Proposal from any individual, partnership, or corporation, under the same or different names, will be considered. Should it appear to the City that any individual, partnership, or corporation has an interest in more than one Proposal for the Work contemplated, the City shall reject all Bids/Proposals in which such individual, partnership, or corporation has such interest.

5. BID PRICING

The Proposal price shall include the selling and delivering of all materials, equipment, tools, including applicable taxes, necessary or proper for the completion of the Work except as may be otherwise expressly provided for in the Contract Documents. The unit prices shall be construed as including all of Contractor's direct and indirect costs of doing the Work required, including such costs as insurance, obtaining required testing, etc., unless otherwise expressly provided in the Contract Documents.

The City may consider Bids/Proposals as nonresponsive if they contain serious omission, unauthorized alterations of form, unauthorized alternate Bids/Proposals, incomplete or unbalanced Proposal pricing (including via escalator clauses), or irregularities of any kind consider the Time of Completion in evaluating the award of this Proposal.

6. SUBMISSION OF BIDS/PROPOSALS

All Bid proposals must be delivered to the Manager of Purchasing, T&D Facility, 3455 Airport West Drive, Vero Beach, Florida, by the date and time indicated on the Request for Proposal. Proposers must allow sufficient time for the Manager of Purchasing to time-stamp the sealed Proposal by the time indicated in the Request for Proposal.

All Bid proposals must be sealed in an envelope marked on the outside with Proposer's name, address, Proposal number, description, and date.

EXAMPLE: 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

PROPOSAL NO. _____
PROPOSAL DESCRIPTION _____
PROPOSAL DATE _____

7. FAMILIARITY WITH LAWS

The Proposer is assumed to be familiar with all federal, state and local laws and regulations that may affect the Work. The Contract Documents may describe some of these laws and regulations; however, the Proposer is responsible for knowing and complying with any and all such laws and regulations. Ignorance on the part of the Proposer will in no way relieve him from the responsibility of compliance therewith.

8. REJECTION OF BIDS/PROPOSALS

The City reserves the right to reject any Proposal, if the evidence submitted by the Proposer, or if the investigation of such Proposer, fails to satisfy the City that such Proposer is properly qualified to carry out the obligations and to complete the Work contemplated therein. Any or all Proposals will be rejected, if there is reason to believe that collusion exists among the Proposers. Proposals will be considered irregular and may be rejected, if they show serious omissions, alterations in form, additions not called for, conditions or irregularities of any kind. The City reserves the right to reject any or all Proposals and to waive such technical errors as may be deemed best for the interest of the City.

9. WITHDRAWALS AND MODIFICATIONS

Any Proposer may, without prejudice to himself, withdraw or modify his Proposal at any time prior to Proposal Opening, by physically delivering written notice of withdrawal or the written modification in writing to the Manager of Purchasing. All written requests for withdrawal and written modifications must be signed by a person duly authorized to make such withdrawal or modification; and, in case signed by a deputy or subordinate, the principal's proper written authority to such deputy or subordinate must accompany the request for withdrawal or modification.

10. CONTRACT AWARD

The Contract Awardee, if any, shall execute the Contract, furnish good and sufficient bonds as herein required, and provide a certificate of insurance as herein required, within ten (10) days after receiving the Contract for execution. If the Contract Awardee fails to execute the Contract or furnish the bonds within such time, the City may annul the award and award the Contract to another Proposer, or take any other actions as authorized under Section 3.04 of the Vero Beach Code, including the award of the Contract to another Proposer. The new

Contract Awardee, if any, shall fulfill every stipulation embraced herein as if he were the original party to whom award was made.

If the Contract Awardee is a corporation, it shall furnish certificates as to its corporate existence and evidence that the officer signing the Contract is authorized to do so on behalf of the corporation, prior to the City's execution of the Contract.

11. SUBLETTING OR ASSIGNING OF CONTRACT

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof or the Work provided for therein or of any part or all of his right, title or interest therein without the express written consent of the City. Any such attempt without the prior written consent of the City shall be void ab initio and shall allow the City, at its option, to void the Contract.

The following is a list of the subcontractors that VPI would potentially utilize during execution of the proposed project. VPI's pricing and schedule are predicated on use of any of the subcontractors listed therein. In the absence of express written notification of subcontractor disapproval from the Customer prior to Contract award, VPI shall be entitled to an equitable adjustment to the Contract Price and time of performance for any resulting impact arising from or relating to any disapproval.

- TEi Construction Services
- Titan Contracting and Leasing Company
- Enerfab
- Bluewater Energy Solutions
- Arthur T. Astle & Associates, Inc. (ATA&A)

In addition, VPI uses many vendors and suppliers for various aspects of the work and presumes that they fall outside the restrictions of this paragraph 11.

12. PATENT FEES, ROYALTIES AND LICENSES

If the Contractor requires or desires to use any design, trademark, material or process covered by letters of patent or copyright, the Contractor and his Surety shall indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented designs, trademark, mentioned or processed in connection with the Work agreed to be performed under the Contract and shall indemnify the City from any costs, expense or damage which he may be obliged to pay by reason of any infringement at any time during the prosecution of, or after completion of, the Work.

13. LIENS

Because the Work called for under the Contract is "public Work" under Chapter 255, Florida Statutes, the Contractor shall insert the following Article in all subcontracts hereunder:

"Notice: Claims for labor, materials and supplies cannot be asserted against the City of Vero Beach and are subject to proper prior notice to (Contractor's Name) and to (Contractor's Surety Company Name), Surety, pursuant to Chapter 255 of *Florida Statutes*. This Article shall be inserted in every sub-Contract hereunder."

14. FINANCIAL STATEMENT

If requested by the City, Proposers may be required to provide a summary of their financial statement. In the event that City requires Proposer to provide a summary of its financial statement, City shall exercise its best efforts under the law, working in concert with Proposer, to redact confidential and proprietary information in any submission that is or may be accessible through "open records", "freedom of information" or similar type laws or regulations

15. PUBLIC ENTITY CRIMES

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.

16. Any variances to the specifications, terms, conditions, or any part of these documents shall be stated on the variance form of this document. No variances by the Proposer shall be deemed to be part of the submitted Proposal unless such variance is listed, contained and referenced on the variance form.

CITY OF VERO BEACH, FLORIDA

GENERAL CONDITIONS

1. DEFINITION OF TERMS

Where the following terms, or their pronouns, occur herein or in any of the Contract Documents, they shall have the following meanings:

A. Addendum

A modification of the Contract Documents issued in writing by the City prior to the Proposal Opening.

B. Bid Opening

The time and place for the opening of Bids, as described in the Request for Proposal.

D. Change Order

A written order issued by the City to the Contractor directing certain changes, additions, or reduction in the Work.

C. City ("Owner")

City of Vero Beach, P.O. Box 1389, Vero Beach, Florida 32961-1389.

E. Commencement Date

The date on which the Contractor may start the Work.

F. Completion Date

The date on which all Contract Work, other than steam blow and related activities, guarantee and maintenance Work, is required to be completed.

G. Contract

The written agreement between the City and the Contractor covering the Work to be performed, including all Contract Documents.

H. Contract Documents

All forms and documents comprising the Contract, including Request for Proposal, Addendum as Required, Instructions to Proposers, General Conditions, Supplementary General Conditions, Sworn Statement, Questionnaire, Drug-Free Workplace Compliance Form, Bid Proposal, Bid Bond, Form of Agreement, Performance and Payment Bond, Affidavit, Final Payment Request by Contractor, and Periodic Estimate for Partial Payment, Specifications, Drawings, Contractor's Proposal, and Change Orders.

I. Contractor

The individual, partnership, or corporation who, by executing the Contract, agrees to perform the Work described therein.

K. Extra Work

Work not included as a unit of Work described in the Bid Schedule, not reasonably incidental to such Work, but reasonably related to the original scope of Work.

L. Notice to Proceed

A written notice issued by the City, designating the Commencement Date, the Time of Completion, and the Completion Date.

M. Site

The area upon or in which the Contractor is to perform the Work and such other areas adjacent thereto as may be designated as such by the City.

N. Specifications

All of the technical requirements and standards of performance applying to the Work as hereinafter detailed, designated by reference (e.g., on Drawings), or which may be stated in an Addendum.

O. Subcontractor

Any individual, partnership, or corporation, other than the Contractor's employees, who Contracts with the Contractor to furnish, or actually furnishes, labor, materials, or equipment, or any combination thereof, in connection with the Work performed under the Contract.

P. Surety

Any person, firm or corporation bound by the Contract bonds with and for the Contractor acceptable performance of the Work and for payment of all debts pertaining thereto.

Q. Time of Completion

The total number of calendar days from and including Commencement Date through the Completion Date.

R. Work

Everything expressly or reasonably implied to be done by the Contractor under this Contract, including furnishing and installing materials, as well as any Extra Work properly authorized by the City through a Change Order.

2. CONTROL, SUPERVISION AND INSPECTION OF THE WORK

- A. The City shall have full control and direction of the Work in all respects. The City shall have the right to supervise the Work as the City deems necessary, provided any unreasonable alteration or hindrance of Contractor's schedule of Work shall be subject to a claim by Contractor for an equitable adjustment to the Contract.
- B. The City shall at all times have the right to inspect the Work and the Site. If requested by the City, the Contractor shall uncover any of the Work for inspection and replace same. If the inspection reveals that materially compliant Work had been performed, the cost to uncover and replace the Work will be charged to the City and an equitable adjustment in schedule will be made. The Contractor shall furnish all reasonable means for obtaining such information as the City may desire, respecting the quality of the Work and materials and the manner of conducting the Work. The City shall not have the power to waive the Contractor's obligation to properly perform the Work as herein prescribed.
- C. The Contractor shall perform night Work only as permitted by the City, it being noted that outage work of this nature is routinely performed in multiple shifts. The Contractor shall receive no extra payment for such Work.
- D. The City's right to inspect and supervise shall not relieve the Contractor from his responsibilities and obligations under the Contract. The City shall not be responsible for the safety of the Workmen, the safeguarding of the Work, or the proper performance of the Contractor.

3. SUPERINTENDENTS

When the Contractor is not present at the Site, any orders given by the City to the Contractor's foremen or superintendents relating to safety or protection of property shall be strictly obeyed and shall be treated in all respects as if given to the Contractor. Furthermore, the Contractor shall provide the City an emergency phone number to allow contact with him or his representative at times when he is not on the Site.

4. SUBCONTRACTORS

- A. The Contractor shall not sublet the whole or any part of the Work without the written consent and approval of the City. In all cases, the Contractor shall give his personal attention to the Work and the Subcontractors being considered as foremen employed by the Contractor. (See Instructions to Proposers, Section 11) Contractor's vendors and suppliers for various aspects of the work fall outside the restrictions of this paragraph 4.

- B. After acceptance of any on site Subcontractor by the City, the Contractor shall not replace the Subcontractor with a new Subcontractor without the written approval of the City.

5. EMPLOYEES

None but skilled foremen and Workmen shall be employed on Work requiring special qualifications. Any person employed on the Work who fails, refuses, or neglects to obey the instructions of the City in anything relating to this Work, or who appears to the City to be disorderly, insubordinate, unfaithful, or incompetent, shall, upon the order of the City, be at once discharged and not again employed on any part of the Work. Any interference with, or abusive or threatening conduct toward, any City employee by the Contractor or his employees or agents, shall be authority for the City to annul the Contract and relet the Work.

6. CHANGES IN SCOPE OF WORK; EXTRA WORK

While the City has tried to anticipate all Work required under and during the term of this Contract, the parties understand and agree that the Work required herein may require, without notice to the sureties, the performance of Extra Work or the deletion of Work previously required. The City may, at any time and without notice to the sureties, require changes in the scope of Work under this Contract, as the City may find necessary or desirable, provided such change is shown to be reasonably related to Contractor's original undertaking. Such changes may include the deletion of Work previously required.

- A. The City shall notify the Contractor of the change in scope via a Change Order, which shall become a part of the Contract Documents. If a Change Order directs Contractor to delete Work, the Contractor shall refrain from performing it, provided Contractor may notify the City of detriment to the overall Work that may result from such action, and in such event, City shall indemnify and hold harmless Contractor from any and all damages resulting from such change.
- B. The Contractor shall perform Extra Work only pursuant to the issuance by the City of a Change Order. Records of any Extra Work performed by Contractor shall be reviewed daily by the Contractor and the City, duplicate copies of accepted records made and signed by both the Contractor or his representative and the City, and one (1) copy retained by each.
- C. If the Contractor believes that any directive or act of the City or any change in law after execution affects the amount or character of the Work, Contractor may request the issuance of an equitable adjustment to the Contract prior to undertaking the work.
- D. Any Change Order under the contract shall take into account all costs and schedule

impact to Contractor for the alteration of the Work, including general and administrative costs and profit.

7. DELETED WORK

The City may, at any time by a written order and without notice to the Sureties, require the deletion of such Contract Work as the City may find necessary or desirable. All Work so ordered must be deleted by the Contractor. The amount by which the Contract price shall be reduced by the reasonable and fair estimated net adjusted cost of such deleted Work as reasonably determined by the Contractor in good faith. Note, general and administrative costs and profit will not be reduced pro rata according to any direct cost of the deleted work since there is no direct reduction in those items necessarily tied to a reduction of the Work as originally contracted.

8. TERMINATION OF CONTRACT (FOR CONVENIENCE)

City may terminate this Contract at any time without further obligation hereunder, except with regard to any services already performed by Contractor under a purchase release issued by City, by delivering written notice to Contractor, which notice shall include the date upon which termination becomes effective. City's right to terminate is in addition to City's other rights hereunder except to the extent that the exercise of those rights would be inconsistent with the City's act of termination. City shall pay Contractor the amounts due not previously paid to Contractor for the services performed and for the products furnished pursuant to this Contract prior to such effective date of the termination notice and a reasonable amount, including profit, for Work then in production and for the costs associated with effecting the termination of Work.

9. GRATUITIES

City may, by written notice to Contractor, cancel this Contract without liability to Contractor if it is determined by City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of City with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a Contract. In the event this Contract is canceled by City pursuant to this provision, City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Contractor in providing such gratuities.

10. SAFETY; MAINTAINING THE SITE

A. The Contractor shall maintain safety at all times in cooperation with the City. The Contractor shall be responsible for any damage to existing utilities, property, or persons

to the extent arising out of the Contractor's negligent act or omission at the Work Site. The Contractor shall take precautions as are necessary to protect the public, the City and its employees, and the Contractor's employees from hazards associated with the Contractor's use and occupancy of the Work Site, in cooperation with the City.

- B. The Contractor shall maintain the Work Site in a safe and reasonable condition. For any period, including weekends and holidays, during which Work is halted, Contractor shall ensure that the Work Site on which Work has been halted is in a condition that is clean, orderly, and satisfactory to the City.
- C. The city shall have overall security obligations for access to the Site and maintaining of all common areas of the Site.

11. LOSS CONTROL/SAFETY

- A. Any costs due to loss, theft, or damage to all City materials, equipment, and property shall be the responsibility of the Contractor to the extent arising out of the Contractor's negligent act or omission at the Work Site.
- B. Precaution shall be exercised at all times by the Contractor for the protection of all persons, including employees and property. The Contractor shall comply with all applicable laws, regulations and ordinances related to safety and health, shall undertake reasonable effort to detect hazardous conditions, and shall take prompt action when loss control/safety measures are reasonably necessary, provided that liability and costs associated with any hazardous condition created by or resulting from the conduct of others shall not be the responsibility of the Contractor.
- C. The City may order work to be stopped if conditions exist that present an immediate danger to persons or property. The Contractor acknowledges that such stoppage will not shift responsibility for any damages from the Contractor to the City, but only to the extent Contractor is the proximate cause for the existence of the condition.

12. SUSPENSION OF WORK

The City shall have the right to require the Contractor to suspend Work during inclement weather. The City may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than thirty (30) days by notifying the Contractor to cease Work. The City's decision as to suspensions shall be final and binding. Whenever the Contractor is required to suspend Work for any reason, the Contractor shall secure the Site and protect the Work, so as to preserve the Site and the Work from damage, destruction, and loss. During any such suspension, Contractor shall be entitled to make a claim for a change to the Contract in accordance with Section 6, of the General Conditions, Changes In Scope Of Work; Extra Work.

13. ROYALTIES AND PATENTS

All fees, royalties, and claims for any invention, or pretended invention, or patent of any articles, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the construction of this Work or appurtenances, are hereby included in the prices stipulated in this Contract for said Work.

14. INDEMNIFICATION

A. Contractor agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to City) City, its council members, directors, officers, employees, principals and each of them, against any and all administrative and judicial proceedings and orders, charges, claims, costs, damages, demands, expenses, fines, judgments, liabilities, losses, penalties, and remedial actions of any kind, including the costs of any hazardous materials remedial actions of any kind and all other related costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and the costs of defense arising out of injury to persons, including, but not limited to death, or damage to property, to the extent caused by, directly or indirectly, the negligence of Contractor in the performance of the Work set forth in the Contract Documents.

B. The indemnification and hold harmless provisions set forth in paragraph 17A. above, shall be binding upon the successors, assigns, and sub-licensees of Contractor.

15. INSURANCE

Before starting the Work and until final acceptance of the Work by the City, the Contractor shall procure and maintain insurance of the types and to the limits specified in the Attachment Section of the document. Further, the Contractor shall require each of his on Site Subcontractors to procure and maintain, until completion of that Subcontractor's Work, insurance of types and to the limits specified in Attachment Section of document. It shall be the responsibility of the Contractor to ensure that all of his Subcontractors comply with all of the insurance requirements contained herein relating to such Subcontractors.

Certificates of Insurance evidencing the insurance coverage specified herein shall be filed with the City before Work is begun. The required Certificates of Insurance not only shall name the types of policies provided, but also shall refer specifically to this Contract and the specific Contractual provisions thereof which require such insurance, and shall state that such insurance is as required by this Contract. If the initial insurance expires prior to the completion of the Work, renewal Certificates of Insurance shall be furnished to the City

within five business days of renewal of the insurance program.

16. INTERPRETATION OF SPECIFICATIONS

The City shall reasonably decide, in good faith, all questions concerning the interpretation of all Contract Documents pertaining to the character, quality, amount and value of any Work done under or by reason of this Contract and the City's estimate and decisions shall be final and conclusive, provided that Contractor shall be entitled to dispute such City determination under the dispute resolution provisions provided herein..

17. DISPUTED WORK

If the Contractor is of the opinion that any Work required, necessitated, or ordered is not within the terms and provisions of this Contract, he must promptly notify the City, in writing, of his contentions with respect thereto and request a final determination thereon. If the City determines that the Work in question is not Extra Work, and that the order complained of is proper, the City will direct the Contractor to proceed and the Contractor shall promptly comply, unless Contractor shows that proceeding with the work under the circumstances would be manifestly inequitable. Final determination and decisions, in case any question shall arise, shall constitute a condition precedent to the right of the Contractor to receive any money therefor, until the matter in question has been determined, provided that Contractor shall be entitled to dispute such City determination under the dispute resolution provisions provided herein.

18. NO WAIVER OF LEGAL RIGHTS

- A. The City shall not waive any rights hereunder by making any payment of any kind, or accepting any Work, unless expressly stated otherwise. Except to the extent otherwise expressly stated, the consent by City to any act by Contractor shall not be deemed to imply consent or to constitute a waiver of a breach of any provision of the Contract or continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between City and Contractor be construed to waive or lessen the right of City to insist upon the performance by Contractor in strict accordance with the provisions of the Contract, except to the extent that such custom or practice was undertaken with respect to the specific event, or the Contractor shows that the Contractor and/or the City has relied upon such custom and practice.
- B. The City reserves the right to correct any manifest error that may be discovered in any estimate that may have been paid and to adjust the same to meet requirements of the Contract. The City further reserves the right, should conclusive proof of defective Work on the part of the Contractor that does not fall within Contractor's warranty obligations be discovered after the Final Payment has been made, to claim and recover, by process of law, such sums as may be sufficient to correct the error or make good the defects in the Work.

19. DEFECTIVE WORK

- A. If, at any time prior to the expiration of the warranty period, defects therein shall be found, the Contractor shall promptly correct such defects, remove and dispose of all defective or unsatisfactory Work or materials, and supply others in accordance with the Contract.
- B. Should the Contractor fail or refuse to remove and renew any defective Work performed, or to make any necessary repairs in an acceptable manner, and in accordance with the requirements of the Contract within the time reasonably indicated in writing, the City shall have the authority to cause the unacceptable or defective Work to be removed or renewed, or such repairs as may be necessary to be made at the Contractor's expense. Continued failure or refusal on the part of the Contractor to make any or all necessary repairs, promptly, fully, and in an acceptable manner, shall be sufficient cause for the City to declare the Contract terminated, in which case the City at its option may instruct the City to purchase materials, tools, and equipment and employ labor or may contact with any other individual, firm or corporation, or may proceed with its own forces to perform the Work.
- C. All reasonable direct costs and expenses incurred thereby shall be charged against the defaulting Contractor and the amount thereof deducted from any monies due, or which may become due him, or shall be charged against the Contract bond.
- D. At the request of the City, the Contractor shall, at any time remove or uncover such portions of the Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by the Contract Documents. Should the Work thus exposed or examined prove to be in compliance with the Contract, the uncovering or removing, and the replacing of the covering or making good of the parts removed, shall be paid for by Change Order; but to the extent the Work so exposed or examined prove unacceptable, the uncovering or removing and replacing of the covering or making good of the parts removed shall be at the Contractor's expense.
- E. Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect be discovered, or obligate the City to final acceptance.

20. TOOLS & EQUIPMENT

If, at any time before the commencement or during the progress of the Work, tools or equipment can be shown by the City to be insufficient, inefficient or inappropriate to secure the quality of Work required or the proper rate of progress, the City may order the Contractor to increase their efficiency, to improve character, to augment their number or substitute new tools or equipment, as the case may be, and the Contractor shall conform to such order,

unless contractor shows a contrary justifiable basis for the condition. The failure of the City to demand such increase of efficiency shall not relieve the Contractor of his obligation to secure the quality of Work and the rate of progress necessary to complete the Work within the time required by the Contract and to the satisfaction of the City.

21. TESTING

The Contractor shall perform, or obtain the performance of, any testing required herein. The Contractor shall bear the cost of any testing required under the Contract, as well as any retesting required as a result of failures. The Contractor's Bid prices shall be construed as including the cost of any such testing or retesting.

22. PERMITS & FEES

(Not Used)

23. MISCELLANEOUS

A. Notice:

Any notice, request, instruction, demand, consent, or other communication required or permitted to be given under this Agreement shall be:

(1) in writing;

(2) delivered (to the addresses listed in this Article 5, below, or such other address as the Parties may provide to each other in writing) by one of the following means:

(a) by hand;

(b) by overnight mail service (such as Federal Express); or

(c) by certified mail, postage prepaid, and certified return receipt requested

to the following address, or such other address as the Parties may provide to each other in writing:

To: [Name of Division]
Attn:
Name of Company
Street Address
City / State / Zip Code
Telephone: (xxx)xxx-xxxx
Facsimile: (xxx)xxx-xxxx
E-Mail:

With a copy to: [Name of Division]
[Contact] [Title] Attn: [Contact] [Title]
Name of Company
Street Address
City / State / Zip Code
Telephone: (xxx)xxx-xxxx
Facsimile: (xxx)xxx-xxxx
E-Mail:

To CITY: With a copy to:

City of Vero Beach, Florida
Attn: Bill Messersmith,
Public Works & Engineering
1053 20th Place
P. O. Box 1389
Vero Beach, FL 32961
Telephone: (772) 978-4870
Facsimile: (772) 978-4879
E-Mail:

City of Vero Beach, Florida
Attn: Carol Shoaf,
Contract Administrator
3455 Airport West Drive
P.O. Box 1389
Vero Beach, FL 32961-1389
Telephone: (772) 978-5474
Facsimile: (772) 770-6860
E-Mail:

A copy of any notice, request, instruction, demand, consent, or other communication required or permitted to be given under this Agreement may also be sent via facsimile or as a separate attachment to an e-mail. However, delivery via facsimile or e-mail shall not constitute an alternative or substitute means of delivery (i.e., notice must still be sent via hand delivery, over night mail, or certified mail return receipt requested as set forth, above).

B. The parties expressly recognize that the relationship between the City and the Contractor is that of independent Contractors, and that neither the Contractor nor any of his servants, agents or employees shall ever be considered to be an agent, servant or employee of the City.

C. Severability

In the event that any provision of this Agreement shall be held unconscionable, unenforceable, or void for any reason by any tribunal of competent jurisdiction, it is agreed that the provision in question shall be modified to eliminate the elements of concern to the tribunal and as modified shall be binding on the parties hereto. The remaining provisions shall not be affected by the action of any tribunal or modification of such provision, and shall remain in full force and effect.

D. Choice of Law; Venue

The validity, interpretation, and enforcement of this Agreement shall be governed by the laws of Florida without regard to conflict of law applications. Indian River County, Florida, shall be proper venue for any litigation involving this Agreement, including the applicable Federal Circuit in which Indian River County resides. Any legal proceedings of any nature brought by either Party to enforce any right or obligation arising out of this Agreement shall be submitted to trial without jury before any court of competent jurisdiction in Indian River County, Florida. The Parties consent and submit to the jurisdiction of any such court in Indian River County, Florida, and agree to accept service of process outside the state of Florida in any matter submitted to any court pursuant hereto.

E. Attorneys' Fees

The prevailing party in any litigation, arbitration or mediation relating to this Agreement shall be entitled to recover its reasonable attorneys' fees and costs from the other party for all matters, including, but not limited to, appeals, to the extent that such Party prevails.

F. Article Headings For Convenience Only

The Article headings, and underlined sub-article headings, hereof are inserted for convenience of reference only, are not a part hereof, and shall have no effect on the construction or interpretation of this Contract.

G. Limitation of liability

Except to the extent Contractor's express indemnity obligations stated herein are considered to be such, Contractor shall not be liable for any loss of profit, special, indirect incidental or consequential damages arising under any cause or combination of causes whatsoever in connection with the Contract. This limitation shall apply notwithstanding any failure of essential purpose of any limited remedy. Contractor's cumulative liability arising under any cause or combination of causes shall in no event be in excess of the Contract Price except to the extent of Contractor's indemnification liabilities expressly set out in the Contract Documents.

CITY OF VERO BEACH, FLORIDA

SUPPLEMENTARY GENERAL CONDITIONS

1. MODIFICATIONS

This Contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

2. CONFLICTS

The following principles shall apply in resolving any conflict among or ambiguity in the Contract Documents:

- A. The Supplementary General Conditions shall have priority over the General Conditions and Form of Agreement in case of conflict. The Technical Specifications shall take precedence over all other Contract provisions, except as may be expressly provided in the other Contract Documents.
- B. Full size details shall take precedence over scale Drawings and large scale Drawings shall take precedence over small scale Drawings. Dimensions given in figures shall take precedence over scaled dimensions.
- C. When measurements are affected by conditions already established or where items are to be fitted into constructed conditions, it shall be the Contractor's responsibility to verify all such dimensions at the Site and the actual job dimensions shall take precedence over scaled or calculated dimensions on the Drawings, provided, in such event, Contractor shall be entitled to an adjustment of the Contract Price and Schedule to the extent that actual dimensions conflict with dimensions on the Drawings.

3. FORCE MAJEURE

Except as otherwise expressly provided herein, a Party shall not be liable for any failure or delay in the performance of its obligations under this Agreement due to causes not reasonably within its control, including, but not limited to, acts of civil or military authority, including courts and regulatory agencies, superior governmental authority, God, war, riot or insurrection, blockages, embargoes, sabotages, epidemics, fires, floods, strikes, lockouts or other labor difficulties, provided such labor difficulties do not arise from inequitable labor practices. In the event of any failure or delay resulting from such causes upon notice to the other party within five (5) business days of occurrence of the event giving rise to the delay the time for performance hereunder shall be extended for a period of time reasonably necessary to overcome the effects of such delays. In the event any such failure or delay shall last for a period of more than ten (10) calendar days, then either Party may terminate this

Agreement forthwith, in whole or in part, by notice in writing to the other, which termination shall be treated as a termination for the convenience of City with payment to Contractor accordingly.

4. APPLICABLE STANDARDS

All standards referred to herein shall mean the latest revision under the same specification number or for those provisions in the new or revised Specifications which are clearly inapplicable. The following abbreviations have been used in referring to other standards:

DBPR	Department of Business and Professional Regulations
DHR	Department of Hotel and Restaurants
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Associates
IEEE	Institute of Electrical and Electronic Engineers
OSHA	Occupational Safety and Health Administration
ASME	American Standard of Mechanical Engineers
ANSI	American National Standards Institute
NFPA	National Fire Protection Association
AISC	American Institute of Steel Construction
AWS	American Welding Society
EPA	Environmental Protection Agency
ASTM	American Society of Testing Materials
FDEP	Florida Department of Environmental Protection

Whenever a conflict exists between these standards and the Contract Documents, the Contract Documents shall govern. In the event of a conflict among any of the above codes and standards, the one having the most stringent requirements shall take precedence unless otherwise approved in writing by the City.

5 SECURITY OF WORK AREA

All doors in all City buildings shall remain locked while the building is being cleaned.

6. QUALITY OF ITEMS AND WORKMANSHIP

All materials and equipment furnished for this project shall be new and unused. Any materials or equipment which, in the reasonable opinion of the City, exercised in good faith, have become excessively weathered or damaged since manufacture, shall not be considered as new. Workmanship shall be first class and the finished product equal to the Contractor's best accepted standards for the category of Work performed. All Work shall be performed by experienced, skilled tradesmen.

7. MATERIALS DISPOSAL AND CLEANUP

The Contractor shall comply with all pertinent local, state and federal regulations as enforced by the EPA, FDER, U.S. Coast Guard and any other regulatory agency. The Contractor shall be responsible for the disposal of all hazardous and non-hazardous materials in accordance with EPA, FDEP, and OSHA requirements. Additionally, the Contractor shall comply with all regulatory requirements for the clean-up of all spills as a result of the Work performed.

8. CONTRACTOR SAFETY

- A. The Contractor shall ensure that all personnel meet OSHA and ANSI requirements for the Work being done.
- B. Any Contractor personnel not wearing required safety equipment, or when required, complying with all safety standards and requirements will be removed from the Work Site until such time as appropriate safety equipment is worn or standards observed.

9. MISCELLANEOUS

The City reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet requirements of the Contract. The City further reserves the right, should conclusive proof of defective Work on the part of the Contractor be discovered after payment has been made, to claim and recover by process of law such sums as may be sufficient to correct the error or make good the defects in the Work, subject to the express limitations provided elsewhere in the Contract Documents.

10. INSPECTION

The City shall at all times have the right to inspect the Work. The Contractor shall furnish all reasonable means for obtaining such information as the City may reasonably request, respecting the quality of the Work and materials and the manner of conducting the Work. The City shall not have the power to waive the Contractor's obligation to properly perform the Work as herein prescribed.

The City's right to inspect and supervise shall not relieve the Contractor from his responsibilities and obligations under the Contract. The City shall not be responsible for the safety of the workmen, the safeguarding of the work, or the proper performance of the Contractor.

DRUG-FREE WORKPLACE COMPLIANCE FORM

IDENTICAL TIE BIDS

Preference shall be given to business with drug-free workplace programs. Whenever two or more Bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or Contractual services, a Bid received from a business that certifies that it has implemented a drug-free Work place program shall be given preference in the award process. Established procedures for processing tie Bids will be followed if none of the tied vendors has a drug-free Workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or Contractual services that are under Bid a copy of the statement specified in Subsection 1.
4. In the statement specified in Subsection 1, notify the employees that, as a condition of working on the commodities or Contractual services that are under Bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any State for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employer's community by, any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through the implementation of this section. As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

VENDOR'S SIGNATURE

BID PROPOSAL
RFP NO:170-10/PJW
HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

To: The City Manager
City of Vero Beach
P.O. Box 1389
Vero Beach, Florida 32961

The Undersigned Proposer has carefully examined the Contract Documents and visually examined any and all Work Sites. The undersigned is familiar with the nature and extent of the Work and any local conditions that may in any manner affect the Work to be done, and the equipment, materials and labor required, but excluding conditions not reflected in information provided by the City, and further subject to express clauses contained elsewhere in the Contract Documents.

The undersigned agrees to do all the Work in accordance with the Contract Documents and according to the standards of quality and performance established by the City, for the unit prices as provided in the attached Bid Schedule, for each of the items or combination of items stipulated. It is understood that certain quantities shown in the Bid Schedule are approximate only, subject to increases and decreases, and for the purpose of Proposal comparisons for determination of low Proposer. It is further understood that payment will be in accordance with actual quantities placed in the construction as more specifically provided in the Contract Documents. The undersigned further agrees as follows:

1. To do any Work, not covered by the Bid Schedule, which may be ordered by the City in accordance with provisions contained in the Contract Documents upon authorization by the City Council, and to accept as full compensation therefore such prices as may be agreed upon, in writing, by the City and the Contractor in accordance with Article 6, of the General Conditions.
2. To begin and complete Work as required in the Notice to Proceed, provided such Notice to Proceed does not conflict with the agreed Contract Documents.
3. To allow the City of Vero Beach to reduce invoices per fines in the amount and under the conditions specified in the Contract Documents.
4. To keep in force all insurance and bonding requirements as set forth in the Contract Documents for the duration of the Contract and to give thirty (30) days notice of expiration of insurance and/or bonding.

Dated this _____ day of _____, 20__.

Respectfully submitted Proposer _____
Address: _____

City, State and Zip Code

QUESTIONNAIRE

The undersigned guarantees the truth and accuracy of all statements and answers herein contained.

1. How many years has your organization been in business as a supplier of these materials/services?

2. What is the last project of this nature that you have completed?

3. Have you ever failed to complete Work awarded to you; if so, where and why?

4. Name three (3) individuals or corporations for which you have performed Work of this size and nature to which you refer:

_____ Phone _____

_____ Phone _____

_____ Phone _____

5. Have you personally inspected the proposed Work and have you a complete plan for its performance?

6. Will you sublet any part of this Work? If so, give details:

7. What equipment do you own that is available for the Work?

8. What equipment will you purchase for the proposed Work?

9. What equipment will you rent for the proposed Work?

10. Minority Business Statement:

Is your firm a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985? YES or NO

11. State the true, exact, correct, and complete name of the partnership, corporation, limited liability company, or trade name under which you do business, and the address of the place of business. (If a partnership, state the name of all partners. If a corporation, state the name of the President and Secretary. If a Limited Liability Company, state the names of all members. If a trade name, state the names of the individuals who do business under the trade name.)

(Correct Name of Proposer)

a. The business is a Sole Proprietorship, Partnership, Corporation, or Limited Liability Company.

b. The address and phone number of principal place of business is

c. The names of the partners, corporate officers, members, or individuals doing business under a trade name, are as follows:

(Proposer)

FORM OF AGREEMENT

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

THIS PROFESSIONAL SERVICES CONTRACT is executed by and between the City of Vero Beach, a municipal corporation organized and existing under the laws of the State of Florida, whose address is P. O. Box 1389, Vero Beach, Florida, 32961-1389 (hereinafter "City"); and

NAME OF CONTRACTOR: _____

ADDRESS OF CONTRACTOR: _____

CITY, STATE, ZIP CODE: _____

hereinafter called the Contractor, and the CITY OF VERO BEACH, a municipal corporation organized and existing under the Laws of the State of Florida and located in Indian River County, Florida, hereinafter called the City.

WITNESSETH:

That the Contractor and the City, for the consideration hereinafter named, agree as follows:

Article 1. SCOPE OF WORK - The Contractor shall perform all the Work as described in the Documents entitled "**HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT**" for the City of Vero Beach, Florida, and shall do everything required by this Form of Agreement and any other Contract Documents.

Article 2. TERM AND RENEWAL -- The term of the Contract performance on site, exclusive of steam blow, shall be twenty-eight consecutive calendar days after notice to proceed during the period February 5, 2011-March 21, 2011.

Article 3. THE CONTRACT SUM - The City will pay Contractor for performance of the Contract, subject to additions and deductions provided therein, in current funds as follows:

Written Amount : _____

Numerical Amount: _____

Article 4. PAYMENT

- A. The City will make payments upon proof of completion of payment milestones, as described in the Proposal Schedule, once the Contractor has completed the work in accordance with the Contract Documents. Ten percent (10%) of the amount due and payable to the Contractor will be retained from each payment to ensure that the Contractor completes all work under this Contract and complies with all obligations hereunder. Payment of the ten percent (10%) retention shall not be unreasonable withheld.

- B. Not Used.

- C. No invoice shall include Federal Excise, State or City Sales Tax, to the extent that City furnishes tax exemption certificates that apply.
- D. The unit prices contained in the Schedule for contract services are incorporated herein, with changes as noted, and made a part of this Contract.

Article 5. FINAL PAYMENT - Before final payment, the Contractor shall submit evidence satisfactory to the City that all payrolls, material bills, and other indebtedness connected with the Work have been paid. The City shall have the right to demand and receive from the Contractor before making final payment, an affidavit stating that the Contractor has made payment in full for all labor, services and materials incorporated into the Work corresponding to the progress or final payment to be made. The City shall rely on said affidavit at face value.

The making and acceptance of the final payment shall constitute a waiver of all claims by the Contractor and the City, other than any claims the City may have arising from unsettled liens or from faulty Work appearing after final payment. The City may withhold from final payment such amounts as may be expressly stated elsewhere herein.

Article 6. INDEMNIFICATION AND INSURANCE - The Contractor shall indemnify City, as provided in Article 14, General Conditions, and procure and maintain insurance provided in Article 15, General Conditions, and Attachment "Insurance Requirements" and, to the extent required in said Articles or Attachment, require any and all Subcontractors to do the same.

Article 7. GUARANTEES - The Contractor shall guarantee, the equipment, articles, devices, and materials furnished or installed, against any and all failure in proper use and operation for a period of one (1) year from the date of completion of installation of the equipment provided under this Contract, but in no case longer than eighteen (18) months after delivery of the equipment. The Contractor shall also obtain warranties from manufacturers for each article and piece of equipment furnished or installed, so that the manufacturer's warranty fully covers the equipment from date of shipment to the Contractor through the time period established above.

Article 8. CONTRACTOR'S REPRESENTATIONS - In order to induce the City to enter into this Contract, the Contractor makes the following representations:

- A. The Contractor has familiarized himself with the nature and extent of his obligations under this Contract. Contractor has familiarized himself with the Work Site, locality, and all local conditions and laws and regulations that in any manner may effect his costs, progress, or performance.
- B. The Contractor has carefully studied, or will carefully study, all reports and Drawings of physical conditions which are identified or provided in this Contract or prior to any Work Order and accepts or shall accept the accuracy of any technical data contained in such reports and Drawings, upon which Contractor is entitled to rely.
- C. Notwithstanding the foregoing, to the extent that Contractor discovers (1) subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract Documents, Contractor will give prompt notice of such condition and Contractor shall be entitled to make a claim for a change to the Contract in accordance with Section 6, of the General Conditions, Changes In Scope Of Work; Extra Work.
- D. At the time of entering into the Contract, the Contractor has given the City written notice of all conflicts, errors, and discrepancies that the Contractor had discovered in the Contract Documents and the written

resolution thereof by the City is acceptable to the Contractor.

Article 9. CONTRACT UNIT PRICES - The unit prices contained in the Bid Schedule are incorporated herein, with changes as noted, and made a part of this Contract.

TITLE: HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

WITNESSED BY:

(NAME OF CONTRACTOR)

Sign: _____
Print: _____

Sign: _____
Print: _____
Title: _____

Sign: _____
Print: _____

Sign: _____
Print: _____
Title: _____

(CORPORATE SEAL)

COMMONWEALTH OF KENTUCKY
COUNTY OF JEFFERSON

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____, and _____ as _____, on behalf of the corporation. They are personally known to me or have produced _____ as identification and did (did not) take an oath.

NOTARY PUBLIC

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

TITLE: HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

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 _____, 20 ____, by Kevin Sawnick, Mayor of the City of Vero Beach, 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: _____

Approved as to form and
legal sufficiency:

Approved as to technical requirements:

City Attorney

City Manager

Director, Power Resources

AFFIDAVIT

STATE OF _____

COUNTY OF _____

Before me personally appeared the undersigned who, by me being first duly sworn, deposes and says:

The undersigned is a sub-Contractor under the prime Contractor under a Contract entered into by and between the City of Vero Beach, Florida, and

for the performance of the following described Work:

The undersigned further deposes and says that said labor, materials, and/or services were of a total value of \$_____ of which there remains due owing and unpaid the sum of \$_____ to the undersigned.

Corporate Seal

Sub-Contractor

WITNESS:

_____ By: _____

_____ Title: _____

Sworn to and subscribed before
me this _____ day of _____, 20__.

Notary Seal

Notary Public State of _____ at Large

SCOPE OF WORK

The City of Vero Beach Power Plant is requesting proposals for replacement of Unit 5 Heat Recovery Steam Generator Superheater tubes and Steam Blow based on qualified contractors' previous site visits and engineering studies.

VPI's proposed scope of work is detailed in the latest submitted revision of VPI Proposal No. V69054, which would be required to be included as a Contract document.

TYPE III

INSURANCE REQUIRED

Revised 02/13/02

A. General

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

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

B. Coverage

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

- a) Employer's Liability with a limit of \$500,000 each accident or disease.
- b) Notice of Cancellation and/or Restriction - Contractor shall endeavor to provide the City with thirty (30) days notice of cancellation and/or restriction.

2. **Commercial General Liability** - Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability policy filed by the Insurance Services Office and must include:

- a) Minimum limits of \$3,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- b) Premises and Operations.

- c) Independent Contractors.
- d) Products and Completed Operations - Contractors shall maintain in force until at least three years after completion of all services required under the contract, coverage for products and completed operations, including Broad Form Property Damage.
- e) Broad Form Contractual Coverage applicable to this specific contract including any hold harmless and/or indemnification exclusions removed.
- f) Additional Insured - The City is to be specifically included as an additional insured (including Products and Completed Operations). Contractor's insurance, including that applicable to the City as an additional insured, shall apply on a primary basis, as respects Contractor's scope of work, and any other insurance maintained by the City shall be in excess of and shall not contribute with Contractor's insurance. Contractor's insurance shall contain a severability of interest provision, providing that, except with respect to the total limits of liability, the insurance shall apply to each insured or additional insured in the same manner as if separate policies had been issued to each.
- g) Notice of Cancellation and/or Restriction - Contractor shall endeavor to provide the City with thirty (30) days notice of cancellation and/or restriction.
- h) Coverage on an occurrence basis.

3. **Business Auto Policy** - Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Services Office and must include:

- a) Minimum limits of \$3,000,000 per accident combined single limit for Bodily Injury Liability and Property Damage Liability.
- b) Owned Vehicles.
- c) Hired and Non-Owned Vehicles.
- d) Notice of Cancellation and/or Restriction - Contractor shall endeavor to provide the City with thirty (30) days notice of cancellation and/or restriction.
- e) Additional Insured - The City is to be specifically included as an additional insured. Contractor's

insurance including that applicable to the City as an additional insured shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute with Contractor's insurance.

Contractor's insurance shall contain a severability of interest provision, providing that, except with respect to the total limits of liability, the insurance shall apply to each insured or named insured in the same manner as if separate policies had been issued to each.

4. NOT USED

5. **Installation Floater** - When this contract includes the installation of machinery and/or equipment into an existing structure, the following insurance coverages must be afforded on that machinery and/or equipment.

a) Form - "All Risk" including installation and transit.

b) Amount of Insurance - 100% of the "installed replacement cost value".

c) Valuation - 100% of the "installed replacement cost value".

d) Cessation of Insurance - coverage is not to cease and is to remain in force (subject to cancellation notice) until final acceptance by the City.

e) Maximum Deductible - \$50,000 each claim.

f) Certificate of Insurance- A certificate of insurance evidencing Contractor's Installation Floater shall be provided to the City prior to the commencement of work.

g) Additional Insured - The City must be included as an additional insured.

h) Notice of cancellation and/or Restriction - Contractor shall endeavor to provide the City with thirty (30) days notice of cancellation and/or restriction.

i) Flood Insurance - When the machinery or equipment are located within an identified special flood hazard area, flood insurance protecting the interest of Contractor and City, must be afforded for the lesser of the total insurable value of the equipment in Contractor's scope of work or the maximum amount of flood

insurance coverage available under the National Flood Insurance Program.

NOTE: IT IS NOT NECESSARY THAT THE CONTRACTOR PROVIDE BOTH A BUILDER'S RISK AND INSTALLATION FLOATER. IF THE CONTRACT INCLUDES CONSTRUCTION OF AND/OR ADDITIONS TO ABOVE GROUND BUILDINGS OR STRUCTURES, BUILDER'S RISK, BUT NOT INSTALLATION FLOATER, COVERAGE MUST BE PROVIDED. WHEN THE CONTRACT INCLUDES THE INSTALLATION OF MACHINERY AND/OR EQUIPMENT INTO AN EXISTING STRUCTURE, BUT DOES NOT CONTEMPLATE CONSTRUCTION OF OR ADDITION TO THE STRUCTURE ITSELF, ONLY THE INSTALLATION FLOATER MUST BE PROVIDED.

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

March 10, 2010

COVB BID 170-10/PJW

**ADDENDUM NO. 1
TO
CITY OF VERO BEACH BID**

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

The following ADDENDUM is hereby made a part of the specifications for a **HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT** as identified above, and shall be considered a part thereof for all purposes, superceding and replacing anything to the contrary in the original specifications.

CHANGE OF BID DUE DATE:

APRIL 9TH, 2010 @ 2:00 P.M.

ADDITIONS:

In the event the Contract is awarded to the Bidder, said Bidder shall enter into a Contract with the City, under the terms and conditions mutually negotiated between Bidder and the City.

**COVB BID 170-10/PJW
ADDENDUM NO. 1
CITY OF VERO BEACH BID
HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT
Page 2**

All Bidders/Contractors submitting proposals must be authorized to do business in the State of Florida. If said Bidders/Contractors are a corporation, partnership or limited liability company, they must be in continuous good standing, active and current with state of their incorporation or registration and the State of Florida and must keep their active and current status throughout the term of the contract. Any business located within the city limits of Vero Beach must provide a copy of their business occupational license at the time of award.

Bids must be sealed and plainly marked "**HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT 170-10/PJW**" 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

The City reserves the right to delay awarding of the Contract for a period of sixty (60) days after Bid Due Date, 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 Section 2-351, Vero Beach Code concerning Bidding Procedures and this Invitation to Bid shall control in this order.

2. INSURANCE REQUIREMENT

TYPE III Per attachment

CLARIFICATIONS

- 1. Union or non-union workforce? Is there a site labor agreement?**
Union and Non-Union workforce as there is no labor agreement.
- 2. Number of Units?**
One (1)

COVB BID 170-10/PJW

ADDENDUM NO. 1

CITY OF VERO BEACH BID

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

Page 3

- 3. Date(s) of outage(s)?**
Proposed Dates are: February 5, 2011-March 21, 2011
- 4. Will there be a bonus/penalty program based on completion vs. specified completion?**
If mechanical installation work prior to the start of steam blow-related activities is not completed within 28 consecutive calendar days after Contractor commences site work, provided that Contractor is permitted unrestricted access during such period and that such delay is not otherwise excused by the terms of the Contract, Contractor shall pay to the City of Vero Beach as liquidated damages and not as a penalty \$8,000 per day of late completion as the sole and exclusive liability for such failure to achieve the work completion date. Some touch-up painting, insulation work and other work of a punch list nature, not affecting operational turnover, may be completed later and would not give rise to liability for liquidated damages for late completion, or any other damages. Notwithstanding the foregoing, liquidated

damages shall be assessed against Contractor only if Contractor's unexcused delay is the sole cause of delay in the completion of the City of Vero Beach's outage, and in the event that there is no concurrent delay in any other aspect of the outage that will be taking place. In any event, Contractor's maximum liability for liquidated damages for work completion for which liquidated damages are payable shall not exceed 10% of the Contract price.

5. **What are the anticipated trailer/trailer space needs?**
Two Areas: 50 Ft. x 15 Ft. (208V, 30A), 45 Ft. x 15 Ft. (208V, 60A)
6. **Will the plant provide and hookup trailer electrical power and other utilities?**
Yes.
7. **Will the plant provide telephone lines to contractor's trailer?**
Yes. Analog Only.
8. **Will there be onsite parking provided for contractor's craft personnel?**
Onsite parking provided at jobsite.
9. **Will there be onsite parking for construction supervision at the jobsite?**
Onsite parking provided at jobsite.
10. **Where will lay-down for supplied materials be located and how much area is to be provided?**
Yes, Outside Area. Area Approximately 100 Ft. x 100 Ft.
11. **Is potable water available for contractor's use?**
Yes
12. **Are sanitary facilities available for contractor's personnel or are contractor furnished portable toilets required?**
Contractor furnished portable toilets required.
13. **Is electrical power for welders and other equipment available? If so, how much (volts/amps)? What type of connections?**
Contractor is to supply welding equipment. Crouse-Hinds connections are available – Catalog #APJ6485, 60 amps, 3 Wire, 4 Pole, or equivalent plug.
14. **Are gas or diesel welding machines allowed?**
Yes, If staged outside plant between the hours of 8:00 a.m. – 5:00 p.m.
15. **Is compressed air available for contract's use? If so, how much (cfm/psi)?**
Yes. 110 PSI.
16. **Is formal plant safety orientation/training required? If so what is the duration? Are there plant specific safety policies/procedures?**
Yes formal plant safety orientation/training is required and takes approximately 30 minutes. Yes, there are plant safety policies/procedures.

COVB BID 170-10/PJW

ADDENDUM NO. 1

CITY OF VERO BEACH BID

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

Page 4

17. **Will the work be considered confined space during the outage? If so, what are the hole watch requirements?**
Yes, Contractor must have a confined space program/training and supply employee confined space cards. Contractor to supply hole watch employees and follow

company procedures.

- 18. Will O2 sniffing be required at the start of every shift or more often? Who will perform and who supplies equipment?**
Confined space program to comply with OSHA 1910.146. Contractor to perform O2 sniffing and supply equipment.
- 19. Will the plant require hot work permits? If so, per work location, per shift, etc?**
No.
- 20. Will the contractor's cranes and equipment be able to remain in position for the outage or must they be moved daily and/or for plant operation purposes?**
Contractor's equipment may remain in position unless plant operation requires moving. (Contact: Sims Crane 772-569-6161)
- 21. Will touch up and finish repainting be required by the contractor?**
Yes. Touch up welded areas of the HRSG opening reattachment:
Surface preparation: Clean the welded areas in accordance with SSPC-SP 11.
Apply two coats of International Paint Intertherm 751 CSA Heat Resistant Cold Spray Aluminum @ 3.0 to 4.0 DFT per coat.
- New platform Attachment to HRSG Unit**
Surface Preparation: Clean surface in accordance with SSPC-SP 3 Power Tool Cleaning.
Primer: Apply one coat of Devoe Bar Rust 231 Multi Purpose Epoxy Aluminum @ 4.0 to 6.0 DFT.
Finish: Apply one coat of Devoe Devtrhane 379 UVA Urethane @ 2.0 to 3.0 DFT.
Please see attachments for paint and primer literature, SSPC-SP 3 and SSPC-SP 11 requirements.
- 22. Will the plant provide dumpsters and disposal of demolished materials?**
Yes.
- 23. Will any electrical/instrumentation disconnection/reconnection be required? If so, by whom (contractor/plant)?**
Yes, Plant.

COVB BID 170-10/PJW

ADDENDUM NO. 1

CITY OF VERO BEACH BID

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

Page 5

- 24. Will piping re-insulation and lagging be the responsibility of the contractor? Are specs provided?**
Contractor Responsibility. Match existing insulation or lagging. (Contact: All Services – Steve Hicks)
- 25. Will the plant provide hydro test water, disposal of hydro test water and/or test pump(s)?**
Yes.
- 26. Will all permits be obtained by the plant?**

None required.

27. Are daily/weekly/periodic planning meetings required with plant personnel?

Yes, daily with Plant personnel.

28. Will other major contractor's be onsite at the same time? If so, what is their scope of work?

Yes. To remove Plant roof section for entry of superheater harps.

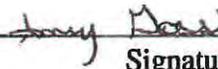
29. Are there any other site specific conditions and/or requirements? (safety, welding, inspection, insurance)

Insurance Documents and employee Confined Space Cards.

ALL ADDENDA MUST BE SIGNED BY THE BIDDER AND INCLUDED WITH THE BIDDING DOCUMENTS IN ORDER FOR BID TO BE CONSIDERED.

Vogt Power International Inc.

Company Name



Signature

ADDENDUM NO. 1

March 17, 2010

**ADDENDUM NO. 2
TO
COVB RFP 170-10/PJW**

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

The following ADDENDUM is hereby made a part of the specifications for a **HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT** as identified above, and shall be considered a part thereof for all purposes, superceding and replacing anything to the contrary in the original specifications.

CHANGES:

BONDS

Neither Bid Bonds nor Payment and Performance Bonds will be required for this project.

ADDITIONS:

1. Attached are City of Vero Beach's standard terms and conditions for Request for Proposals to be completed by Proposer. Please don't attach your own terms and conditions. If you take exception to any terms please clearly identify in the "Variances" section of the RFP.

2. STEAM BLOW SCOPE OF WORK

To Include:

Engineering of temporary blow equipment

Field labor personnel to install & remove temporary blow equipment

Technical advisor during installation & removal of temporary blow equipment

New tie-in piping

Valves

Flanged fittings

Standard target inserter

Brass targets

Quench assemblies

Exhausters

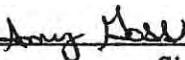
Consumables

3. Steam Blow portion of proposal to be quoted on a cost plus basis and not subject to the late completion liquidated damages specified in Addendum No. 1.

ALL ADDENDA MUST BE SIGNED BY THE BIDDER AND INCLUDED WITH THE BIDDING DOCUMENTS IN ORDER FOR BID TO BE CONSIDERED.

Vogt Power International Inc.

Company Name



Signature

ADDENDUM NO. 2

March 23, 2010

**ADDENDUM NO. 3
TO
COVB RFP 170-10/PJW**

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

The following ADDENDUM is hereby made a part of the specifications for a **HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT** as identified above, and shall be considered a part thereof for all purposes, superceding and replacing anything to the contrary in the original specifications.

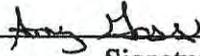
ADDITION:

VARIANCE FORM – Should have been included in the Terms & Conditions(attached)

ALL ADDENDA MUST BE SIGNED BY THE BIDDER AND INCLUDED WITH THE BIDDING DOCUMENTS IN ORDER FOR BID TO BE CONSIDERED.

Vogt Power International Inc.

Company Name



Signature

ADDENDUM NO. 3

April 1, 2010

ADDENDUM NO. 4
TO
COVB RFP 170-10/PJW

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

The following ADDENDUM is hereby made a part of the specifications for a **HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT** as identified above, and shall be considered a part thereof for all purposes, superceding and replacing anything to the contrary in the original specifications.

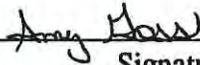
QUESTIONS/CLARIFICATIONS:

- Q1. All structural steel for moving the panels and the designed platform will have a PE stamp but it will not be a Florida PE – is that ok?**
A1. Yes
- Q2. The given start – completion date (Feb5-March 21, 2011) is forty-five (45) days yet item 2 to Addendum 1 state we have 28 calendar days to complete?**
A2. The outage starts on February 5, 2011 with work to begin on Monday, February 7th and the completion time is 28 calendar days to complete. The remaining days are the length of the outage for other work items and any unforeseen problems.
- Q3. If we are held to a penalty clause, is there a bonus clause?**
A3. No
- Q4. Can work be performed at night with electric welders?**
A4. Yes if work is inside the power plant. No outside loud or noisy work after 5:00 pm or bright lights outside after dark.
- Q5. Can work (structural in nature) be performed prior to Feb 5th?**
A5. Yes, as long as the work does not affect the availability of Unit 5 or other units.
- Q6. The bid package asks for a Florida notary. Can we use our local notary?**
A6. Yes, but please specify what state they are certified for.

ALL ADDENDA MUST BE SIGNED BY THE BIDDER AND INCLUDED WITH THE BIDDING DOCUMENTS IN ORDER FOR BID TO BE CONSIDERED.

Vogt Power International Inc.

Company Name



Signature

ADDENDUM NO. 4

7.2 APPENDIX-2 PRELIMINARY PROJECT SCHEDULE

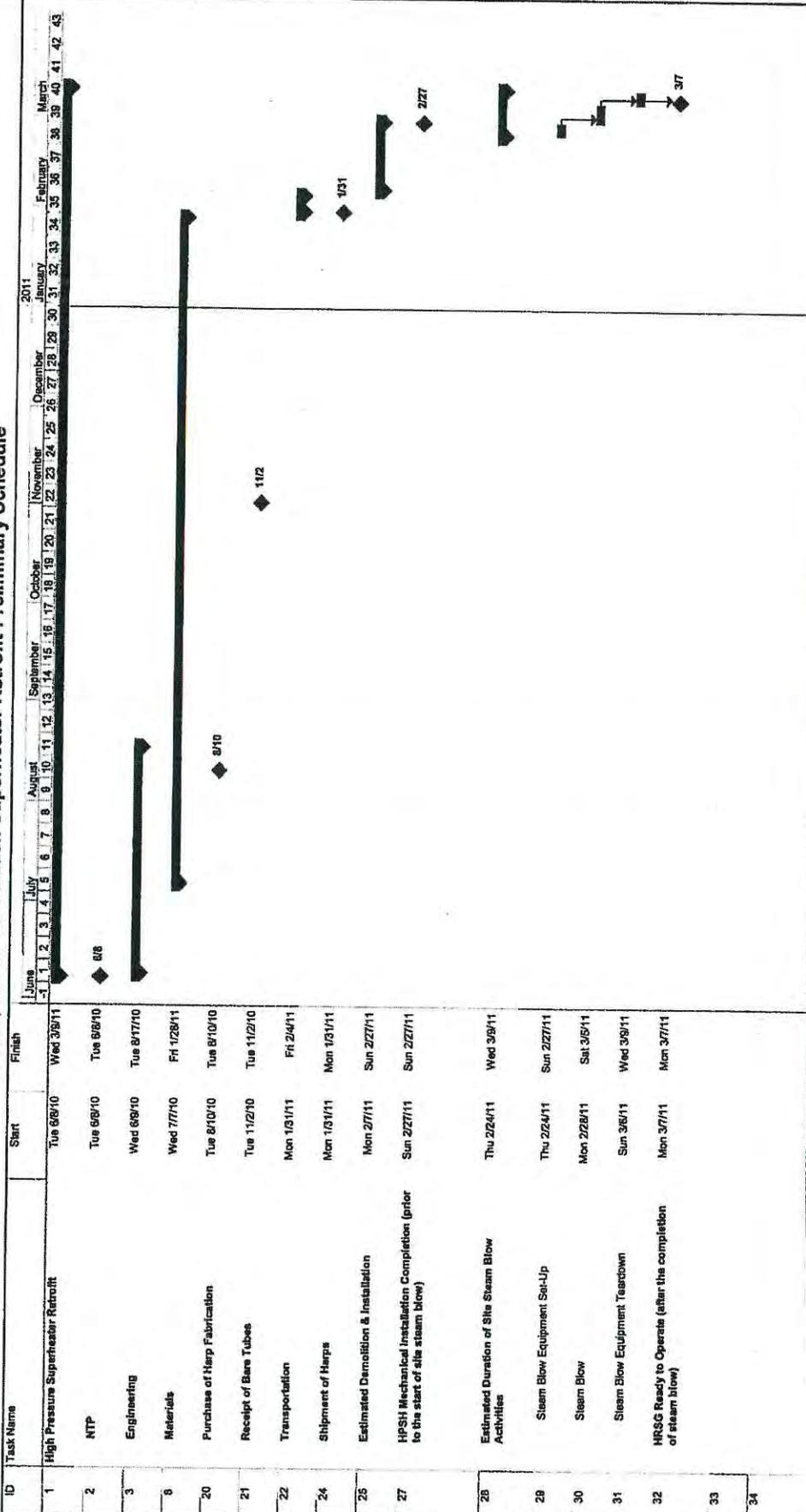
NOTICE: This document contains sensitive proprietary information, not intended for release to the general public and exempt from disclosure under applicable laws. Anyone in possession of the document other than the named recipient should immediately destroy the document.

Vogt Power International - Louisville, Kentucky, USA

Document Title: Aftermarket Technical and Commercial Proposal
Customer: Vero Beach Municipal Power Plant
Proposal: HPSH Retrofit

Vogt Power Ref. No.: V69054, Rev.2
Page No.: 7-2
Date: May 24, 2010

V69054, Rev.2: Vero Beach Superheater Retrofit Preliminary Schedule



CITY OF VERO BEACH

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

RFP NO. 170-10/PJW

PREPARED BY

PURCHASING DIVISION

MAYOR – KEVIN SAWNICK

VICE MAYOR – SABIN C. ABELL, JR.

COUNCIL MEMBERS

KEN DAIGE

BRIAN T. HEADY

THOMAS P. WHITE

CHARTER OFFICERS

CITY MANAGER – JAMES GABBARD

CITY CLERK - TAMMY VOCK

CITY ATTORNEY – CHARLES VITUNAC

MARCH 2010 (Revised May 2010)

TABLE OF CONTENTS

SECTION	PAGE NO.
Request for Proposal	1
Instructions to Proposers	
1. General	3
2. Examination of Site and Contract Documents	3
3. Interpretations, Inconsistencies and Addenda	3
4. Preparation of Bids/Proposals	3
5. Proposal Pricing	4
6. Submission of Bids/Proposals	4
7. Familiarity with Laws.....	5
8. Rejection of Bids/Proposals	5
9. Withdrawals and Modifications	5
10. Contract Award	5
11. Subletting or Assigning of Contract	6
12. Patent Fees, Royalties and Licenses	6
13. Liens	7
14. Financial Statement	7
15. Public Entity Crimes	6 – 7
16. Variances.....	7
General Conditions	
1. Definition of Terms	8 - 9
2. Control, Supervision and Inspection of the Work	10
3. Superintendents	10
4. Subcontractors	10
5. Employees	11
6. Changes in Scope of Work; Extra Work	11
7. Omitted Work.....	11
8. Termination of Contract	12
9. Gratuities	12
10. Safety, Maintaining the Site	12
11. Loss Control / Safety	12
12. Suspension of work	13
13. Royalties and Patents.....	13
14. Indemnification.....	13

TABLE OF CONTENTS (Continued)

SECTION	PAGE NO.
General Conditions (continued)	
15. Insurance.....	14
16. Interpretation of Specifications	14
17. Disputed Work	14
18. No Waiver of Legal Rights.....	14
19. Defective Work	15
20. Tools & Equipment	16
21. Testing.....	16
22. Permits and Fees.....	16
23. Miscellaneous.....	16 - 18
Supplementary General Conditions	
1. Modifications	19
2. Conflicts	19
3. Force Majeure	19
4. Applicable Standards.....	20
5. Security of Work Area.....	20
6. Quality of Items and Workmanship.....	20
7. Materials Disposal and Cleanup.....	21
8. Contractor Safety.....	21
9. Miscellaneous.....	21
10. Inspection	21
Drug-Free Compliance	22
Bid Proposal	23
Bid Schedule	24 - 25
Questionnaire	26 - 27
Form of Agreement	29 - 33

TABLE OF CONTENTS (Continued)

SECTION	PAGE NO.
Affidavit	34
Scope of Work	35 - 36
Attachments: Insurance Requirements	

CITY OF VERO BEACH, FLORIDA

**REQUEST FOR PROPOSAL
RFP NO. 170-10/PJW**

Sealed Bids/Proposals will be received by the Manager of Purchasing, 3455 Airport West Drive, Vero Beach, Florida, 32960, until 2:00 p.m., Friday, April 9, 2010, and subsequently opened in a meeting to be held in the T&D Conference Room for the following:

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

Proposal Documents may be obtained from Manager of Purchasing, (772) 978-5470.

All Bids/Proposals shall be submitted in duplicate on the Bid Proposal forms provided within the Specifications.

Bids/Proposals must be sealed and plainly marked " **HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT RFP 170-10/PJW**" 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

The City reserves the right to delay awarding of the Contract for a period of sixty (60) days after Proposal Opening Due Date, to waive informalities in any Proposal, or reject any or all Bids/Proposals in whole or in part with or without cause and/or to accept the Proposal 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 Proposal or Proposal-related documents, the provisions of Chapter 2, Vero Beach Code concerning Bidding Procedures and this Request for Proposal shall control in this order.

CITY OF VERO BEACH, FLORIDA

INSTRUCTIONS TO PROPOSERS

1. GENERAL

The following instructions are given for the purpose of guiding Proposers in properly preparing their Bids or proposals. These Instructions and the Request for Proposal shall be binding on all Proposers, and incorporated into and made part of the Contract.

2 EXAMINATION OF SITE AND CONTRACT DOCUMENTS

The Proposer is required, before submitting his Proposal, to visit the Site of the proposed Work and familiarize himself with the nature and the extent of the Work and any surface ~~and subsurface~~ conditions that may in any manner affect the Work to be done, and the equipment, materials, and labor required, and the cost thereof. The Proposer is also required to examine carefully any and all Contract Documents, ~~and~~ ~~—~~ ~~ignorance~~ on the part of the Proposer will in no way relieve him of the obligations and responsibilities assumed under the Contract. No information derived from maps, Drawings, Specifications, or from the City, shall relieve the Contractor from any risk or from fulfilling all terms of the Contract, except to the extent of express statements and depictions made therein. In the event that Proposer discovers (1) subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract Documents, Proposer will give prompt notice of such condition and Proposer shall be entitled to make a claim for a change to the Contract in accordance with Section 6, of the General Conditions, Changes In Scope Of Work; Extra Work ~~an equitable adjustment to the Contract will be made.~~

3. INTERPRETATIONS, INCONSISTENCIES AND ADDENDA

The Proposer must request interpretations or clarifications regarding the Contract Documents and any Specifications received prior to Proposal Opening, in writing from the Manager of Purchasing. To be considered, such request must be received at least four (4) days prior to Proposal Opening. The Manager of Purchasing will notify all prospective Proposers of any and all interpretations and supplemental instructions. These notices shall be in the form of written Addenda. The failure of any Proposer to receive any such Addenda sent to the address of the Proposer on record shall not relieve the Proposer from the obligation to comply with the terms of the Addenda in addition to all other Contract Documents, should the Proposer submit a Proposal and become the Contract Awardee. All Addenda ~~so issued received by Proposer~~ shall become a part of the Contract Documents. ~~The City Neither party shall not~~ be bound by any oral interpretations or clarifications.

4. PREPARATION OF BIDS/PROPOSALS

All Bids/Proposals shall include the Bid Proposal and such other forms and statements, such as the Questionnaire, Bid Bond, and Sworn Statement, as are herein provided or otherwise required. The Bid Schedule must have all blank spaces filled in with a price for each lump sum item and for every item for which a quantity is given. All Bids/Proposals must be typed or in ink and submitted in duplicate.

One Proposal from any individual, partnership, or corporation, under the same or different names, will be considered. Should it appear to the City that any individual, partnership, or corporation has an interest in more than one Proposal for the Work contemplated, the City shall reject all Bids/Proposals in which such individual, partnership, or corporation has such interest.

5. BID PRICING

The Proposal price shall include the selling and delivering of all materials, equipment, tools, including applicable taxes, necessary or proper for the completion of the Work except as may be otherwise expressly provided for in the Contract Documents. The unit prices shall be construed as including all of Contractor's direct and indirect costs of doing the Work required, including such costs as insurance, obtaining required ~~permits~~, testing, etc., unless otherwise expressly provided in the Contract Documents.

~~The Contractor shall familiarize himself with the requirements of the State of Florida pertaining to the exemption from State Sales Tax as it may apply to the City.~~

The City may consider Bids/Proposals as nonresponsive if they contain serious omission, unauthorized alterations of form, unauthorized alternate Bids/Proposals, incomplete or unbalanced Proposal pricing (including via escalator clauses), or irregularities of any kind consider the Time of Completion in evaluating the award of this Proposal.

6. SUBMISSION OF BIDS/PROPOSALS

All Bid proposals must be delivered to the Manager of Purchasing, T&D Facility, 3455 Airport West Drive, Vero Beach, Florida, by the date and time indicated on the Request for Proposal. Proposers must allow sufficient time for the Manager of Purchasing to time-stamp the sealed Proposal by the time indicated in the Request for Proposal.

All Bid proposals must be sealed in an envelope marked on the outside with Proposer's name, address, Proposal number, description, and date.

EXAMPLE: By Mail:
City of Vero Beach

By Courier:
City of Vero Beach

Manager of Purchasing
P.O. Box 1389
Vero Beach, FL 32961-1389

Manager of Purchasing
3455 Airport West Drive
Vero Beach, FL 32960

PROPOSAL NO. _____
PROPOSAL DESCRIPTION _____
PROPOSAL DATE _____

7. FAMILIARITY WITH LAWS

The Proposer is assumed to be familiar with all federal, state and local laws and regulations that may affect the Work. The Contract Documents may describe some of these laws and regulations; however, the Proposer is responsible for knowing and complying with any and all such laws and regulations. Ignorance on the part of the Proposer will in no way relieve him from the responsibility of compliance therewith.

8. REJECTION OF BIDS/PROPOSALS

The City reserves the right to reject any Proposal, if the evidence submitted by the Proposer, or if the investigation of such Proposer, fails to satisfy the City that such Proposer is properly qualified to carry out the obligations and to complete the Work contemplated therein. Any or all Proposals will be rejected, if there is reason to believe that collusion exists among the Proposers. Proposals will be considered irregular and may be rejected, if they show serious omissions, alterations in form, additions not called for, conditions or irregularities of any kind. The City reserves the right to reject any or all Proposals and to waive such technical errors as may be deemed best for the interest of the City.

9. WITHDRAWALS AND MODIFICATIONS

Any Proposer may, without prejudice to himself, withdraw or modify his Proposal at any time prior to Proposal Opening, by physically delivering written notice of withdrawal or the written modification in writing to the Manager of Purchasing. All written requests for withdrawal and written modifications must be signed by a person duly authorized to make such withdrawal or modification; and, in case signed by a deputy or subordinate, the principal's proper written authority to such deputy or subordinate must accompany the request for withdrawal or modification.

10. CONTRACT AWARD

The Contract Awardee, if any, shall execute the Contract, furnish good and sufficient bonds as herein required, and provide a certificate of insurance as herein required, within ten (10) days after receiving the Contract for execution. If the Contract Awardee fails to execute the

Contract or furnish the bonds within such time, the City may annul the award and award the Contract to another Proposer, or take any other actions as authorized under Section 3.04 of the Vero Beach Code, including the award of the Contract to another Proposer. The new Contract Awardee, if any, shall fulfill every stipulation embraced herein as if he were the original party to whom award was made.

If the Contract Awardee is a corporation, it shall furnish certificates as to its corporate existence and evidence that the officer signing the Contract is authorized to do so on behalf of the corporation, prior to the City's execution of the Contract.

11. SUBLETTING OR ASSIGNING OF CONTRACT

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof or the Work provided for therein or of any part or all of his right, title or interest therein without the express written consent of the City. Any such attempt without the prior written consent of the City shall be void ab initio and shall allow the City, at its option, to void the Contract.

The following is a list of the subcontractors that VPI would potentially utilize during execution of the proposed project. VPI's pricing and schedule are predicated on use of any of the subcontractors listed therein. In the absence of express written notification of subcontractor disapproval from the Customer prior to Contract award, VPI shall be entitled to an equitable adjustment to the Contract Price and time of performance for any resulting impact arising from or relating to any disapproval.

- TEi Construction Services
- Titan Contracting and Leasing Company
- Enerfab
- Bluewater Energy Solutions
- Arthur T. Astle & Associates, Inc. (ATA&A)

In addition, VPI uses many vendors and suppliers for various aspects of the work and presumes that they fall outside the restrictions of this paragraph 11.

12. PATENT FEES, ROYALTIES AND LICENSES

If the Contractor requires or desires to use any design, trademark, material or process covered by letters of patent or copyright, the Contractor and his Surety shall indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented designs, trademark, mentioned or processed in connection with the Work agreed to be performed under the Contract and shall indemnify the City from any costs, expense or damage which he may be obliged to pay by reason of any infringement at any time during the prosecution of, or after completion of, the Work.

13. LIENS

Because the Work called for under the Contract is "public Work" under Chapter 255, *Florida Statutes*, the Contractor shall insert the following Article in all subcontracts hereunder:

"Notice: Claims for labor, materials and supplies cannot be asserted against the City of Vero Beach and are subject to proper prior notice to (Contractor's Name) and to (Contractor's Surety Company Name), Surety, pursuant to Chapter 255 of *Florida Statutes*. This Article shall be inserted in every sub-Contract hereunder."

14. FINANCIAL STATEMENT

If requested by the City, ~~and upon execution of a suitable Confidentiality Agreement governing the confidentiality and restricted access to such information,~~ Proposers may be required to provide a summary of their financial statement. ~~In the event that City requires Proposer to provide a summary of its financial statement, City shall exercise its best efforts under the law, working in concert with Proposer, to redact confidential and proprietary information in any submission that is or may be~~ Note: special arrangements may be necessary to assure that this highly confidential information is not accessible through "open records", "freedom of information" or similar type laws or regulations.

15. PUBLIC ENTITY CRIMES

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.

16. Any variances to the specifications, terms, conditions, or any part of these documents shall be stated on the variance form of this document. No variances by the Proposer shall be deemed to be part of the submitted Proposal unless such variance is listed, contained and referenced on the variance form.

CITY OF VERO BEACH, FLORIDA

GENERAL CONDITIONS

1. DEFINITION OF TERMS

Where the following terms, or their pronouns, occur herein or in any of the Contract Documents, they shall have the following meanings:

A. Addendum

A modification of the Contract Documents issued in writing by the City prior to the Proposal Opening.

B. Bid Opening

The time and place for the opening of Bids, as described in the Request for Proposal.

D. Change Order

A written order issued by the City to the Contractor directing certain changes, additions, or reduction in the Work.

C. City ("Owner")

City of Vero Beach, P.O. Box 1389, Vero Beach, Florida 32961-1389.

E. Commencement Date

The date on which the Contractor may start the Work.

F. Completion Date

The date on which all Contract Work, other than [steam blow and related activities](#), guarantee and maintenance Work, is required to be completed.

G. Contract

The written agreement between the City and the Contractor covering the Work to be performed, including all Contract Documents.

H. Contract Documents

All forms and documents comprising the Contract, including Request for Proposal, Addendum as Required, Instructions to Proposers, General Conditions, Supplementary General Conditions, Sworn Statement, Questionnaire, Drug-Free Workplace Compliance Form, Bid Proposal, Bid Bond, Form of Agreement, Performance and Payment Bond, Affidavit, Final Payment Request by Contractor, and Periodic Estimate for Partial Payment, ~~Technical~~ Specifications, Drawings, [Contractor's Proposal](#), and Change Orders.

I. Contractor

The individual, partnership, or corporation who, by executing the Contract, agrees to perform the Work described therein.

K. Extra Work

Work not included as a unit of Work described in the Bid Schedule, ~~and~~ not reasonably ~~related to or~~ incidental to such Work, but reasonably related to the original scope of Work.

L. Notice to Proceed

A written notice issued by the City, designating the Commencement Date, the Time of Completion, and the Completion Date.

M. Site

The area upon or in which the Contractor is to perform the Work and such other areas adjacent thereto as may be designated as such by the City.

N. Specifications

All of the technical requirements and standards of performance applying to the Work as hereinafter detailed, designated by reference (e.g., on Drawings), or which may be stated in an Addendum.

O. Subcontractor

Any individual, partnership, or corporation, other than the Contractor's employees, who Contracts with the Contractor to furnish, or actually furnishes, labor, materials, or equipment, or any combination thereof, in connection with the Work performed under the Contract.

P. Surety

Any person, firm or corporation bound by the Contract bonds with and for the Contractor acceptable performance of the Work and for payment of all debts pertaining thereto.

Q. Time of Completion

The total number of calendar days from and including Commencement Date through the Completion Date.

R. Work

Everything expressly or reasonably implied ~~required~~ to be done by the Contractor under this Contract, including furnishing and installing materials, as well as any Extra Work properly authorized by the City through a Change Order.

2. CONTROL, SUPERVISION AND INSPECTION OF THE WORK

- A. The City shall have full control and direction of the Work in all respects. The City shall have the right to supervise the Work as the City deems necessary, provided any unreasonable alteration or hindrance of Contractor's schedule of Work shall be subject to a claim by Contractor for an equitable adjustment to the Contract.
- B. The City shall at all times have the right to inspect the Work and the Site. If requested by the City, the Contractor shall uncover any of the Work for inspection and replace same, all at the Contractor's expense. If the inspection reveals that materially compliant Work had been performed, the cost to uncover and replace the Work will be charged to the City and an equitable adjustment in schedule will be made. The Contractor shall furnish all reasonable means for obtaining such information as the City may desire, respecting the quality of the Work and materials and the manner of conducting the Work. The City shall not have the power to waive the Contractor's obligation to properly perform the Work as herein prescribed.
- C. The Contractor shall perform night Work only as ~~directed or~~ permitted by the City, it being noted that outage work of this nature is routinely performed in multiple shifts. The Contractor shall receive no extra payment for such Work.
- D. The City's right to inspect and supervise shall not relieve the Contractor from his responsibilities and obligations under the Contract. The City shall not be responsible for the safety of the Workmen, the safeguarding of the Work, or the proper performance of the Contractor.

3. SUPERINTENDENTS

When the Contractor is not present at the Site, any orders given by the City to the Contractor's foremen or superintendents relating to safety or protection of property shall be strictly obeyed and shall be treated in all respects as if given to the Contractor. Furthermore, the Contractor shall provide the City an emergency phone number to allow contact with him or his representative at times when he is not on the Site.

4. SUBCONTRACTORS

- A. The Contractor shall not sublet the whole or any part of the Work without the written consent and approval of the City. In all cases, the Contractor shall give his personal attention to the Work, and the Subcontractors being considered as foremen employed by the Contractor ~~and liable to be discharged by the City for neglect of duty or incompetency or misconduct.~~ (See Instructions to Proposers, Section 11) Contractor's vendors and suppliers for various aspects of the work fall outside the restrictions of this paragraph 4.

- B. After acceptance of any on site Subcontractor by the City, the Contractor shall not replace the Subcontractor with a new Subcontractor without the written approval of the City.

5. EMPLOYEES

None but skilled foremen and Workmen shall be employed on Work requiring special qualifications. Any person employed on the Work who fails, refuses, or neglects to obey the instructions of the City in anything relating to this Work, or who appears to the City to be disorderly, insubordinate, unfaithful, or incompetent, shall, upon the order of the City, be at once discharged and not again employed on any part of the Work. Any interference with, or abusive or threatening conduct toward, any City employee by the Contractor or his employees or agents, shall be authority for the City to annul the Contract and relet the Work.

6. CHANGES IN SCOPE OF WORK; EXTRA WORK

While the City has tried to anticipate all Work required under and during the term of this Contract, the parties understand and agree that the Work required herein may require, without notice to the sureties, the performance of Extra Work or the ~~omission~~ deletion of Work previously required. The City may, at any time and without notice to the sureties, require changes in the scope of Work under this Contract, as the City may find necessary or desirable, provided such change is shown to be reasonably related to Contractor's original undertaking. Such changes may include the ~~omission~~ deletion of Work previously required.

- A. The City shall notify the Contractor of the change in scope via a Change Order, which shall become a part of the Contract Documents. If a Change Order directs Contractor to ~~omit~~ delete Work, the Contractor shall refrain from performing it, provided Contractor may notify the City of detriment to the overall Work that may result from such action, and in such event, City shall indemnify and hold harmless Contractor from any and all damages resulting from such change.
- B. The Contractor shall perform Extra Work only pursuant to the issuance by the City of a Change Order. Records of any Extra Work performed by Contractor shall be reviewed daily by the Contractor and the City, duplicate copies of accepted records made and signed by both the Contractor or his representative and the City, and one (1) copy retained by each.
- C. If the Contractor believes that any directive or act of the City or any change in law after execution affects the amount or character of the Work, Contractor may request the issuance of an equitable adjustment to the Contract prior to undertaking the work.

D. Any Change Order under the contract shall take into account all costs and schedule impact to Contractor for the alteration of the Work, including general and administrative costs and profit.

7. ~~OMITTED~~ DELETED WORK

The City may, at any time by a written order and without notice to the Sureties, require the ~~omission~~ deletion of such Contract Work as the City may find necessary or desirable. All Work so ordered must be ~~omitted~~ deleted by the Contractor. The amount by which the Contract price shall be reduced ~~shall be determined as follows:~~

~~A. By such applicable unit prices, if any, as are set forth in the Contract; or~~

~~B. If there are no applicable unit prices, then by an appropriate lump sum price, if any, set forth in the Contract; or~~

~~C. If there is no such lump sum price, then by the reasonable and fair estimated net adjusted cost of such ~~omitted~~ deleted Work as reasonably determined by the ~~City~~ Contractor in good faith. Note, general and administrative costs and profit will not be reduced pro rata according to any direct cost of the deleted work since there is no direct reduction in those items necessarily tied to a reduction of the Work as originally contracted.~~

8. TERMINATION OF CONTRACT (FOR CONVENIENCE)

City may terminate this Contract at any time without further obligation hereunder, except with regard to any services already ~~delivered~~ performed by Contractor under a purchase release issued by ~~city~~ City, by delivering written notice to Contractor, which notice shall include the date upon which termination becomes effective. City's right to terminate is in addition to City's other rights hereunder except to the extent that the exercise of those rights would be inconsistent with the City's act of termination. City shall pay Contractor the amounts due not previously paid to Contractor for the services performed and for the products furnished pursuant to this Contract prior to such effective date of the termination notice and a reasonable amount, including profit, for Work then in production and for the costs associated with effecting the termination of Work.

9. GRATUITIES

City may, by written notice to Contractor, cancel this Contract without liability to Contractor if it is determined by City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of City with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations

with respect to the performing of such a Contract. In the event this Contract is canceled by City pursuant to this provision, City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Contractor in providing such gratuities.

10. SAFETY; MAINTAINING THE SITE

- A. The Contractor shall maintain safety at all times in cooperation with the City. The Contractor shall be responsible for any damage to existing utilities, property, or persons to the extent arising out of the Contractor's ~~Work~~ negligent act or omission at the Work Site. The Contractor shall take precautions as are necessary to protect the public, the City and its employees, and the Contractor's employees from hazards associated with the Contractor's use and occupancy of the Work Site, in cooperation with the City ~~which to city shall reasonably provide without cost to the Contractor.~~
- B. The Contractor shall maintain the Work Site in a safe and reasonable condition. For any period, including weekends and holidays, during which Work is halted, Contractor shall ensure that the Work Site on which Work has been halted is in a condition that is clean, orderly, and satisfactory to the City.
- C. The city shall have overall security obligations for access to the Site and maintaining of all common areas of the Site.

11. LOSS CONTROL/SAFETY

- A. ~~Any~~ costs due to loss, theft, or damage to all City materials, equipment, and property shall be the responsibility of the Contractor to the extent arising out of the Contractor's negligent act or omission at the Work Site.
- B. Precaution shall be exercised at all times by the Contractor for the protection of all persons, including employees and property. The Contractor shall comply with all applicable laws, regulations and ordinances related to safety and health, shall ~~make~~ undertake reasonable special effort to detect hazardous conditions, and shall take prompt action when loss control/safety measures are reasonably necessary, provided that liability and costs associated with any hazardous condition created by or resulting from the conduct of others shall not be the responsibility of the Contractor.
- C. The City may order work to be stopped if conditions exist that present an immediate danger to persons or property. The Contractor acknowledges that such stoppage will not shift responsibility for any damages from the Contractor to the City, but only to the extent Contractor is the proximate cause for the existence of the condition.

12. SUSPENSION OF WORK

The City shall have the right to require the Contractor to suspend Work during inclement weather. The City may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than thirty (30) days by notifying the Contractor to cease Work. The City's decision as to suspensions shall be final and binding. Whenever the Contractor is required to suspend Work for any reason, the Contractor shall secure the Site and protect the Work, so as to preserve the Site and the Work from damage, destruction, and loss. During any such suspension, Contractor shall be entitled to make a claim for a change to the Contract in accordance with Section 6, of the General Conditions, Changes In Scope Of Work; Extra Work, for all costs incurred by Contractor arising from or relating to such suspension, including general and administrative costs and profit. In addition, an equitable adjustment in schedule shall be made

13. ROYALTIES AND PATENTS

All fees, royalties, and claims for any invention, or pretended invention, or patent of any articles, material, arrangement, appliance, or method that may be used upon or in any manner be connected with the construction of this Work or appurtenances, are hereby included in the prices stipulated in this Contract for said Work.

14. INDEMNIFICATION

- A. Contractor agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to City) City, its council members, directors, officers, employees, ~~partners,~~ principals, ~~Contractors, agents, representatives,~~ and each of them, against any and all administrative and judicial proceedings and orders, charges, claims, costs, damages, demands, expenses, fines, judgments, liabilities, losses, penalties, and remedial actions of any kind, including the costs of any hazardous materials remedial actions of any kind and all other related costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and the costs of defense arising out of injury to persons, including, but not limited to death, or damage to property, to the extent caused by, directly or indirectly, ~~in whole or in part,~~ the negligence of Contractor in the performance of the Work set forth in the Contract Documents.
- B. The indemnification and hold harmless provisions set forth in paragraph 17A. above, shall be binding upon the successors, assigns, and sub-licensees of Contractor.

15. INSURANCE

Before starting the Work and until final acceptance of the Work by the City, the Contractor shall procure and maintain insurance of the types and to the limits specified in the

Attachment Section of the document. Further, the Contractor shall require each of his on Site Subcontractors to procure and maintain, until completion of that Subcontractor's Work, insurance of types and to the limits specified in Attachment Section of document. It shall be the responsibility of the Contractor to ensure that all of his Subcontractors comply with all of the insurance requirements contained herein relating to such Subcontractors.

Certificates of Insurance evidencing the insurance coverage specified herein shall be filed with the City before Work is begun. The required Certificates of Insurance not only shall name the types of policies provided, but also shall refer specifically to this Contract and the specific Contractual provisions thereof which require such insurance, and shall state that such insurance is as required by this Contract. If the initial insurance expires prior to the completion of the Work, renewal Certificates of Insurance ~~and required copies of policies~~ shall be furnished ~~thirty (30) days prior to the date of their expiration~~ to the City within five business days of renewal of the insurance program.

16. INTERPRETATION OF SPECIFICATIONS

The City shall reasonably decide, in good faith, all questions concerning the interpretation of all Contract Documents pertaining to the character, quality, amount and value of any Work done under or by reason of this Contract and the City's estimate and decisions shall be final and conclusive, provided that Contractor shall be entitled to dispute such City determination under the dispute resolution provisions provided herein.

17. DISPUTED WORK

If the Contractor is of the opinion that any Work required, necessitated, or ordered is not within the terms and provisions of this Contract, he must promptly notify the City, in writing, of his contentions with respect thereto and request a final determination thereon. If the City determines that the Work in question is not Extra Work, and that the order complained of is proper, the City will direct the Contractor to proceed and the Contractor shall promptly comply, unless Contractor shows that proceeding with the work under the circumstances would be manifestly inequitable. Final determination and decisions, in case any question shall arise, shall constitute a condition precedent to the right of the Contractor to receive any money therefor, until the matter in question has been determined, provided that Contractor shall be entitled to dispute such City determination under the dispute resolution provisions provided herein.

18. NO WAIVER OF LEGAL RIGHTS

- A. The City shall not waive any rights hereunder by making any payment of any kind, or accepting any Work, unless expressly stated otherwise. ~~The~~ Except to the extent otherwise expressly stated, the consent by City to any act by Contractor shall not be deemed to imply consent or to constitute a waiver of a breach of any provision of the Contract or continuing waiver of any subsequent breach of the same or any other

provision, nor shall any custom or practice which may arise between City and Contractor be construed to waive or lessen the right of City to insist upon the performance by Contractor in strict accordance with the provisions of the Contract, except to the extent that such custom or practice was undertaken with respect to the specific event, or the Contractor shows that the Contractor and/or the City has relied upon such custom and practice.

- B. The City reserves the right to correct any manifest error that may be discovered in any estimate that may have been paid and to adjust the same to meet requirements of the Contract. The City further reserves the right, should conclusive proof of defective Work on the part of the Contractor that does not fall within Contractor's warranty obligations be discovered after the Final Payment has been made, to claim and recover, by process of law, such sums as may be sufficient to correct the error or make good the defects in the Work.

19. DEFECTIVE WORK

- A. If, at any time prior to the expiration of the warranty period, defects therein shall be found, the Contractor shall promptly correct such defects, remove and dispose of all defective or unsatisfactory Work or materials, and supply others in accordance with the Contract. ~~Previous Work will not relieve the Contractor of the responsibility for good Work or materials, although the defects may have been overlooked by the City, or may have been the result of damage from any cause.~~
- B. Should the Contractor fail or refuse to remove and renew any defective Work performed, or to make any necessary repairs in an acceptable manner, and in accordance with the requirements of the Contract within the time reasonably indicated in writing, the City shall have the authority to cause the unacceptable or defective Work to be removed or renewed, or such repairs as may be necessary to be made at the Contractor's expense. Continued failure or refusal on the part of the Contractor to make any or all necessary repairs, promptly, fully, and in an acceptable manner, shall be sufficient cause for the City to declare the Contract ~~forfeited~~ terminated, in which case the City at its option may instruct the City to purchase materials, tools, and equipment and employ labor or may contact with any other individual, firm or corporation, or may proceed with its own forces to perform the Work.
- C. All reasonable direct costs and expenses incurred thereby shall be charged against the defaulting Contractor and the amount thereof deducted from any monies due, or which may become due him, or shall be charged against the Contract bond.
- D. At the request of the City, the Contractor shall, at any time remove or uncover such portions of the Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by the Contract Documents. Should

the Work thus exposed or examined prove ~~acceptable to be in compliance with the Contract~~, the uncovering or removing, and the replacing of the covering or making good of the parts removed, shall be paid for by Change Order; but ~~should to the extent~~ the Work so exposed or examined prove unacceptable, the uncovering or removing and replacing of the covering or making good of the parts removed shall be at the Contractor's expense.

- E. Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect be discovered, or obligate the City to final acceptance.

20. TOOLS & EQUIPMENT

If, at any time before the commencement or during the progress of the Work, tools or equipment ~~appear to~~ can be shown by the City to be insufficient, inefficient or inappropriate to secure the quality of Work required or the proper rate of progress, the City may order the Contractor to increase their efficiency, to improve character, to augment their number or substitute new tools or equipment, as the case may be, and the Contractor shall conform to such order, unless contractor shows a contrary justifiable basis for the condition. The failure of the City to demand such increase of efficiency shall not relieve the Contractor of his obligation to secure the quality of Work and the rate of progress necessary to complete the Work within the time required by the Contract and to the satisfaction of the City.

21. TESTING

The Contractor shall perform, or obtain the performance of, any testing required herein. The Contractor shall bear the cost of any testing required under the Contract, as well as any retesting required as a result of failures. The Contractor's Bid prices shall be construed as including the cost of any such testing or retesting.

22. PERMITS & FEES

~~The successful Proposer (Contractor) shall be responsible for obtaining and paying the respective fees of all local government permits. Payment for the cost associated with this obligation will be reimbursed by the City upon presentation of paid receipt and/or copy of said permit (as determined by the City).~~

(Not Used)

23. MISCELLANEOUS

A. Notice:

Any notice, request, instruction, demand, consent, or other communication required or permitted to be given under this Agreement shall be:

- (1) in writing;
- (2) delivered (to the addresses listed in this Article 5, below, or such other address as the Parties may provide to each other in writing) by one of the following means:
 - (a) by hand;
 - (b) by overnight mail service (such as Federal Express); or
 - (c) by certified mail, postage prepaid, and certified return receipt requested

to the following address, or such other address as the Parties may provide to each other in writing:

To: [Name of Division]	With a copy to: [Name of Division]
Attn:	[Contact] [Title] Attn: [Contact] [Title]
Name of Company	Name of Company
Street Address	Street Address
City / State / Zip Code	City / State / Zip Code
Telephone: (xxx)xxx-xxxx	Telephone: (xxx)xxx-xxxx
Facsimile: (xxx)xxx-xxxx	Facsimile: (xxx)xxx-xxxx
<u>E-Mail:</u>	<u>E-Mail:</u>

To CITY: With a copy to:

City of Vero Beach, Florida
 Attn: Bill Messersmith,
 Public Works & Engineering
 1053 20th Place
 P. O. Box 1389
 Vero Beach, FL 32961
 Telephone: (772) 978-4870
 Facsimile: (772) 978-4879
E-Mail:

City of Vero Beach, Florida
 Attn: Carol Shoaf,
 Contract Administrator
 3455 Airport West Drive
 P.O. Box 1389
 Vero Beach, FL 32961-1389
 Telephone: (772) 978-5474
 Facsimile: (772) 770-6860
~~_____~~ E-Mail:

A copy of any notice, request, instruction, demand, consent, or other communication required or permitted to be given under this Agreement may also be sent via facsimile or as a separate attachment to an e-mail. However, delivery via facsimile or e-mail shall not constitute an alternative or substitute means of delivery (i.e., notice must still be sent via hand delivery, over night mail, or certified mail return receipt requested as set forth, above).

- B.** The parties expressly recognize that the relationship between the City and the Contractor is that of independent Contractors, and that neither the Contractor nor any of his servants, agents or employees shall ever be considered to be an agent, servant or employee of the City.

C. Severability

In the event that any provision of this Agreement shall be held unconscionable, unenforceable, or void for any reason by any tribunal of competent jurisdiction, it is agreed that the provision in question shall be modified to eliminate the elements of concern to the tribunal and as modified shall be binding on the parties hereto. The remaining provisions shall not be affected by the action of any tribunal or modification of such provision, and shall remain in full force and effect.

D. Choice of Law; Venue

The validity, interpretation, and enforcement of this Agreement shall be governed by the laws of Florida without regard to conflict of law applications. Indian River County, Florida, shall be proper venue for any litigation involving this Agreement, including the applicable Federal Circuit in which Indian River County resides. Any legal proceedings of any nature brought by either Party to enforce any right or obligation arising out of this Agreement shall be submitted to trial without jury before any court of competent jurisdiction in Indian River County, Florida. The Parties consent and submit to the jurisdiction of any such court in Indian River County, Florida, and agree to accept service of process outside the state of Florida in any matter submitted to any court pursuant hereto.

E. Attorneys' Fees

The prevailing party in any litigation, arbitration or mediation relating to this Agreement shall be entitled to recover its reasonable attorneys' fees and costs from the other party for all matters, including, but not limited to, appeals, to the extent that such Party prevails.

F. Article Headings For Convenience Only

The Article headings, and underlined sub-article headings, hereof are inserted for convenience of reference only, are not a part hereof, and shall have no effect on the construction or interpretation of this Contract.

G. Limitation of liability

Except to the extent Contractor's express indemnity obligations stated herein are considered to be such, Contractor shall not be liable for any loss of profit, special, indirect incidental or consequential damages arising under any cause or combination of causes whatsoever in connection with the Contract. This limitation shall apply notwithstanding any failure of essential purpose of any limited remedy. Contractor's cumulative liability arising under any cause or combination of causes shall in no event be in excess of the Contract Price except to the extent of Contractor's indemnification liabilities expressly set out in the Contract Documents.

CITY OF VERO BEACH, FLORIDA

SUPPLEMENTARY GENERAL CONDITIONS

1. MODIFICATIONS

This Contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

2. CONFLICTS

The following principles shall apply in resolving any conflict among or ambiguity in the Contract Documents:

- A. The Supplementary General Conditions shall have priority over the General Conditions and Form of Agreement in case of conflict. The Technical Specifications shall take precedence over all other Contract provisions, except as may be expressly provided in the other Contract Documents.
- B. Full size details shall take precedence over scale Drawings and large scale Drawings shall take precedence over small scale Drawings. Dimensions given in figures shall take precedence over scaled dimensions.
- C. When measurements are affected by conditions already established or where items are to be fitted into constructed conditions, it shall be the Contractor's responsibility to verify all such dimensions at the Site and the actual job dimensions shall take precedence over scaled or calculated dimensions on the Drawings, provided, in such event, Contractor shall be entitled to an adjustment of the Contract Price and Schedule to the extent that actual dimensions conflict with dimensions on the Drawings.

3. FORCE MAJEURE

Except as otherwise expressly provided herein, ~~City~~ a Party shall not be liable for any failure or delay in the performance of its obligations under this Agreement due to causes not reasonably within its control, including, but not limited to, acts of civil or military authority, including courts and regulatory agencies, superior governmental authority, God, war, riot or insurrection, ~~inability to obtain required construction permits,~~ blockages, embargoes, sabotages, epidemics, fires, floods, strikes, lockouts or other labor difficulties, provided such labor difficulties do not arise from inequitable labor practices. In the event of any failure or delay resulting from such causes upon notice to the other party within five (5) business days of occurrence of the event giving rise to the delay the time for performance hereunder shall be extended for a period of time reasonably necessary to overcome the effects of such delays. In the event any such failure or delay shall last for a period of more

than ten (10) calendar days, then either Party may terminate this Agreement forthwith, in whole or in part, by notice in writing to the other, which termination shall be treated as a termination for the convenience of City with payment to Contractor accordingly.

4. APPLICABLE STANDARDS

All standards referred to herein shall mean the latest revision under the same specification number or for those provisions in the new or revised Specifications which are clearly inapplicable. The following abbreviations have been used in referring to other standards:

DBPR	Department of Business and Professional Regulations
DHR	Department of Hotel and Restaurants
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Associates
IEEE	Institute of Electrical and Electronic Engineers
OSHA	Occupational Safety and Health Administration
ASME	American Standard of Mechanical Engineers
ANSI	American National Standards Institute
NFPA	National Fire Protection Association
AISC	American Institute of Steel Construction
AWS	American Welding Society
EPA	Environmental Protection Agency
ASTM	American Society of Testing Materials
FDEP	Florida Department of Environmental Protection

Whenever a conflict exists between these standards and the Contract Documents, the Contract Documents shall govern. In the event of a conflict among any of the above codes and standards, the one having the most stringent requirements shall take precedence unless otherwise approved in writing by the City.

5 SECURITY OF WORK AREA

All doors in all City buildings shall remain locked while the building is being cleaned.

6. QUALITY OF ITEMS AND WORKMANSHIP

All materials and equipment furnished for this project shall be new and unused. Any materials or equipment which, in the reasonable opinion of the City, exercised in good faith, have become excessively weathered or damaged since manufacture, shall not be considered as new. Workmanship shall be first class and the finished product equal to the Contractor's best accepted standards of the trade for the category of Work performed. All Work shall be performed by experienced, skilled tradesmen.

7. MATERIALS DISPOSAL AND CLEANUP

The Contractor shall comply with all pertinent local, state and federal regulations as enforced by the EPA, FDER, U.S. Coast Guard and any other regulatory agency. The Contractor shall be responsible for the disposal of all hazardous and non-hazardous materials in accordance with EPA, FDEP, and OSHA requirements. Additionally, the Contractor shall comply with all regulatory requirements for the clean-up of all spills as a result of the Work performed.

8. CONTRACTOR SAFETY

- A. The Contractor shall ensure that all personnel meet OSHA and ANSI requirements for the Work being done.
- B. Any Contractor personnel not wearing required safety equipment, or when required, complying with all safety standards and requirements will be removed from the Work Site until such time as appropriate safety equipment is worn or standards observed.

9. MISCELLANEOUS

The City reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet requirements of the Contract. The City further reserves the right, should conclusive proof of defective Work on the part of the Contractor be discovered after payment has been made, to claim and recover by process of law such sums as may be sufficient to correct the error or make good the defects in the Work, [subject to the express limitations provided elsewhere in the Contract Documents](#).

10. INSPECTION

The City shall at all times have the right to inspect the Work. The Contractor shall furnish all reasonable means for obtaining such information as the City may ~~desire~~ [reasonably request](#), respecting the quality of the Work and materials and the manner of conducting the Work. The City shall not have the power to waive the Contractor's obligation to properly perform the Work as herein prescribed.

The City's right to inspect and supervise shall not relieve the Contractor from his responsibilities and obligations under the Contract. The City shall not be responsible for the safety of the workmen, the safeguarding of the work, or the proper performance of the Contractor.

DRUG-FREE WORKPLACE COMPLIANCE FORM

IDENTICAL TIE BIDS

Preference shall be given to business with drug-free workplace programs. Whenever two or more Bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or Contractual services, a Bid received from a business that certifies that it has implemented a drug-free Workplace program shall be given preference in the award process. Established procedures for processing tie Bids will be followed if none of the tied vendors has a drug-free Workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or Contractual services that are under Bid a copy of the statement specified in Subsection 1.
4. In the statement specified in Subsection 1, notify the employees that, as a condition of working on the commodities or Contractual services that are under Bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any State for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employer's community by, any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through the implementation of this section. As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

VENDOR'S SIGNATURE

BID PROPOSAL
RFP NO:170-10/PJW
HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

To: The City Manager
City of Vero Beach
P.O. Box 1389
Vero Beach, Florida 32961

The Undersigned Proposer has carefully examined the Contract Documents and visually examined any and all Work Sites. The undersigned is familiar with the nature and extent of the Work and any local conditions that may in any manner affect the Work to be done, and the equipment, materials and labor required, but excluding conditions not reflected in information provided by the City, and further subject to express clauses contained elsewhere in the Contract Documents.

The undersigned agrees to do all the Work in accordance with the Contract Documents and according to the standards of quality and performance established by the City, for the unit prices as provided in the attached Bid Schedule, for each of the items or combination of items stipulated. It is understood that certain quantities shown in the Bid Schedule are approximate only, subject to increases and decreases, and for the purpose of Proposal comparisons for determination of low Proposer. It is further understood that payment will be in accordance with actual quantities placed in the construction as more specifically provided in the Contract Documents. The undersigned further agrees as follows:

1. To do any Work, not covered by the Bid Schedule, which may be ordered by the City in accordance with provisions contained in the Contract Documents upon authorization by the City Council, and to accept as full compensation therefore such prices as may be agreed upon, in writing, by the City and the Contractor in accordance with Article ~~156~~, of the General Conditions.
2. To begin and complete Work as required in the Notice to Proceed, provided such Notice to Proceed does not conflict with the agreed Contract Documents.
3. To allow the City of Vero Beach to reduce invoices per fines in the amount and under the conditions specified in the Contract Documents.
4. To keep in force all insurance and bonding requirements as set forth in the Contract Documents for the duration of the Contract and to give thirty (30) days notice of expiration of insurance and/or bonding.

Dated this _____ day of _____, 20__.

Respectfully submitted Proposer _____
Address: _____

City, State and Zip Code

PROPOSAL SCHEDULE

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

RFP 170-10/PJW

Lump Sum \$ _____
Numeric

\$ _____
Written

Steam Blow (Cost Plus)
Time & Materials \$ _____
Numeric

\$ _____
Written

Estimated Total Cost \$ _____

Firm Name: _____

Address: _____

City & State: _____

Telephone: _____ Fax: _____ E-Mail: _____

Terms: _____

Name, (Typed or Printed: _____

Signature: _____

Title: _____

QUESTIONNAIRE

The undersigned guarantees the truth and accuracy of all statements and answers herein contained.

1. How many years has your organization been in business as a supplier of these materials/services?

2. What is the last project of this nature that you have completed?

3. Have you ever failed to complete Work awarded to you; if so, where and why?

4. Name three (3) individuals or corporations for which you have performed Work of this size and nature to which you refer:

_____ Phone _____

_____ Phone _____

_____ Phone _____

5. Have you personally inspected the proposed Work and have you a complete plan for its performance?

6. Will you sublet any part of this Work? If so, give details:

7. What equipment do you own that is available for the Work?

8. What equipment will you purchase for the proposed Work?

9. What equipment will you rent for the proposed Work?

10. Minority Business Statement:

Is your firm a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985? YES or NO

11. State the true, exact, correct, and complete name of the partnership, corporation, limited liability company, or trade name under which you do business, and the address of the place of business. (If a partnership, state the name of all partners. If a corporation, state the name of the President and Secretary. If a Limited Liability Company, state the names of all members. If a trade name, state the names of the individuals who do business under the trade name.)

(Correct Name of Proposer)

a. The business is a Sole Proprietorship, Partnership, Corporation, or Limited Liability Company.

b. The address and phone number of principal place of business is

c. The names of the partners, corporate officers, members, or individuals doing business under a trade name, are as follows:

(Proposer)

FORM OF AGREEMENT

HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

THIS PROFESSIONAL SERVICES CONTRACT is executed by and between the City of Vero Beach, a municipal corporation organized and existing under the laws of the State of Florida, whose address is P. O. Box 1389, Vero Beach, Florida, 32961-1389 (hereinafter "City"); and

NAME OF CONTRACTOR: _____

ADDRESS OF CONTRACTOR: _____

CITY, STATE, ZIP CODE: _____

hereinafter called the Contractor, and the CITY OF VERO BEACH, a municipal corporation organized and existing under the Laws of the State of Florida and located in Indian River County, Florida, hereinafter called the City.

WITNESSETH:

That the Contractor and the City, for the consideration hereinafter named, agree as follows:

Article 1. SCOPE OF WORK - The Contractor shall perform all the Work as described in the Documents entitled "**HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT**" for the City of Vero Beach, Florida, and shall do everything required by this Form of Agreement and any other Contract Documents.

Article 2. TERM AND RENEWAL -- The term of the Contract performance on site, exclusive of steam blow, shall be twenty-eight consecutive calendar days after notice to proceed during the period February 5, 2011-March 21, 2011.

Article 3. THE CONTRACT SUM - The City will pay Contractor for performance of the Contract, subject to additions and deductions provided therein, in current funds as follows:

Written Amount : _____

Numerical Amount: _____

Article 4. PAYMENT

- A. The City will make ~~payments upon proof of completion of payment milestones a single lump sum payment on the tenth of each month for the prior month's services~~, as described in the ~~Contract Price Proposal~~ Schedule, once the Contractor has completed the work in accordance with the Contract Documents. Ten percent (10%) of the amount due and payable to the Contractor will be retained from each payment to ensure that the Contractor completes all work under this Contract and complies with all obligations hereunder. Payment of the ten percent (10%) retention shall not be unreasonable withheld.
- B. ~~Not Used. City's obligation is payable only and solely from funds available for the purpose of any purchase~~

~~made. Lack of funds shall render this Contract null and void.~~

- C. No invoice shall include Federal Excise, State or City Sales Tax. ~~Te, to the extent that City shall furnishes~~ tax exemption certificates ~~upon request that apply.~~
- D. The unit prices contained in the Schedule for contract services are incorporated herein, with changes as noted, and made a part of this Contract.

Article 5. FINAL PAYMENT - Before final payment, the Contractor shall submit evidence satisfactory to the City that all payrolls, material bills, and other indebtedness connected with the Work have been paid. The City shall have the right to demand and receive from the Contractor before making final payment, an affidavit stating that the Contractor has made payment in full for all labor, services and materials incorporated into the Work corresponding to the progress or final payment to be made. The City shall rely on said affidavit at face value.

The making and acceptance of the final payment shall constitute a waiver of all claims by the Contractor and the City, other than any claims the City may have arising from unsettled liens or from faulty Work appearing after final payment. The City may withhold from final payment such amounts as may be ~~described~~ expressly stated elsewhere herein.

Article 6. INDEMNIFICATION AND INSURANCE - The Contractor shall indemnify City, as provided in Article 14, General Conditions, and procure and maintain insurance provided in Article 15, General Conditions, and Attachment "Insurance Requirements" and, to the extent required in said Articles or Attachment, require any and all Subcontractors to do the same.

Article 7. GUARANTEES - The Contractor shall guarantee ~~via performance bond as described herein~~, the equipment, articles, devices, and materials furnished or installed, against any and all failure in proper use and operation for a period of one (1) year from the date of ~~final acceptance~~ completion of installation of the ~~Work completed~~ equipment provided under this Contract, but in no case longer than eighteen (18) months after delivery of the equipment. The Contractor shall also obtain ~~and guarantee by Performance Bond, as described herein~~, warranties from manufacturers for each article and piece of equipment furnished or installed, so that the manufacturer's warranty fully covers the equipment from date of shipment to the Contractor through the ~~period of one (1) year after date of final acceptance of the Work completed under this Contract~~ time period established above.

Article 8. CONTRACTOR'S REPRESENTATIONS - In order to induce the City to enter into this Contract, the Contractor makes the following representations:

- A. The Contractor has familiarized himself with the nature and extent of his obligations under this Contract. Contractor has familiarized himself with the Work Site, locality, and all local conditions and laws and regulations that in any manner may effect his costs, progress, or performance.
- B. The Contractor has carefully studied, or will carefully study, all reports ~~of explorations and tests of subsurface conditions~~ and Drawings of physical conditions which are identified or provided in this Contract or prior to any Work Order and accepts or shall accept the accuracy of any technical data contained in such reports and Drawings, upon which Contractor is entitled to rely.
- C. ~~The Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to those referred to in Sub-Article B, above) pertaining to the subsurface or physical conditions at or contiguous to the Site or otherwise affecting his performance, as the Contractor considers necessary for the performance at the Contract Price and in accordance with the other terms and conditions of this Contract.~~

~~D. The Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.~~

C. ~~E.~~ ~~Notwithstanding the foregoing, to the extent that Contractor discovers (1) subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract Documents, Contractor will give prompt notice of such condition and Contractor shall be entitled to make a claim for a change to the Contract in accordance with Section 6, of the General Conditions, Changes In Scope Of Work; Extra Work an equitable adjustment to the Contract will be made.~~

~~The Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the Site and assumes responsibility for the accurate location of said underground facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said underground facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including other revisions specified elsewhere herein.~~

~~G.D.~~ At the time of entering into the Contract, the Contractor has given the City written notice of all conflicts, errors, and discrepancies that the Contractor had discovered in the Contract Documents and the written resolution thereof by the City is acceptable to the Contractor.

Article 9. CONTRACT UNIT PRICES - The unit prices contained in the Bid Schedule are incorporated herein, with changes as noted, and made a part of this Contract.

TITLE: HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

WITNESSED BY:

(NAME OF CONTRACTOR)

Sign: _____
Print: _____

Sign: _____
Print: _____
Title: _____

Sign: _____
Print: _____

Sign: _____
Print: _____
Title: _____

(CORPORATE SEAL)

~~STATE OF FLORIDA~~ COMMONWEALTH OF KENTUCKY
COUNTY OF ~~INDIAN RIVER~~ JEFFERSON

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as _____, and _____ as _____, on behalf of the corporation. They are personally known to me or have produced _____ as identification and did (did not) take an oath.

NOTARY PUBLIC

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

TITLE: HEAT RECOVERY STEAM GENERATOR SUPERHEATER RETROFIT

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 _____, 20 ____, by Kevin Sawnick, Mayor of the City of Vero Beach, 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: _____

Approved as to form and
legal sufficiency:

Approved as to technical requirements:

City Attorney

City Manager

Director, Power Resources

AFFIDAVIT

STATE OF _____

COUNTY OF _____

Before me personally appeared the undersigned who, by me being first duly sworn, deposes and says:

The undersigned is a sub-Contractor under the prime Contractor under a Contract entered into by and between the City of Vero Beach, Florida, and

for the performance of the following described Work:

The undersigned further deposes and says that said labor, materials, and/or services were of a total value of \$ _____ of which there remains due owing and unpaid the sum of \$ _____ to the undersigned.

Corporate Seal

Sub-Contractor

WITNESS:

_____ By: _____

_____ Title: _____

Sworn to and subscribed before
me this _____ day of _____, 20__.

Notary Seal

Notary Public State of **Florida** _____
at Large

SCOPE OF WORK

The City of Vero Beach Power Plant is requesting proposals for replacement of Unit 5 Heat Recovery Steam Generator Superheater tubes and Steam Blow based on qualified contractors' previous site visits and engineering studies.

VPI's proposed scope of work is detailed in the latest submitted revision of VPI Proposal No. V69054, which would be required to be included as a Contract document.

TYPE III

INSURANCE REQUIRED

Revised 02/13/02

A. General

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

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

B. Coverage

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

a) Employer's Liability with a limit of \$500,000 each accident or disease.

b) Notice of Cancellation and/or Restriction - ~~The policy must be endorsed Contractor shall endeavor to provide the City with thirty (30) days notice of cancellation and/or restriction.~~

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

2. **Commercial General Liability** - Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability policy filed by the Insurance Services Office and must include:

a) Minimum limits of \$3,000,000 per occurrence combined single limit for Bodily Injury Liability and Property

Damage Liability.

b) Premises and Operations.

c) Independent Contractors.

d) Products and Completed Operations - Contractors shall maintain in force until at least three years after completion of all services required under the contract, coverage for products and completed operations, including Broad Form Property Damage.

e) Broad Form Contractual Coverage applicable to this specific contract including any hold harmless and/or indemnification exclusions removed.

f) Additional Insured - The City is to be specifically included as an additional insured (including Products and Completed Operations) ~~for the liability of the City for acts or omissions of the City in connection with the general supervision of such operations.~~ Contractor's insurance, including that applicable to the City as an additional insured, shall apply on a primary basis, as respects Contractor's scope of work, and any other insurance maintained by the City shall be in excess of and shall not contribute with Contractor's insurance. Contractor's insurance shall contain a severability of interest provision, providing that, except with respect to the total limits of liability, the insurance shall apply to each insured or additional insured in the same manner as if separate policies had been issued to each.

g) Notice of Cancellation and/or Restriction - ~~The policy must be endorsed Contractor shall endeavor~~ to provide the City with thirty (30) days notice of cancellation and/or restriction.

h) Coverage on an occurrence basis.

3. **Business Auto Policy** - Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Services Office and must include:

a) Minimum limits of \$3,000,000 per ~~occurrence-accident~~ combined single limit for Bodily Injury Liability and Property Damage Liability.

b) Owned Vehicles.

c) Hired and Non-Owned Vehicles.

d) Notice of Cancellation and/or Restriction - ~~The policy must be endorsed Contractor shall endeavor~~ to provide the City with thirty (30) days notice of cancellation and/or restriction.

e) Additional Insured - The City is to be specifically included as an additional insured. Contractor's insurance including that applicable to the City as an additional insured shall apply on a primary basis and any other insurance maintained by the City shall be in excess of and shall not contribute with Contractor's insurance. Contractor's insurance shall contain a severability of interest provision, providing that, except with respect to the total limits of liability, the insurance shall apply to each insured or named insured in the same manner as if separate policies had been issued to each.

~~4. NOT USED **Builder's Risk** - When this contract includes construction of and/or additions to above ground buildings or structures, Builder's Risk coverage must be provided as follows:~~

- ~~a) Form - All Risk Coverage - Coverage is to be no more restrictive than that afforded by the latest edition of Insurance Services Office Forms CP-0020.~~
- ~~b) Amount of insurance is to be 100% of the completed value of such additions(s), building(s) or structures(s).~~
- ~~c) Waiver of Occupancy Clause or Warranty - Policy must be specifically endorsed to eliminate any "Occupancy Clause" or similar warranty or representation that the building(s), addition(s) or structure(s) in the course of construction shall not be occupied without specific endorsement of the policy. The policy must be endorsed to provide that the builder's risk coverage will continue to apply until final acceptance of the building(s), addition(s) or structure(s) by the City.~~
- ~~d) Maximum Deductible - \$5,000 each claim. Higher deductibles are permitted subject to City approval.~~
- ~~e) Additional Insured - The City must be included as an additional insured.~~
- ~~f) Notice of Cancellation and/or Restriction - The policy must be specifically endorsed to provide the City with thirty (30) days notice of cancellation and/or restriction.~~
- ~~g) Flood Insurance - When buildings or structures are located within an identified special flood hazard area, flood insurance protecting the interest of the contractor and City must be afforded for the lesser of the total insurable value of such buildings or structures, or, the~~

~~maximum amount of flood insurance coverage available under the National Flood Insurance Program.~~

~~OR~~

5. **Installation Floater** - When this contract includes the installation of machinery and/or equipment into an existing structure, the following insurance coverages must be afforded on that machinery and/or equipment.

- a) Form - "All Risk" including installation and transit.
- b) Amount of Insurance - 100% of the "installed replacement cost value".
- c) Valuation - 100% of the "installed replacement cost value".
- d) Cessation of Insurance - coverage is not to cease and is to remain in force (subject to cancellation notice) until final acceptance by the City.
- e) Maximum Deductible - \$50,000 each claim.
- f) ~~Copy of Policy Certificate of Insurance-~~ A certified copy of the policy must certificate of insurance evidencing Contractor's Installation Floater shall be provided to the City prior to the commencement of work.
- g) Additional Insured - The City must be included as an additional insured.
- h) Notice of cancellation and/or Restriction - ~~The policy must be specifically endorsed Contractor shall endeavor~~ to provide the City with thirty (30) days notice of cancellation and/or restriction.
- i) Flood Insurance - When the machinery or equipment are located within an identified special flood hazard area, flood insurance protecting the interest of Contractor and City, must be afforded for the lesser of the total insurable value of ~~such buildings or structures, the equipment in Contractor's scope of work~~ or the maximum amount of flood insurance coverage available under the National Flood Insurance Program.

NOTE: IT IS NOT NECESSARY THAT THE CONTRACTOR PROVIDE BOTH A BUILDER'S RISK AND INSTALLATION FLOATER. IF THE CONTRACT INCLUDES CONSTRUCTION OF AND/OR ADDITIONS TO ABOVE GROUND BUILDINGS OR STRUCTURES, BUILDER'S RISK, BUT NOT INSTALLATION FLOATER, COVERAGE

MUST BE PROVIDED. WHEN THE CONTRACT INCLUDES THE INSTALLATION OF MACHINERY AND/OR EQUIPMENT INTO AN EXISTING STRUCTURE, BUT DOES NOT CONTEMPLATE CONSTRUCTION OF OR ADDITION TO THE STRUCTURE ITSELF, ONLY THE INSTALLATION FLOATER MUST BE PROVIDED.

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

COUNCIL AGENDA REPORT
MEETING OF JUNE 15, 2010

TO: The Honorable Mayor and Members of the City Council

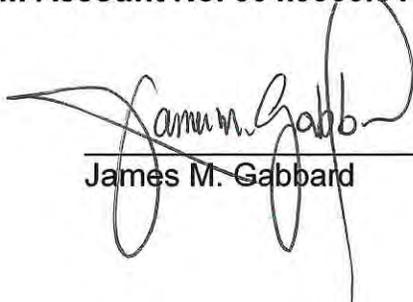
FROM: James M. Gabbard, City Manager

DATE: June 8, 2010

SUBJECT: AWARD OF BID NO. 230-10/JV – 19TH STREET CULVERT REPLACEMENT AT 20TH AVENUE LATERAL E CANAL

Attached is a memorandum from Scott Sanders, dated June 7, 2010, which provides background information and a recommendation on the above-referenced bid.

It is the recommendation of the City Manager's Office that Council approve the Award of Bid No. 230-10/JV, for a 19th Street Culvert Replacement at 20th Avenue Lateral E Canal, to SPC Contracting, Inc., in the amount of \$144,157.30. Funding will be from Account No. 304.9900.541.610001.



James M. Gabbard

:jav
Attachments

xc: Scott Sanders
Monte Falls
Stephen Maillet



DEPARTMENTAL CORRESPONDENCE

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

VIA: Monte K. Falls, PE, Director
DEPT: Public Works *MK FALLS 6/17*

FROM: Scott R. Sanders, PE, Civil Engineer III
DEPT: Public Works *SRSD 6/17/10*

DATE: June 7, 2010

RE: **19th Street Culvert Replacement at 20th Avenue Lateral E Canal
Recommendation of Award
City of Vero Beach Project No. 2009-12
Bid No. 230-10/JV**

Recommendation:

- Place this item on the agenda for the June 15, 2010 meeting of the City Council;
- Award the contract to SPS Contracting, Inc. of Vero Beach, Florida in the amount of \$144,157.30.

Funding:

Funding for this project will be from account number 304.9900.541.610001.

Background:

This project is for replacement of the failing 96" corrugated metal pipe at 19th Street where it crosses the 20th Avenue canal with a new 96" Reinforced Concrete Pipe (RCP). The project also includes adding/upgrading sidewalks, guardrails, curbing, drainage and turning radii.

On May 27, 2010 bids were received from eight contractors for this project. The lowest bid using RCP was received from SPS Contracting, Inc. in the amount of \$144,157.30. A copy of the bid tabulation and bid summary are attached.

SPS Contracting, Inc. has successfully completed several projects for the City of Vero Beach.

Attachments

Cc: Steve Maillet, Finance Director
John O'Brien, Purchasing Manager
Charles Vitunac, City Attorney
Jim Widmann, Contract Administrator, SPS Contracting, Inc.

WBM/ntn

19TH STREET CULVERT REPLACEMENT
 @ 20TH AVENUE LATERAL E CANAL

PAY ITEM NO.	DESCRIPTION	UNIT	PROJECT QUANTITY	Engineers Estimate		SPS Contracting, Inc.		Mancil's Tractor Service, Inc.		Guettler Brothers Construction, LLC		Sunshine Land Design, Inc.		Johnson-Davis, Inc.		Timothy Rose Contracting, Inc.		Ranger Construction Industries, Inc.		Jobear/Warden Construction	
				UNIT COST	PROJECT COST	UNIT COST	PROJECT COST	UNIT COST	PROJECT COST	UNIT COST	PROJECT COST	UNIT COST	PROJECT COST	UNIT COST	PROJECT COST	UNIT COST	PROJECT COST	UNIT COST	PROJECT COST	UNIT COST	PROJECT COST
1	MAINTENANCE OF TRAFFIC/TRAFFIC CONTROL	LS	1	\$ 4,000.00	\$ 4,000.00	\$3,500.00	\$3,500.00	\$11,000.00	\$ 11,000.00	\$ 5,900.00	\$ 5,900.00	\$ 25,000.00	\$ 25,000.00	\$ 8,000.00	\$ 8,000.00	\$ 12,000.00	\$ 12,000.00	\$ 67,000.00	\$ 67,000.00	\$ 13,200.00	\$ 13,200.00
2	CLEARING & GRUBBING	LS	1	\$ 1,500.00	\$ 1,500.00	\$1,750.00	\$1,750.00	\$4,400.00	\$ 4,400.00	\$ 2,165.00	\$ 2,165.00	\$ 12,500.00	\$ 12,500.00	\$ 5,000.00	\$ 5,000.00	\$ 3,500.00	\$ 3,500.00	\$ 5,000.00	\$ 5,000.00	\$ 2,000.00	\$ 2,000.00
3	EARTHWORK (DITCH BANK GRADING)	LS	1	\$ 1,000.00	\$ 1,000.00	\$5,750.00	\$5,750.00	\$5,400.00	\$ 5,400.00	\$ 6,000.00	\$ 6,000.00	\$ 12,250.00	\$ 12,250.00	\$ 6,000.00	\$ 6,000.00	\$ 3,800.00	\$ 3,800.00	\$ 2,730.00	\$ 2,730.00	\$ 11,355.00	\$ 11,355.00
4	UNCLASSIFIED EXCAVATION	LS	1	\$ 10,000.00	\$ 10,000.00	\$3,750.00	\$3,750.00	\$10,000.00	\$ 10,000.00	\$ 4,940.00	\$ 4,940.00	\$ 27,500.00	\$ 27,500.00	\$ 9,000.00	\$ 9,000.00	\$ 6,450.00	\$ 6,450.00	\$ 12,200.00	\$ 12,200.00	\$ 25,711.00	\$ 25,711.00
5.a. ALT.	12" CAP	LF	55	\$ 50.00	\$ 2,750.00	\$24.15	\$1,328.25	\$27.50	\$1,512.50	\$ 27.70	\$1,523.50	\$ 27.93	\$1,536.15	\$ 40.00	\$ 2,200.00	\$ 24.36	\$1,339.80	\$ 25.55	\$1,405.25	\$ 76.90	\$ 4,229.50
5.b. ALT.	12" HDPE N-12	LF	55	\$ 40.00	\$ 2,200.00	\$18.50	\$1,017.50	\$20.00	\$1,100.00	\$ 22.70	\$1,248.50	\$ 20.40	\$1,122.00	\$ 35.00	\$ 1,925.00	\$ 12.23	\$ 672.65	\$ 18.80	\$1,034.00	\$ 72.25	\$ 3,973.75
5.c. ALT.	12" RCP	LF	55	\$ 60.00	\$ 3,300.00	\$27.50	\$1,512.50	\$25.41	\$1,397.55	\$ 30.70	\$1,688.50	\$ 29.68	\$1,632.40	\$ 40.00	\$ 2,200.00	\$ 30.15	\$1,658.25	\$ 22.95	\$1,262.25	\$ 77.60	\$ 4,268.00
5.d.	24" CAP	LF	180	\$ 70.00	\$ 12,600.00	\$49.50	\$8,910.00	\$47.00	\$8,460.00	\$ 44.60	\$8,028.00	\$ 45.73	\$8,231.40	\$ 60.00	\$ 10,800.00	\$ 44.28	\$7,970.40	\$ 41.90	\$7,542.00	\$ 85.40	\$ 15,372.00
5.e. ALT.	24" HDPE N-12	LF	180	\$ 58.00	\$ 10,440.00	\$37.50	\$6,750.00	\$34.75	\$6,255.00	\$ 34.60	\$6,228.00	\$ 36.32	\$6,537.60	\$ 55.00	\$ 9,900.00	\$ 30.57	\$5,502.60	\$ 34.40	\$6,192.00	\$ 81.87	\$ 14,736.60
5.f. ALT.	24" RCP	LF	180	\$ 80.00	\$ 14,400.00	\$42.55	\$7,659.00	\$40.00	\$7,200.00	\$ 39.60	\$7,128.00	\$ 44.47	\$8,004.60	\$ 60.00	\$ 10,800.00	\$ 36.80	\$6,624.00	\$ 38.35	\$6,903.00	\$ 99.60	\$ 16,128.00
5.g.	96" CASP	LF	70	\$ 350.00	\$ 24,500.00	\$315.00	\$22,050.00	\$350.00	\$ 24,500.00	\$ 425.00	\$ 29,750.00	\$ 328.46	\$22,992.20	\$ 400.00	\$ 28,000.00	\$ 720.00	\$ 50,400.00	\$ 327.30	\$22,911.00	\$ 775.00	\$ 54,250.00
5.h. ALT.	96" RCP	LF	70	\$ 350.00	\$ 24,500.00	\$370.00	\$25,900.00	\$491.00	\$ 34,370.00	\$ 500.00	\$ 35,000.00	\$ 370.34	\$ 25,923.80	\$ 550.00	\$ 38,500.00	\$ 818.00	\$ 57,260.00	\$ 429.30	\$ 30,051.00	\$ 1,144.00	\$ 80,080.00
6.a.	UNCLASSIFIED FILL	CY	100	\$ 6.00	\$ 600.00	\$6.25	\$625.00	\$14.00	\$ 1,400.00	\$ 17.30	\$ 1,730.00	\$ 20.00	\$ 2,000.00	\$ 5.00	\$ 500.00	\$ 18.00	\$ 1,800.00	\$ 16.20	\$ 1,620.00	\$ 20.00	\$ 2,000.00
6.b.	#57 ROCK	CY	36	\$ 28.00	\$ 1,008.00	\$28.05	\$1,009.80	\$46.25	\$ 1,665.00	\$ 45.00	\$ 1,620.00	\$ 50.00	\$ 1,800.00	\$ 50.00	\$ 1,800.00	\$ 60.00	\$ 2,160.00	\$ 43.05	\$ 1,549.80	\$ 50.50	\$ 1,818.00
6.c.	EXTRA CONCRETE	CY	10	\$ 125.00	\$ 1,250.00	\$125.00	\$1,250.00	\$125.00	\$ 1,250.00	\$ 745.00	\$ 7,450.00	\$ 250.00	\$ 2,500.00	\$ 110.00	\$ 1,100.00	\$ 150.00	\$ 1,500.00	\$ 615.00	\$ 6,150.00	\$ 200.00	\$ 2,000.00
7.a.	CURB INLET	EA	4	\$ 2,500.00	\$ 10,000.00	\$2,440.00	\$9,760.00	\$2,500.00	\$ 10,000.00	\$ 2,710.00	\$ 10,840.00	\$ 2,794.70	\$ 11,178.80	\$ 4,000.00	\$ 16,000.00	\$ 2,005.00	\$ 8,020.00	\$ 1,840.00	\$ 7,360.00	\$ 2,215.00	\$ 8,860.00
7.b.	MANHOLE	EA	1	\$ 2,500.00	\$ 2,500.00	\$1,675.00	\$1,675.00	\$1,900.00	\$ 1,900.00	\$ 2,225.00	\$ 2,225.00	\$ 1,904.15	\$ 1,904.15	\$ 2,000.00	\$ 2,000.00	\$ 1,546.00	\$ 1,546.00	\$ 1,410.00	\$ 1,410.00	\$ 2,200.00	\$ 2,200.00
7.c.	ANCHORWALL HEADWALL	EA	2	\$ 15,000.00	\$ 30,000.00	\$9,250.00	\$18,500.00	\$8,000.00	\$ 16,000.00	\$ 9,930.00	\$ 19,860.00	\$ 5,328.23	\$ 10,656.46	\$ 13,000.00	\$ 26,000.00	\$ 7,662.00	\$ 15,324.00	\$ 27,110.00	\$ 54,220.00	\$ 7,280.00	\$ 14,560.00
8.	SAWCUTTING	LF	200	\$ 2.60	\$ 520.00	\$0.75	\$150.00	\$5.00	\$ 1,000.00	\$ 1.16	\$ 232.00	\$ 2.00	\$ 400.00	\$ 2.00	\$ 400.00	\$ 2.00	\$ 400.00	\$ 2.55	\$ 510.00	\$ 5.00	\$ 1,000.00
9.	ADJUST SANITARY MANHOLE TOPS	EA	1	\$ 250.00	\$ 250.00	\$375.00	\$375.00	\$500.00	\$ 500.00	\$ 516.00	\$ 516.00	\$ 350.00	\$ 350.00	\$ 300.00	\$ 300.00	\$ 150.00	\$ 150.00	\$ 282.00	\$ 282.00	\$ 400.00	\$ 400.00
10.a.	SUBGRADE PREPARATION	SY	400	\$ 6.25	\$ 2,500.00	\$2.50	\$1,000.00	\$2.50	\$ 1,000.00	\$ 6.70	\$ 2,680.00	\$ 2.00	\$ 800.00	\$ 10.00	\$ 4,000.00	\$ 3.00	\$ 1,200.00	\$ 3.35	\$ 1,340.00	\$ 28.75	\$ 11,500.00
10.b.	COQUINA BASE ROCK (8")	SY	400	\$ 20.00	\$ 8,000.00	\$12.10	\$4,840.00	\$14.00	\$ 5,600.00	\$ 21.00	\$ 8,400.00	\$ 13.25	\$ 5,300.00	\$ 20.00	\$ 8,000.00	\$ 12.50	\$ 5,000.00	\$ 12.35	\$ 4,940.00	\$ 44.25	\$ 17,700.00
10.c.	TEMPORARY ASPHALT (1")	SY	200	\$ 7.00	\$ 1,400.00	\$10.50	\$2,100.00	\$18.75	\$ 3,750.00	\$ 29.25	\$ 5,850.00	\$ 8.46	\$ 1,692.00	\$ 15.00	\$ 3,000.00	\$ 8.50	\$ 1,700.00	\$ 10.55	\$ 2,110.00	\$ 24.74	\$ 4,948.00
10.d.	TYPE S-1 ASPHALT (1 1/2")	SY	760	\$ 9.15	\$ 6,954.00	\$11.70	\$8,892.00	\$11.75	\$ 8,930.00	\$ 15.00	\$ 11,400.00	\$ 10.68	\$ 8,116.80	\$ 13.00	\$ 9,880.00	\$ 9.30	\$ 7,068.00	\$ 10.70	\$ 8,132.00	\$ 12.45	\$ 9,462.00
10.e.	TYPE S-3 ASPHALT OVERLAY (1")	SY	760	\$ 6.15	\$ 4,674.00	\$10.75	\$8,170.00	\$8.06	\$ 6,125.60	\$ 8.70	\$ 6,612.00	\$ 8.46	\$ 6,429.60	\$ 8.00	\$ 6,080.00	\$ 9.30	\$ 7,068.00	\$ 10.10	\$ 7,676.00	\$ 7.33	\$ 5,570.80
10.f.	S-3 ASPHALT OVERLAY (1")	SY	225	\$ 6.05	\$ 1,361.25	\$12.50	\$2,812.50	\$14.33	\$ 3,224.25	\$ 17.00	\$ 3,825.00	\$ 8.46	\$ 1,903.50	\$ 14.00	\$ 3,150.00	\$ 8.50	\$ 1,912.50	\$ 13.50	\$ 3,037.50	\$ 14.40	\$ 3,240.00
10.g.	ADDITIONAL S-3 ASPHALT	TN	20	\$ 12.00	\$ 240.00	\$125.00	\$2,500.00	\$110.00	\$ 2,200.00	\$ 165.00	\$ 3,300.00	\$ 150.00	\$ 3,000.00	\$ 145.00	\$ 2,900.00	\$ 140.00	\$ 2,800.00	\$ 152.00	\$ 3,040.00	\$ 139.26	\$ 2,785.20
11.a. ALT.	GUARDRAILS	LF	150	\$ 75.00	\$ 11,250.00	\$61.90	\$9,285.00	\$78.00	\$ 11,700.00	\$ 70.00	\$ 10,500.00	\$ 65.00	\$ 9,750.00	\$ 80.00	\$ 12,000.00	\$ 74.00	\$ 11,100.00	\$ 57.30	\$ 8,595.00	\$ 83.12	\$ 12,468.00
11.b.	DECORATIVE WING WALLS	LF	90	\$ 150.00	\$ 13,500.00	\$175.00	\$15,750.00	\$111.12	\$ 10,000.80	\$ 205.00	\$ 18,450.00	\$ 210.83	\$ 18,974.70	\$ 130.00	\$ 11,700.00	\$ 68.43	\$ 6,158.70	\$ 193.35	\$ 17,401.50	\$ 82.15	\$ 7,393.50
12.	F CURB	LF	480	\$ 20.00	\$ 9,600.00	\$13.45	\$6,456.00	\$12.75	\$ 6,120.00	\$ 11.80	\$ 5,664.00	\$ 13.75	\$ 6,600.00	\$ 13.00	\$ 6,240.00	\$ 12.50	\$ 6,000.00	\$ 12.50	\$ 6,000.00	\$ 19.05	\$ 9,144.00
13.	ADDITIONAL FILL	CY	18	\$ 35.00	\$ 630.00	\$7.25	\$130.50	\$12.75	\$ 229.50	\$ 8.00	\$ 144.00	\$ 20.00	\$ 360.00	\$ 5.00	\$ 90.00	\$ 20.00	\$ 360.00	\$ 14.30	\$ 257.40	\$ 20.00	\$ 360.00
14.	CONCRETE SIDEWALK (6")	SF	1300	\$ 5.00	\$ 6,500.00	\$3.30	\$4,290.00	\$6.00	\$ 7,800.00	\$ 4.30	\$ 5,590.00	\$ 4.12	\$ 5,356.00	\$ 5.00	\$ 6,500.00	\$ 2.45	\$ 3,185.00	\$ 4.55	\$ 5,915.00	\$ 7.52	\$ 9,773.75
15.a.	FLORATAM	SY	0	\$ 4.00	\$ -	\$2.00	\$0.00	\$2.50	\$ -	\$ 3.00	\$ -	\$ -	\$ -	\$ 8.00	\$ -	\$ -	\$ -	\$ 3.35	\$ -	\$ -	\$ -
15.b.	ARGENTINE BAHIA	SY	375	\$ 3.00	\$ 1,125.00	\$1.20	\$450.00	\$1.40	\$ 525.00	\$ 1.90	\$ 712.50	\$ 3.00	\$ 1,125.00	\$ 5.00	\$ 1,875.00	\$ 1.45	\$ 543.75	\$ 3.10	\$ 1,162.50	\$ 3.50	\$ 1,312.50
16.	STRIPING	LF	550	\$ 1.50	\$ 825.00	\$2.10	\$1,155.00	\$1.90	\$ 1,045.00	\$ 2.80	\$ 1,540.00	\$ 1.80	\$ 990.00	\$ 2.00	\$ 1,100.00	\$ 4.40	\$ 2,420.00	\$ 1.95	\$ 1,072.50	\$ 2.12	\$ 1,166.00
17.	SIGNAGE	EA	2	\$ 200.00	\$ 400.00	\$210.00	\$420.00	\$190.00	\$ 380.00	\$ 340.00	\$ 680.00	\$ 250.00	\$ 500.00	\$ 300.00	\$ 600.00	\$ 250.00	\$ 500.00	\$ 195.00	\$ 390.00	\$ 215.00	\$ 430.00
18.	ROCK REMOVAL	CY	5	\$ 40.00	\$ 200.00	\$8.50	\$42.50	\$15.00	\$ 75.00	\$ 45.00	\$ 225.00	\$ 50.00	\$ 250.00	\$ 50.00	\$ 250.00	\$ 25.00	\$ 125.00	\$ 229.00	\$ 1,145.00	\$ 100.00	\$ 500.00
19.	DEWATERING	LS	1	\$ 3,500.00	\$ 3,500.00	\$3,495.00	\$3,495.00	\$6,900.00	\$ 6,900.00	\$ 16,700.00	\$ 16,700.00	\$ 15,000.00	\$ 15,000.00	\$ 25,000.00	\$ 25,000.00	\$ 39,200.00	\$ 39,200.00	\$ 7,170.00	\$ 7,170.00	\$ 6,000.00	\$ 6,000.00
TOTAL BID:				\$229,977.25	\$229,977.25	\$195,010.55	\$195,010.55	\$225,590.20	\$225,590.20	\$258,345.00	\$258,345.00	\$270,167.16	\$270,167.16	\$282,790.00	\$282,790.00	\$284,418.65	\$284,418.65	\$316,716.70	\$316,716.70	\$381,895.60	\$381,895.60
TOTAL AWARD USING RCP PIPE (LESS OTHER ALTERNATES) =				\$ 162,937.25	\$ 162,937.25	\$144,157.30	\$144,157.30	\$ 170,665.15	\$ 170,665.15	\$ 197,378.50	\$ 197,378.50	\$ 218,365.41	\$ 218,365.41	\$ 215,765.00	\$ 215,765.00	\$ 205,774.95	\$ 205,774.95	\$ 267,775.20	\$ 267,775.20	\$ 272,597.75	\$ 272,597.75

Denotes Alternate Items Deducted from Award

DEPARTMENTAL CORRESPONDENCE

TO: Scott Sanders – Civil Engineer
FROM: Jay Van Arsdall, Senior Buyer
DATE: May 28, 2010
SUBJECT: Bid No. 230-10/JV 19th Street Culvert Replacement at 20th Avenue Lateral E Canal

In order to secure firm pricing for your department, the Division of Purchasing advertised and solicited bids on May 6, 2010 for Bid No. 230-10/JV 19th Street Culvert Replacement at 20th Avenue Lateral E Canal. Seven hundred and nineteen (719) vendors were notified of this bid, forty-one (41) vendors actually downloaded the bid, and eight (8) responses were received.

On Thursday, May 27, 2010, at 2:30 p.m., the Division of Purchasing opened bids on the above subject. Please find a tabulation of the bid enclosed for your review and recommendation. Please provide Purchasing a memorandum stating your recommendation for our files.

Should you have any questions regarding this matter, please do not hesitate to contact me at extension 5473.

Cc: File

Bid Tabulation
City of Vero Beach - Bid No. 230-10-JV
19th Street Culvert Replacement at 20th Avenue Lateral E Canal

	SPS Contracting Vero Beach, FL	Mancil's Tractor Stuart, FL	Guettler Bros. Const. Ft. Pierce, FL	Sunshine Land Design Stuart, FL	Johnson-Davis, Inc. Ft. Pierce, FL	T. Rose Contracting Vero Beach, FL	Ranger Const. Ft. Pierce, FL	Jobear / Warden Palm Bay, FL
Total Bid	\$195,010.55*	\$225,590.20*	\$256,345.00*	\$270,167.16*	\$282,790.00*	\$284,418.65*	\$316,716.70*	\$381,895.60*
Questionnaire	YES	YES	YES	YES	YES	YES	YES	YES
Local Preferences	YES	YES	YES	YES	YES	YES	YES	N/A
Drug-Free Workplace Compliance	YES	YES	YES	YES	YES	YES	YES	YES
Cert. of Non-segregated Facilities	YES	YES	YES	YES	YES	YES	YES	YES
Equal Opportunity Report	YES	YES	YES	YES	YES	YES	YES	YES
Trench Safety Act	YES	YES	YES	YES	YES	YES	YES	YES
Cert. Debar / Suspension	YES	YES	YES	YES	YES	YES	YES	YES
Non-Collusion Affidavit	YES	YES	YES	YES	YES	YES	YES	YES
Bid Bond	YES	YES	YES	YES	YES	YES	YES	YES
Addendum No. 1	YES	YES	YES	YES	YES	YES	YES	YES
Addendum No. 2	YES	YES	YES	YES	YES	YES	YES	YES

* Note: All Total Bids include sum of all options

COUNCIL AGENDA REPORT
MEETING OF JUNE 15, 2010

TO: The Honorable Mayor and Members of the City Council

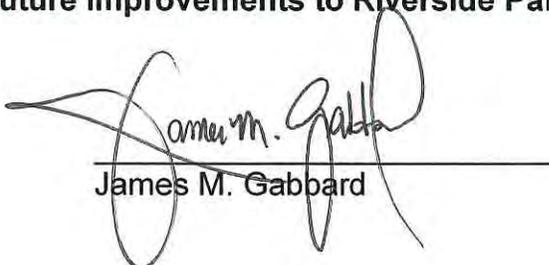
FROM: James M. Gabbard, City Manager

DATE: June 8, 2010

SUBJECT: DIXON DOWNEY DONATION FOR RIVERSIDE PARK

Attached is a memorandum from Monte Falls, dated June 4, 2010, which provides background information and a recommendation on the above-referenced item.

It is the recommendation of the City Manager's Office that Council establish a fund for the remainder of the Dixon Downey donation for improvements to Riverside Park, in the amount of \$148,864.52, by preserving the capital and using only the interest for future improvements to Riverside Park.


James M. Gabbard

:jav
Attachments

xc: Monte Falls
Stephen Maillet

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DEPARTMENTAL CORRESPONDENCE

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

FROM: Monte K. Falls, PE, Director
DEPT: Public Works MKFALLS 6/7

DATE: June 4, 2010

RE: **Dixon Downey Donation for Riverside Park**

Recommendation:

- Place this item on the Jun 15, 2010 agenda of the City Council'
- Authorize the establishment of a fund for the remainder of the Dixon Downey donation.

Funding:

None required.

Background:

On September 10, 2008 an agreement was signed between the City of Vero Beach and Dixon Downey for a donation of \$400,000 (the actual amount \$402,104) for improvements to Riverside Park (copy attached). On November 18, 2009 a grand opening was held for the "Little Flower" gazebo in memoriam to Mr. Downey's wife Virginia. On January 25, 2010 Mr. Downey passed away.

We have completed our final accounting (see attached) of the "Little Flower" project with a total of \$253,239.48 being expended. This leaves a balance of \$148,864.52 from the original donation.

To honor the legacy of Mr. Downey we recommend that the remaining \$148,864.52 be set aside in a fund preserving the capital and only making the interest available for future improvements to Riverside Park.

Attachments

Cc: Steve Maillet, Finance Director
David Bryan, CMT, Northern Trust

MKF/ntn

**AGREEMENT BETWEEN THE CITY OF VERO BEACH,
FLORIDA, AND DIXON DOWNEY, FOR
IMPROVEMENTS TO BE MADE IN RIVERSIDE PARK**

THIS AGREEMENT made the 10th day of September 2008, by and between **Dixon Downey**, whose address is 806 Painted Bunting Lane, Vero Beach, Florida 32963 (hereinafter "DOWNEY"), and the **City of Vero Beach, Florida**, a Florida municipal corporation, whose address is 1053 20th Place, Vero Beach, Florida 32960 (hereinafter "CITY").

WITNESSETH:

WHEREAS, DOWNEY wishes to donate the sum of Four Hundred Thousand Dollars (\$400,000) to CITY; and

WHEREAS, CITY owns and operates a public park facility known as "Riverside Park," Vero Beach, Florida 32963; and

WHEREAS, DOWNEY wishes the above-referenced donation to be used for the design, engineering and construction of improvements to Riverside Park; and

WHEREAS, said improvements to Riverside Park are in the public interest and enjoyment of the citizens of the City of Vero Beach,

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. CITY agrees to accept DOWNEY'S donation to CITY, and further agrees to design, engineer, permit and construct the improvements as set forth below, in the priority listed, and as described in Exhibit "1," attached hereto, and as shown in the aerial map of Riverside Park, Exhibit "2," attached hereto:

Priority (A)	15' octagon pavilion
	Pavilion sidewalk
	Pavilion earthwork/foundation
	Pavilion construction
	Shoreline stabilization, 500 LF
	Benches
	Light poles
	Landscaping
	Mangrove trimming/windowing
	Entryway features

Priority (B) New parking area (21 spaces)
Sidewalks (parking area)

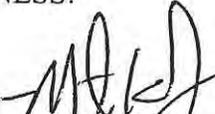
Priority (C) Sidewalks (other areas)
12' shell rock driveway

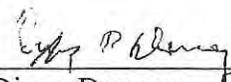
2. CITY and DOWNEY agree that should the donated funds be insufficient to complete the improvements as listed above, improvements will be eliminated, as decided by CITY, beginning with improvements contained within Priority (C).
3. CITY and DOWNEY further agree that should the donated funds be insufficient to complete the improvements as listed above, after eliminating improvements contained within Priority (C), then improvements will be eliminated, as decided by CITY, contained in Priority (B).
4. CITY and DOWNEY further agree that should the donated funds be insufficient to complete the improvements as listed above, after eliminating improvements contained within Priority (C) and Priority (B), then improvements will be eliminated, as decided by CITY, contained in Priority (A).
5. It is agreed between CITY and DOWNEY that, after making the improvements contained within Priorities (A), (B), and (C), listed above, and as described in Exhibit "1," attached hereto, and as shown in the aerial map of Riverside Park, attached hereto as Exhibit "2," there remain excess funds, additional improvements shall be made to Riverside Park as agreed upon by CITY and DOWNEY. Should DOWNEY be unable or unavailable to participate in collaborating with CITY to decide upon said additional improvements, CITY shall have final authority to designate additional improvements.
6. CITY agrees to incorporate the name "Little Flower" on the entryway feature listed in Priority (A) and CITY further agrees not to impose a fee for use of the Pavilion listed in Priority (A).

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement for Improvements to be Made to Riverside Park on the date first written above.

WITNESS:

DIXON DOWNEY

Sign: 
Print: MONTE K. FALLS

Sign: 
Print: Dixon Downey

Sign: 
Print: DAVID BOYAW

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STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 9th day of September 2008, by Dixon Downey. Dixon Downey is personally known to me or produced _____ as identification.

NOTARY PUBLIC



Sign: Barbara J. Peterson
Print: BARBARA J. PETERSON
My Commission Expires: 2-14-11

ATTEST:

CITY OF VERO BEACH, FLORIDA

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

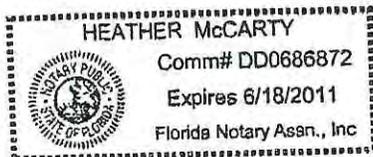
Sign: Thomas P. White
Print: Thomas P. White
Title: Mayor

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

(CORPORATE SEAL)

The foregoing instrument was acknowledged before me this 10th day of September, 2008, by Thomas P. White, as Mayor, and attested by Tammy K. Vock, as City Clerk, of the City of Vero Beach, Florida. They are both personally known to me.

NOTARY PUBLIC



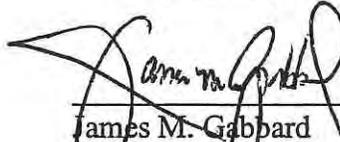
Sign: Heather McCarty
Print: Heather McCarty
My Commission Expires:

Approved as to form
and legal sufficiency:



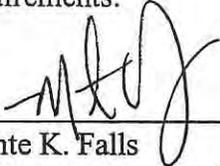
Charles P. Vitunac
City Attorney

Approved as to conforming with
municipal policy:



James M. Gabbard
City Manager

Approved as to technical
requirements:



Monte K. Falls
Director, Public Works

This instrument prepared by:
The Office of the City Attorney
City of Vero Beach
P.O. Box 1389
Vero Beach, FL 32961-1389

Exhibit "1"

Riverside Park Proposed Pavilion

Preliminary Cost Estimate

Priority	Item	Quantity	Units	Unit Price	Total Cost	Comments
A	Pavilion	1	EA		\$14,000.00	15" Vixen Hill (Victorian Model)
	Pavilion Sidewalk	4,800	S.F.	\$10.00	\$48,000.00	6" thick (Green Concrete)
	Earthwork/ Foundation	1	L.S.		\$30,000.00	
	Pavilion Construction	1	L.S.		\$8,000.00	
	Engineering/ Permitting	1	L.S.		\$10,000.00	
	Shoreline Stabilization	500	L.F.	\$80.00	\$40,000.00	
	Benches	12	EA	\$800.00	\$9,600.00	
	Light Poles	7	EA	\$1,571.43	\$11,000.00	
	Entryway Features	1	L.S.	\$5,000.00	\$5,000.00	
	Landscaping	1	L.S.	\$30,000.00	\$30,000.00	
	Mangrove Trimming	1	L.S.	\$15,000.00	\$15,000.00	
B	Additional Parking Area	4200	S.F.	\$10.00	\$42,000.00	(Poured Concrete, 21 Spaces)
	Sidewalk for Parking Area	2,600	S.F.	\$10.00	\$26,000.00	6" thick
C	12' wide Shell Driveway	5600	S.F.	\$2.00	\$11,200.00	Parking lot to Grand Pavilion
	Sidewalks (other areas)	6,100	S.F.	\$10.00	\$61,000.00	6" thick
	Contingency				\$39,200.00	
				Total=	\$400,000.00	

Notes: For estimating purposes these totals include a 10% contingency.

21 additional parking spaces will be constructed along the east side of the road north of the existing restroom.

Final Expense Report Project #2007-23

Little Flower at Riverside Park

Preliminary Cost Estimate										
Priority	Item	Quantity	Units	Unit Price	Total Cost	Comments	Quantity	Units	Total Cost	Status
A	Pavilion	1	EA		\$14,000.00	15' Vixen Hill (Victorian Model)	1	EA	\$14,740.44	Completed
	Pavilion Sidewalk	4,800	S.F.	\$10.00	\$48,000.00	6" thick (Green Concrete)	2441	S.F.	\$38,559.97	Completed
	Earthwork/ Foundation	1	L.S.		\$30,000.00		1	L.S.	\$25,760.60	Completed
	Pavilion Construction	1	L.S.		\$8,000.00		1	L.S.	\$8,397.97	Completed
	Engineering/ Permitting	1	L.S.		\$10,000.00		1	L.S.	\$5,704.84	Completed
	Shoreline Stabilization	500	L.F.	\$80.00	\$40,000.00			L.F.	\$17,017.80	Completed
	Benches	12	EA	\$800.00	\$9,600.00	Standard Composite (Not Charged)	6	EA	\$0.00	Completed
	Light Poles		EA	\$1,571.43	\$1,571.43			EA	\$1,316.32	Completed
	Entryway Features	1	L.S.	\$5,000.00	\$5,000.00	Entry Column		L.S.	\$2,557.05	Completed
	Landscaping	1	L.S.	\$30,000.00	\$30,000.00			L.S.	\$18,483.80	Completed
	Mangrove Trimming	1	L.S.	\$15,000.00	\$15,000.00			L.S.	\$3,000.00	Completed
					\$211,171.43	Priority A Sub-Total			\$135,538.79	
B	Additional Parking Area	4200	S.F.	\$10.00	\$42,000.00	(Poured Concrete, 20 Spaces)	3450	S.F.	\$29,453.81	Completed
	Sidewalk for Parking Area	2,600	S.F.	\$10.00	\$26,000.00	6" thick	3408	S.F.	\$16,367.06	Completed
	Retention Area*								\$22,272.67	Completed
					\$68,000.00	Priority B Sub-Total			\$68,093.54	
C	12' wide Shell Driveway	5600	S.F.	\$2.00	\$11,200.00				\$0.00	Not to be Constructed
	Sidewalks (other areas)	6,100	S.F.	\$10.00	\$61,000.00	6" thick	7314	S.F.	\$49,607.15	Completed
					\$72,200.00	Priority C Sub-Total			\$49,607.15	
	Contingency				\$39,200.00					
				Total=	\$390,571.43 (Estimate)				\$253,239.48	Expenses to date
					(\$402,104.00 Donated to account# 304.9900.572.6090001)					

\$148,864.52 Funds Remaining

NOTE: *Retention area required by St John's River Water Management District permit

COUNCIL AGENDA REPORT
MEETING OF JUNE 15, 2010

TO: The Honorable Mayor and Members of the City Council
FROM: James M. Gabbard, City Manager
DATE: June 8, 2010
SUBJECT: DISCUSSION OF CCNA MEETINGS (ROB BOLTON)

At the June 15, 2010 City Council meeting, Rob Bolton would like to discuss the CCNA Meetings.


James M. Gabbard

JMG:jav

xc: Rob Bolton
Monte Falls

N:\AGENDA\WS\2010\DISCUSSION OF CCNA MEETINGS.DOCX

COUNCIL AGENDA REPORT
MEETING OF JUNE 15, 2010

TO: The Honorable Mayor and Members of the City Council

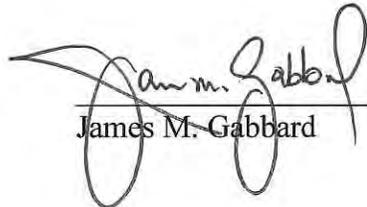
FROM: James M. Gabbard, City Manager

DATE: June 8, 2010

**SUBJ: Procedures for Processing Change of Use Applications
and New Local Business Tax Applications**

At City Council's direction, staff is proposing additional procedures to apprise council of all changes of use and business applications to the City. As a part of the approval process, I will review each use change and new business application. If the request meets the City's code requirements, I will sign off on the application and forward copies to each of you for your review. The effective date of the approval shall commence upon the termination of a three business day review period after the application is signed to allow each of you the opportunity to review and comment if necessary.

If the proposed procedures meet with Council's approval, staff will implement the changes immediately.


James M. Gabbard

JG:gkb

DEPARTMENTAL CORRESPONDENCE

TO: James M. Gabbard, City Manager
FROM: Hank Flores, AICP, Current Planning Manager 
DATE: June 8, 2010
SUBJECT: 1146 21st Street, Suite "B", Application for City Local Business Tax

As requested, I have reviewed the City Local Business Tax application submitted by Bruce Karlin for Stuart Pain Management, Inc. regarding the omission of the Driver's License number, as well as the omission of either a Federal Identification Number or Social Security Number from the Agenda copies. On the original application, the section for the Driver's License Number was completed by the applicant. In keeping with Departmental policy, staff covered over the number with white tape so that this information could not be subsequently copied, since it is not public record. The applicant did not provide either a Federal Identification Number or his Social Security Number. Staff would like to note that to our knowledge the information in question is not required by state law, but was included at the request of the Police Department. The applicant was contacted subsequent to this event and they have provided the Federal ID Number.

Staff has also been instructed to ensure that all areas requiring information contained within the application are either filled in with the correct information or designated as N/A – Not Applicable. Staff will also ensure that any copies of documents containing this type of information that are provided to the general public, other departments, Board or Commission of the City of Vero Beach or City Council is clearly indicated as "redacted."

HF
xc: Timothy J. McGarry, AICP, Planning and Development Director

Good Morning Mayor Sawnick, City Manager Gabbard, City Attorney Vitunic, and Council Members. Thank you for the opportunity to speak before you. I have a few issues I wish to talk about, and I will be as brief on them as I can.

~~I would like to~~ thank and compliment the workers of the city who have worked on and are still completing the sidewalk project on Royal Palm Place and Blvd. They have done a great job. The design of the project, the way the sidewalks weave around trees and avoids damage to landscaping on private property, is beautiful. I travel Royal Palm everyday on my way to work, and in the mornings I have seen more and more people walking, exercising and riding bikes. It's wonderful to see. The workers need to know that the job they have done is greatly appreciated. The sidewalks are a great enhancement to that neighborhood. Please thank them.

I'm sure everyone read Saturdays paper? The Indian River County section, headlines "Neighborhoods may get speed limit cut". Boy, I was seiked! I thought, finally. It's been over 2 ½ years since we started the work with the city council and other city departments to get this done, now we're finally getting our first wish. Was I wrong. I could not believe what I was reading. The first paragraph reads "Concerns about safety on the streets in the Bethel Isle and Silver Shores neighborhoods has prompted assistant city engineer Bill Messersmith to consider a 5 mph reduction in the speed limit". I could not believe it. I along with most of my neighbors have worked on this plan for Original Town Neighborhood. It was adopted on Sept. 6th, 2009. We have the very same concerns of safety. On page 55 it states..... We have waited. We made the decision not to harass the City to get this done. We would wait. We knew the only cost to the city was in making the signs. The speed reduction was agreed upon. So, now we say to you, we need this to happen. We are having more and more traffic issues through our neighborhood since the County has decided to bring their major

bus hub to our neighborhood. Please, without further delay, reduce our speed limits. We have waited long enough. This is not rocket science. Make the signs, get them up, and have the Police Dept. enforce the speed limit.

~~On the issue of the Go-Line Bus Hub in Original Town. We all know that the property the buses are picking up and dropping off at is county property. But, we also know that it is within the city limits. This should not be put in the lap of the neighborhood to remove. The county will present a plan to the planning department and the city for approval to build a bus terminal. I, we as a neighborhood will be there at every meeting to fight this. We hardly have any neighborhood privacy. We have people walking through our neighborhood to catch the buses, or to walk back to where ever they are going to. There are port-o-lets here. Neighbors have called me about trash laying around. I myself had an altercation with a lady that picked up a passenger. The man no sooner sat in the car when he threw a banana peel out the window. I yelled at them that our streets were not their garbage can and the woman stopped her car and got out coming toward me asking what I said, and when I repeated to her that we were not her garbage can, she just went back to her car and left. We do not need, nor do we want a bus terminal at the end of our neighborhood. We have enough businesses and commercial properties that have reduced our residential neighborhood from all directions. Please, work for us. Don't leave us to fight this. Help remove the bus terminal before it gets drawn up on paper. Don't let us come before you to fight this issue.~~

Lastly, I would like to say to Mayor Sawnick, "I have done my homework". I am referring to the issue of time limitations at city council meetings. Both for public speakers and for council members. So, here are some rules of conduct in different cities:

This refers to council members:

City of Belmont, Calif.:

Section III Rules of Conduct:

Item G:- Length of council members comments: Council Members will govern themselves as to the lengths of their comments or presentations. The city council has delegated to the Mayor, the responsibility to assist it's council members by signaling when said council member has been speaking for over five (5) minutes on any agenda item.

Santa Monica, Calif.:

Rule #12- Rules of debate by council members; Prior to the beginning of each meeting, by a two thirds vote of those present, council members may limit the amount of time that each council member may spend stating his or her views on any particular agenda item.

City of Dallas Texas;

Code of Conduct:

(see separate copy)

This refers to public input:

Boston Mass City Council. These rules of the Council were adopted Jan. 27, 2010. Rule #43 of their charter states that "no persons, except city clerk staff or city council staff are allowed upon the council floor. No person shall be permitted to speak, testify, or otherwise participate in any council meeting, hearing or working council session unless permitted to do so in advance by the presiding officer or committee chair person.

Bridgeport, Conn., my birthplace. The Bridgeport Municipal code

states that any resident may be eligible to address the City Council by requesting, in writing, no later than one week prior to the meeting, to speak to the council. You must include your name, address, and the subject matter, and which date you are requesting to speak to the council. Speaking requests are taken on a first come basis and only six requests are allowed for each meeting. The speaker must sign up on that date previously to the start of the meeting. If you fail to make that meeting and or sign up to speak, your slot is given to the speaker next in line.

Lastly, Corpus Cristi, Texas. Rules of decorum.

No council member, staff member, or persons of the audience shall berate, embarrass, accuse or show disrespect for any member of staff, council, or member of the audience at any City Council meeting. When addressing the City Council, members of the audience must begin by giving their name and address. Time limitations are imposed by the Mayor on any presentation. This shall be strictly enforced.

Lastly, Corpus Cristi, section #19 entitled "Power of Recall", The people of the City reserve the power to recall the Mayor and or any City Council Member and may initiate the process by filing with the City Secretary a petition which must be signed by no less than 10% of the registered voters.

So...."Liars, Cheats, and Thieves"....

I sat in this audience many times, over several years, and listened to those words directed towards the council members. I felt embarrassed for you as members of this council. I knew that you should have responded , yet, your code of conduct prevented you to do so. I have respect for all of you.

However, I wish to add two words to that list

First: Enigma; the definition “something or someone puzzling; mysterious or inexplicable”

Grandstand; “To behave dramatically or showily to impress an audience or observer. To pander to a crowd.”

One or all of these words describe councilman Heady. The citizens. Taxpayers, of Vero Beach, which I am one of, are being cheated out of their right to bring forth other issues to this council which may not include “electric issues”. This councilman is “grandstanding” everything and everyone by consistently bringing up the same things at every meeting. Yes the electric is an issue with most if not all taxpayers, but there are other issues which we would like to address. There just is not enough time. We have families, jobs, dead lines, and we just can’t give up 4 or 5 hours of our time to present other issues. As a taxpayer, I am now having to be without any entitlement because I have to contribute part of my tax dollar to help pay \$300.00 an hour for an attorney so a City Council member can sue his own City Council. What part of this do you feel is not cheating me?

My question for the City Attorney is: Does the State of Florida have a law or procedure that allows the recall of an elected council member? If so, what is the procedure and whom would I contact to start the procedure? I wish to petition a recall on council member Brian Heady.

I have been on the internet... Vero Beach is a big topic...and it is not because we have made the top 100 Cities in America to live in.

Thank you for your attention.

9B-1

MEMORANDUM

TO: Mayor Kevin Sawnick and City Councilmembers
FROM: Karl Zimmermann, Chairman
Vero Beach Tree and Beautification Commission
DATE: June 2, 2010
SUBJECT: Funding

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 \$225.00 to purchase Hibiscus Plants. The Hibiscus Plants will be used for a beautification project to replace the old plants and soil in the already existing large planters in Downtown Vero Beach.

KZ/rh

QB 2+3)

New Business:

1. Utilize the social networking site Twitter to update public regarding events, meeting...etc
2. Request an area on city website so public can give input on upcoming budget.

1. Twitter is a social networking internet site that is used to update people using brief statements. I think this could be a tool the city can use to reach more people regarding meetings for all boards and events. Attached is an article about cities twitter.
2. Similar to how the city used our website to gather questions regarding our electric utility, I think to gather more input from the public it would be beneficial to have an area on our city website where a questionnaire can be accessed and filled out by the public. Attached is a sample questionnaire from Brevard county.

More and More Cities Finding Twitter an Effective Communications Tool

July 8, 2009

An increasing number of cities and other government agencies across the country are using [Twitter](#) to help communicate -and with very positive results. Twitter has been "a great way to reach people," in the words of Jessica Brodersen, Web Specialist in the Office of Public Information & Communications for [Mesa, Arizona](#) - even though she admits that Mesa is still in the beginning stages of using Twitter to its full capacity.

Twitter, officially defined as "a real-time short messaging system that works over multiple networks and devices," provides a quick and easy platform to spread the word - about pretty much anything and everything.

For cities, it can run the gamut from spreading the word about an upcoming city council meeting to announcing a road closure or change in garbage collection schedule - or to invite feedback on a special topic of local interest.

It's a bandwagon that's hard not to climb aboard ...

Twitter appears to be everywhere - and growing!

"As the use of Twitter is being popularized in the mainstream media, our followers are increasing," says Liz Rainey, webmaster for the [City of Killeen, Texas](#), which currently has over 450 followers.

One of several technologies falling under the "web 2.0" classification, Twitter came onto the scene in March 2006 with a bang, and has been experiencing staggering growth ever since. According to Pew Internet & American Life Project, as of December 2008, 11 percent of online American adults said they use a service like Twitter to share updates about themselves or follow updates of others. Between February 2008 and February 2009, Twitter reports an increase of 1,841 percent in the number of new accounts created.

Twitter's popularity can be attributed to its many advantages:

- Twitter is one of the easiest technologies for new users to learn.
- Because "tweets" (or posts) are limited to 140 characters, messages are kept simple and straight to the point. Twitter provides an efficient way to "follow" and "be followed."
- Its interactive component allows followers to reply to "tweets."

Is there a downside?

Some are cautious about using a social networking tool like Twitter for fear of vulnerability to negative situations or offensive content. But none of the cities we contacted had experienced any negative ramifications to date.

"Generally speaking, the people who take the time to follow you seem to be the people who are really interested in what is happening in the City, and not the people who want to be a negative voice, says Mesa's Jessica Brodersen. We welcome comments and feedback from the public, and feel that those who follow (Mesa's tweets) are people who want to provide constructive thoughts."

Bruce Edwards says that, to this point, [Dublin, Ohio](#) has not experienced any negative situations either. In fact, he points out yet another advantage of the networking tool. "Since (Twitter) is an open forum, it allows us to be part of the conversation instead of sitting on the sidelines watching what people say *about* the City of Dublin," he says.

Other concerns include the "digital divide," where those with Internet access could be at an advantage over those without, and what we coin the "age divide," describing the intimidation factor associated with networking sites, particularly among baby boomers. As both gaps narrow, we believe the trepidation will give way to an even increased use of Twitter.

Strategic decisions govern content

Using Twitter as an effective communication tool relies on following some basic common sense principles, including the old toothpaste analogy: once you squirt it out of the tube, you can't squeeze it back.

Once a tweet has been posted, it is possible for the author to delete it, but once it's been put out there, you never know who may have seen it, copied it, etc. Tweets should be considered with the same care and scrutiny as any other public communications released by an official source.

And, as with all good things, moderation is key. Oversaturating followers with too many posts can cause "tune-out" ... and if it gets really bad, can lead to "turn-OFF"!

When it comes to deciding what types of content to post, Twitter appears to have developed a niche as a powerful vehicle for keeping residents and other interested parties abreast of local news, happenings and events. Alternate formats such as blogs and social networking sites, are probably a better option for other purposes.

"The city of Mesa is probably not alone in its attempt to figure out a strategic use for different social media tools," ventures Jessica Brodersen, who says that Twitter is an easy vehicle for providing quick updates and posting news feeds.

"Before we create any new social media account, we walk through the goals of what the person, department or division is trying to accomplish - and who they might be trying to reach. Through this discussion, we can determine which tool is most appropriate to use."

Twitter Terminology

Twitter: a real-time short messaging system that works over multiple networks and devices

Tweet: message, post or status update on Twitter, limited to 140 characters or less

Web 2.0: newer technologies that allow greater interaction or networking, including news/messaging tools, blogs, wikis, and social networking sites (like Facebook, Linked In, etc.)

Followers: registered Twitter users that have signed up to follow your updates

Following: other Twitter users (people or organizations) whose updates you want to receive

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May 20, 2010 6:00 p.m.

BCC Palm Bay – Building 1 Room 107 H

Breakout rooms - Building 1, Rooms 93, 95, 99

Using the Strategic Focus Areas (handout) as a guideline, please write your answers to the following questions:

What do we want our community to look like?

URBAN GROWTH AND REDEVELOPMENT CONCENTRATED
IN CITIES

What are your most important priority areas?

ROADWAY NETWORK - CAPACITY IMPROVEMENTS,
WELL-MAINTAINED PAVEMENT, LANE MARKING, SIGN
MEDIANS, DRAINAGES

What are your least important priority areas?

SCAT TRANSIT SUBSIDY

What ideas do you have for cost savings (as the budget is developed)?

REDUCE SHERIFF'S PATROL IN UNINCORPORATED
AREAS; REDUCE FIRE MARSHAL OFFICE STAFFING
REDUCE CODE ENFORCEMENT STAFFING

What ideas do you have for new fees and other new revenue?

DEDICATE PORTION OF ELEGIBLE ROLL BACK
RATE TO PAVEMENT MAINTENANCE COUNTYWIDE
(INCORPORATED AND UNINCORPORATED)

Comments:

9B-4)

ARTICLE IV. CONDUCT

Sec. 20-111. Penalty and construction.

Violations of this article are punishable as provided in section 1-7. Violations shall be construed to include conduct or activity that takes place on the beach while in or on a vehicle.

(Ord. No. 87-36, § 4.14, 11-16-87; Ord. No. 2004-08, § 1, 7-22-04)

Sec. 20-112. Alcoholic beverages.

It shall be unlawful for any person on the beach to sell or consume, or to possess or control, any unsealed or open container containing any type of alcoholic beverage.

(Ord. No. 87-36, § 4.01, 11-16-87)

Cross references: Alcoholic beverages, ch. 6.

Sec. 20-113. Animals.

It shall be unlawful for any person owning or having under his control any animal to permit such animal upon the beach, except that guide dogs accompanying visually impaired persons or hearing ear dogs accompanying hearing impaired persons shall be allowed on the beach at all times.

(Ord. No. 87-36, § 4.02, 11-16-87)

Cross references: Animals, ch. 14.

Sec. 20-114. Fires.

It shall be unlawful for any person to have an open campfire on the beach. It shall be unlawful for any person to dispose of any coals, briquets, embers or other heated object from any stove or grill other than in a designated receptacle.

(Ord. No. 87-36, § 4.03, 11-16-87)

Cross references: Fire prevention and protection, ch. 54.

Sec. 20-115. Overnight camping.

It shall be unlawful to camp overnight on the beach.

(Ord. No. 87-36, § 4.04, 11-16-87)

Sec. 20-116. Fishing.

It shall be unlawful for any person:

- (1) To fish in the ocean after having been warned by a member of the Beach Patrol or any law enforcement officer that the health and safety of swimmers is being endangered; or
- (2) While on the beach or within 600 feet from shore to intentionally fish for sharks or to fish by those methods commonly known as "chumming" or "bloodbaiting."

Nothing in this section shall be construed to create a duty of any sort on the part of any county or municipal employee to prevent fishing or to warn of the presence of sharks in the ocean.

(Ord. No. 87-36, § 4.05, 11-16-87; Ord. No. 97-2, § I, 2-6-97)

Sec. 20-117. Throwing balls, frisbees or other objects.

It shall be unlawful for any person to throw any ball, frisbee or other object or expel or discharge liquid from a water gun through any line of traffic or in any manner so as to interfere with or endanger the movement of vehicular traffic or public safety.

(Ord. No. 87-36, § 4.06, 11-16-87; Ord. No. 92-76, § II, 7-2-92)

Sec. 20-118. Glass containers.

It shall be unlawful for any person while on the beach to possess or utilize any glass bottle or container outside the confines of any vehicle.

(Ord. No. 87-36, § 4.07, 11-16-87)

Sec. 20-119. Soliciting and canvassing.

No commercial activity shall be undertaken on the beach, including the sale, solicitation, canvassing or offer for sale of any product, real estate or real estate interest, service or activity, the rental or offer of rental of any real or personal property, or the distribution of any material, handouts, bills, promotional brochures or similar items. However, this section shall not apply to individual newspaper sales, persons operating under beach franchises or pursuant to temporary beach license agreements, and established business operations conducted entirely within an enclosed building or in a permanent structure for which a building permit is required.

(Ord. No. 87-36, § 4.08, 11-16-87; Ord. No. 89-7, § I, 3-3-89; Ord. No. 90-37, § II, 9-27-90; Ord. No. 91-4, § I, 2-7-91; Ord. No. 92-73, § II, 7-2-92)

Sec. 20-120. Littering.

It shall be unlawful for any person to discard or otherwise dispose of or abandon any trash, garbage, bottles, containers, cans, dead fish or parts thereof, charcoal briquets or ashes, or any other litter on the beach, except in designated containers for that purpose. It is further unlawful to dispose of any household garbage on the beach.

(Ord. No. 87-36, § 4.09, 11-16-87)

Cross references: Solid waste, ch. 106.

State law references: Florida Litter Law, F.S. § 403.413.

Sec. 20-121. Surfing, boating and swimming.

(a) *Objectives and policies.* The recreational use of the Atlantic Ocean is a treasured asset of this county which is afforded to the public at large. By its provision of lifeguards, the county intends to make that recreational use as safe as possible for all. Nevertheless, the natural state of those waters is of an ever-changing and potentially turbulent nature and renders it impossible for the county to ensure that the ocean is safe at all times for all users, and nothing in this section shall be construed as the creation or assumption of such a duty. The county further is without power to ban uses which are not in themselves inherently dangerous, and confining certain of those uses to too small an area can create

SUBJECT TO CHANGE

AGENDA

CITY MANAGER'S OFFICE

JUNE 15, 2010

Consent Agenda

- 2D)1. Regular City Council Minutes – June 1, 2010
- 2D)2. Monthly Capital Projects Status Reports
- 2D)3. SR A1A Landscape Median – Recommendation of Acceptance and Final Payment

City Manager's Matters

- 7A) Award of RFP No. 170-10/PJW – Unit 5 Heat Recovery Steam Generator Superheater Retrofit
- 7B) Award of Bid No. 230-10/JV – 19th Street Culvert Replacement at 20th Avenue Lateral E Canal
- 7C) Dixon Downey Donation for Riverside Park
- 7D) Discussion of CCNA Committee Meetings (Rob Bolton)