CITY OF VERO BEACH, FLORIDA
JULY 20, 2010 9:30 A.M.
REGULAR CITY COUNCIL MEETING
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

A G E N D A

1. CALL TO ORDER

A. Roll Call
B. Invocation – Dr. Tim Harris/First Presbyterian Church
C. Pledge of Allegiance

2. PRELIMINARY MATTERS

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

1. Certificate of Completion to be awarded to Councilmember Brian Heady for completing the Advanced Institute for Elected Municipal Officials
2. Treasure Coast Waterway Cleanup Day – July 24, 2010

C. Public Comment

1. Mr. Don Vosf to speak on Marina Cleaning Initiative
2. Corporal Darryl Rivers to speak about PBA Negotiations

D. Adoption of Consent Agenda

1. Regular City Council Minutes – June 1, 2010

2. Regular City Council Minutes – June 15, 2010

3. Special Call City Council Minutes – June 24, 2010

4. Monthly Capital Projects Status Reports

5. Replacement of Television Equipment

6. Commercial Lease between the City of Vero Beach and Ferrellgas, LP

7. Commercial/Offie Lease agreement between the City of Vero Beach and Legacy Flight Training, LLC

(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 or less; and providing for an effective date.

C) 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 revocation of Tax Exemption; providing for conflict and severability; and providing for an effective date.

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

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

A) An Ordinance of the City of Vero Beach, Florida, amending Chapter 58 "Personnel and Retirement," Article II, Division 4 of the Code of Ordinances of the City of Vero Beach to provide for Compliance with State and Federal Laws and Regulations and Section 401(a) of the Internal Revenue Code; providing for repeal of all Ordinances in conflict herewith; providing for severability; providing for codification and providing an effective date.

B) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach, Part III Land Development Regulations, Title VII Land Development, by adding Chapter 78 to be entitled "Dog-Friendly Dining", establishing the City of Vero Beach "Dog-Friendly" Dining Program: providing a local procedure and regulations pursuant to Florida Statutes Section 509.233 to permit Exemption from certain provisions of the United States Food and Drug Administration Food Code as adopted by the Florida Division of Hotels and Restaurants in order to allow patrons' dogs within certain designated outdoor portions of Public Food Service Establishments; providing for enforcement; providing for conflict and severability; providing for codification; providing for an effective date.

C) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach, Chapter 54 Parks and Recreation, Section 54-2 definitions, by adding definitions for "Bloodbaiting" and "Chumming" and amending certain other definitions for clarification and consistency; amending Section 54-49 Water Activity and Surfacing, by adding Subsection 54-49(e) making unlawful Bloodbaiting and Chumming from any Park or Beach within the City and in the Waters of the Atlantic Ocean within one-half mile of the mean high-water line within the City limits and amending certain other provisions for Clarification and Consistency; providing for conflict and severability; providing for codification; providing for an effective date.

D) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach, Chapter 74 Traffic and Vehicles, Article V Intersection Safety, in order to comply with the "Mark Wandall Traffic Safety Act," Laws of Florida, Chapter 2010-80; providing for implementation of the "Mark Wandall Traffic Safety Program" and the use of Traffic Infraction Detectors in the City; authorizing Traffic Infraction Enforcement Officers to issue notices and citations pursuant to the program; providing for conflict and severability; providing for codification; and providing for an effective date.

E) A Resolution of the City of Vero Beach, Florida, approving the Transmittal to the State of Florida Department of Community Affairs of a proposed City of Vero Beach Comprehensive Plan Amendment to amend the Text of the Land Use Element; Traffic Circulation Element and Capital Improvements Element; providing for an effective date.

F) An Ordinance of the City of Vero Beach, Florida, amending the Text of the Land Use Element, Traffic Circulation Element, and Capital Improvements Element of the City of Vero Beach Comprehensive Plan by revising or creating policies to encourage the location of multi-modal transportation facilities including an Amtrak Passenger Rail Station in Downtown Vero Beach; revising the level of service standard for A1A North of State Route 60 (Beachland Boulevard) and clarifying language describing roadway level of service standards; providing for an effective date.

6. CITY CLERK'S MATTERS

7. CITY MANAGER'S MATTERS

A) Award of Bid No. 240-10/JV – Crestlawn Cemetery Columbarium

B) Indian River Drive East Sidewalk Construction

C) Community Development Block Grant (CDBG) – Jacoby and Piece of Pie Park Playgrounds

D) Unit 3 Forced Outage

8. CITY ATTORNEY'S MATTERS

9. CITY COUNCIL MATTERS

A. Old Business

1. A different consideration for a date for presentation by Dr. Faherty and Glenn Heran – Requested by Councilmember Heady
2. Still waiting for written answers from City Manager – Requested by Councilmember Heady
3. Missing report from City Manager requested by Councilmember Daige – Requested by Councilmember Heady
4. November Elections – Requested by Councilmember Heady
5. Debate on Sale of Electric – Requested by Councilmember Heady
6. 8/12/08 to be played and discussion to follow – Requested by Councilmember Heady
7. Update on a Federal Lawsuit – Requested by Councilmember Heady
8. Honest Services Fraud – Requested by Councilmember Heady
9. Golf Course – Requested by Councilmember Heady

B. New Business

1. Water and Sewer Issues – Requested by Councilmember Heady
2. City Parking – Requested by Councilmember Heady
3. Tourist Tax in relation to Beach Renourishment – Requested by Councilmember Daige

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. FP&L 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

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 JULY 20, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: July 13, 2010

SUBJECT: MONTHLY CAPITAL PROJECTS' STATUS REPORTS

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

James M. Gabbard

:jav
Attachments

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

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

CAPITAL PROJECTS REPORT – AIRPORT

Obstruction Removal	Consultant to prepare bid documents for Phase 2 of the project (Obstruction Removal). This will be presented to City Council in late 2010 for further action.
Rehabilitate Runway 11L/29R and Taxiway F	Notice to Proceed was issued on June 3, 2010. An application for mitigation for gopher tortoise conservation was submitted to Florida Fish and Wildlife Conservation Commission on June 7, 2010. The contractor started procuring materials for the project and began limited site work.
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	Advertisement for Bids was issued on June 8, 2010 with a bid opening date of July 8th. 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 02 JUL 2010

Bay Drive and River Drive Bridge Replacements

Prepared By: PROJECT NO. 2005-24

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

Contractor: Misener Marine Construction, Inc. For Period: 11/24/09 through 7/9/10

NOTES:

Bay Drive: Bridge is complete except for final finishes

Site drainage and roadway restoration to be completed by the end of July, 2010

River Drive: Bridge and approach slabs are complete.

Sidewalks, bridge finishes, utility relocation, site drainage and roadway resoration to be completed by the end of July, 2010.

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	$1,421,343.89	CONTRACT DAY:	209
% OF WORK COMPLETE	86.06%	% OF CONTRACT TIME COMPLETE:	232.22%

09-Jul-10

Bay Drive bridge roadway subgrade in place. Preparing to fully restore roadway.

09-Jul-10

River Drive bridge decorative wall under construction.

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 7/9/10

NOTES:

Total length of sidewalk for this project is 7,640 linear feet. This project is complete.

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

ORIGINAL BUDGET AMOUNT	$334,873.60	Percent of Work Complete	100%

12-Jul-10

New sidewalk on north side of Royal Palm Boulevard along the VBCC golf course

12-Jul-10

Royal Palm Boulevard sidewalk looking east toward US 1

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 7/9/10

NOTES:

Project is substantially complete. Contractor is working on punchlist items.

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	$277,183.28	CONTRACT DAY:	159
% OF WORK COMPLETE	100.00%	% OF CONTRACT TIME COMPLETE:	176.67%

07-Jul-10

Water rushes through the system during a successful test of the new pump

12-Jul-10

Completed electrical control panels and vault.

Florida Department of Transportation
Indian River Boulevard & Royal Palms Intersection

Prepared By: FDOT Project No. 403596-2-52.01

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

Contractor: Community Asphalt Corp. For Period: 1/04/10 through 7/08/10

NOTES:

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

Project is complete.

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	175 days
TOTAL COST OF WORK PERFORMED TO DATE		CONTRACT DAY:	158
% OF WORK COMPLETE	100.00%	% OF CONTRACT TIME COMPLETE:	90.29%

12-Jul-10
New traffic pattern looking east from Royal Palm Place

12-Jul-10
New traffic pattern looking east from Royal Palm Blvd.

WATER TREATMENT PLANT INJECTION WELL SYSTEM

STATUS REPORT AS OF 7/1/10
CITY OF VERO BEACH DEPARTMENT OF WATER AND SEWER

Prepared By:	Jerry A. Gilbert, P.E.	PROJECT NO:	290-09/JV
Consultant:	ARCADIS US	FOR PERIOD:	6/1/10 - 7/1/10
Contract Date:	10/01/09		
Notice to Proceed Date:	10/07/09		
Time of Completion:	270 Calendar Days		
Substantial Completion Date:	06/04/10	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		

Above, panels are erected at both the injection well and monitor well sites, to complete the electrical work and monitoring capabilities at both locations. This contractors work is complete this month.

STORAGE RESERVOIR AND INJECTION WELL PUMP STATION

STATUS REPORT AS OF 7/1/10
CITY OF VERO BEACH WATER AND SEWER DEPARTMENT

Prepared By:	Jerry A. Gilbert, P.E.	PROJECT NO:	280-09/JV
Consultant:	Arcadis, Inc.	FOR PERIOD:	6/1/10 - 7/1/10
Contract Date:	30-Sep-2009		
Notice to Proceed Date:	13-Oct-2009		
Time of Completion:	395 Calendar Days		
Scheduled Completion Date:	12-Nov-2010	Director's Signature	

PROJECT DESCRIPTION:

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

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

DIVISION			
CONTRACTOR	Florida Design Contractors, Inc.		
ORIGINAL CONTRACT AMOUNT	$2,694,375.00		
CHANGE ORDERS TO DATE (TOTAL)	$791,836.36		
ADJUSTED CONTRACT AMOUNT TO DATE	$3,486,211.36		
TOTAL COST OF WORK PERFORMED TO DATE	$1,961,218.17		
% OF WORK PAID	56.26%		
TOTAL WORK COMP.	$1,765,096.35		

Above left, the header pipe at the injection well is now connected to the injection well and to the pumps. Above right, the pumps at the booster station at the sewage treatment plant are in place. Electrical work is being performed at both locations. Generator delivery to both locations is anticipated this month

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

STATUS REPORT AS OF 7/1/10
CITY OF VERO BEACH DEPARTMENT OF WATER AND SEWER

Prepared By:	Jerry A. Gilbert, P.E.	PROJECT NO:	1483
Consultant:	Morgan & Associates	FOR PERIOD:	6/1/10 - 7/1/10
Contract Date:	11-Dec-09		
Notice to Proceed Date:	19-Jan-10		
Time of Completion:	270 Days		
Scheduled Completion Date:	15-Oct-10	Director's Signature	

PROJECT DESCRIPTION:

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

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

DIVISION			
CONTRACTOR	S.P.S. Contracting. Inc.		
ORIGINAL CONTRACT AMOUNT	$2,396,841.58		
CHANGE ORDERS TO DATE (TOTAL)	$39,906.00		
ADJUSTED CONTRACT AMOUNT TO DATE	$2,436,747.58		
TOTAL COST OF WORK PERFORMED TO DATE	$1,815,913.40		
% OF WORK PAID	67.07%		
TOTAL WORK COMP.	$1,634,322.06		

Making a ninety degree bend with two large diameter pipelines side by side is never easy. Above left demonstrates how to do it in tight quarters,above right demonstrates how it's done when you have more working room. The project is nearing completion, all or most of the pipe should be laid this month. It will probably take another month to complete all the testing and restoration.

WATER TREATMENT MAINTENANCE BUILDING AND FIELD SERVICES COMPLEX

STATUS REPORT AS OF 7/1/10
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:	6/1/10 - 7/1/10
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	$1,359,600.00		
% OF WORK PAID	65.84%		
TOTAL WORK COMP.	$1,223,640.00		

The work on the field services building and maintenance building is continuing, including electrical, plumbing, air conditioning, garage doors, painting, etc. Both buildings are on schedule to be completed in accordance with their contract completion date.

2D-5)

MEMORANDUM

TO: Mayor Kevin Sawnick and
City Councilmembers

FROM: Tammy K. Vock, MMC Tammy
City Clerk

DATE: July 13, 2010

SUBJECT: Replacement of Television Equipment

Attached you will find a proposal from Audio Visual Innovations (AVI) to replace the television equipment in our Council Chambers in order for us to continue televising the City Council meetings, along with other meetings held in the Council Chambers. The equipment that we have is ten years old and desperately needs to be replaced. I have worked with the Finance Department in coming up with the money to pay for the cost to replace this equipment. They have suggested using the one-cent sales tax that the City receives to cover the costs for this equipment. That is how it was funded ten years ago when the renovations of the Council Chambers took place.

This probably is not the best time economically to be doing this project, but if we want to continue televising our meetings, I feel that it is time to have it done. From what I have been told that the projected life of the equipment that we currently have could last another month or another year, but the life span of the equipment is not going to last too much longer.

In the audience is Martin Lois, from AVI and Shane Dewitt to answer any questions that Council might have.

I appreciate your consideration in approving this request. The account number used to fund this project will be 304.9900.519.667003.

/tv

Enclosure

Audio Visual Innovations - A wholly owned subsidiary of AVI-SPL

AVI SPL®

718 South Military Trail
Deerfield Beach, FL 33442
(954) 938-9382 Fax (954) 776-4772
www.avispl.com

PROPOSAL SUMMARY

Prepared For
City of Vero Beach
1053 20th Place

Vero Beach, FL 32960

Prepared By:	Martin A. Lois
Date Prepared:	June 7, 2010
Proposal Number:	
Project Name:	Council Chambers
Valid Until:	August 7, 2010

TOTAL EQUIPMENT COST — **$108,399.20**
Includes: cable, connectors, hardware, switches, relays, terminal blocks, panels, etc., to insure a complete and operational system.

PROFESSIONAL INTEGRATION SERVICES — **$24,126.00**
Includes: Engineering, project management, CAD, on-site installation and wiring, coordination and supervision, testing, checkout, owner training, etc. performed on the Owner's premises. Also includes all fabrication, modification, assembly, rack wiring, programming, warranties, etc., some performed at AVI-SPL

Please Reference Hernando County School Board Bid Number 05-480-12 for Labor, Programming and Engineering

DIRECT COSTS — **$0.00**
Includes: Non equipment or labor costs such as travel expenses, per diem, lift and vehicle rentals.

GENERAL & ADMINISTRATIVE — **$3,654.97**
Includes all G & A expenses: clerical, bonds, vehicle mileage, shipping & insurance

CUSTOMER SUPPORT — **INCLUDED**
90 Day Full System Warranty - Includes on site diagnostics and labor, bench repair labor, and all parts necessary to complete a repair.

SUBTOTAL	$136,180.17
TAXES	$0.00
TOTAL	$136,180.17
TERMS	PO REQUIRED

MONTHLY EXPENSE OPTIONS

AVI-SPL Financial Solutions makes it easy for you to secure the best possible technology solutions. Our leasing options are perfect for companies that demand the best, but don't want to consume valuable capital dollars or credit line.

Option 1 - 36 month lease with $1 buyout — Monthy Expense _____

Option 2 - 48 month lease with $1 buyout — Monthly Expense _____

Not Included: Structural, ceiling, millwork, or AC/heat modifications, HV electrical or conduit.

This entire document and all information enclosed including drawings, specifications and designs is the property of AVI-SPL. Proprietary information provided to our client or his agents is for the sole purpose of demonstrating AVI-SPL's capabilities and shall be held in confidence. These materials may not be copied, distributed or disclosed in any way without the sole written permission of an authorized representative of AVI-SPL.

Tammy K. Vock — Tammy K. Vock — 7-1-10

Customer Signature — Print — Date

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www.avispl.com

CUSTOMER CARE PROGRAM

Prepared For
City of Vero Beach
1053 20th Place
Vero Beach, FL 32960

Prepared By:	Martin A. Lois
Date Prepared:	June 7, 2010
Proposal Number:	
Project Name:	Council Chambers
Valid Until:	August 7, 2010

1ST YEAR CUSTOMER CARE PROGRAM

$6,294.95
Plus Tax

YES - I would like the first year Customer Care Program ____ Client Initials

NO - I do don't want the first year Customer Care Program ____ Client Initials

2ND YEAR CUSTOMER CARE PROGRAM

$7,951.52
Plus Tax

YES - I would like the 2nd year Customer Care Program ____ Client Initials

NO - I do don't want the 2nd year Customer Care Program ____ Client Initials

PROGRAM BENEFITS

OUTSTANDING CUSTOMER SUPPORT

❖ 24/7 Technical Help Desk - Staffed By AVI-SPL Engineers

- Trouble ticket generation & tracking
- Dedicated toll free number for access to the help desk
- CISCO certified experts on staff
- Certified Videoconferencing Engineers (CVE) on staff
- Cisco Certified Network Associate and Professional (CCNA & CCNP) on staff
- Cisco Certified Design Associate and Professional (CCDA & CCDP) on staff
- Certified Technology Specialist (CTS) on staff

SEMI ANNUAL PREVENTATIVE MAINTENANCE

- Inspect all surfaces, electrical and signal connections, clean as needed
- Inspect all VCR's, DVD & CD players, clean and lubricate as needed
- Inspect all displays, clean and adjust as need for optimal image quality
- Complete system functionality test to ensure 100% functionality
- Perform walk through with client to demonstrate 100% functionality
- Provide report of findings and recommendations

WARRANTY REPAIR BY CERTIFIED TECHNICIANS

- AVI-SPL will provide all labor and parts to effectively perform repairs
- Unlimited service calls with priority response
- Overnight shipping on replacement parts
- Provide loaner table top projector (if applicable and necessary)

Note: Owner provided equipment is not covered under the Customer Care Program

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RECYCLING PROGRAM

AVI-SPL is dedicated to making sure that you get the best experience from the products that we recommend for your audio/video solution. We also understand that when you are ready for a new solution, proper steps must be taken to ensure that the components of your old equipment are disposed of in a safe and environmentally responsible manner, which is why we have created formal recycling programs for our customers. Working with an ISO certified third party environmentally responsible recycling company with over 20 years of reliable experience, AVI-SPL provides waste management options to make sure that we keep as much toxic waste out of landfills as possible.

Lamp Recycling

AVI-SPL is pleased to offer projector lamp recycling at no cost to you - you pay only the shipping costs to ship the lamp to our recycling center. While many companies offer a recycling service, they often charge for the recycling - AVI-SPL pays the recycling cost - and keeps our carbon footprint small by having you ship directly to our recycling center. It's quick, easy and inexpensive to be environmentally responsible.

Did you know?

- Most projection lamps contain mercury, which is toxic and can leak into the ground water if placed into a landfill
- Shipping a projection lamp to our centralized recycling facility via standard mail is only about $3 per lamp

Recycling for Technology Upgrades

Technology upgrades require the safe removal of obsolete equipment before the installation of any new technology is put into your facility. AVI-SPL has partnered with an ISO certified national recycling company to ensure that all waste equipment is disposed of in an environmentally responsible manner. During the recommendation process, our team of specialists will recommend a recycling solution for any outdated A/V equipment that you may need removed during the installation process.

Did you know?

- Almost all electronic devices contain lead, and such devices are proliferating-and becoming obsolete at breathtaking speed.
- Using our ISO certified recycling partner on your next new project ensures that old technology is properly recycled - keeping it out of landfills.

Recycling During the Fabrication Process

During the process of creating your integrated solution, we generate waste products such as cable and wire clippings, connectors, metal plates and parts, and packaging waste, for instance. Our fabrication plants are able to capture and recycle much of this waste to prevent it from being disposed of through standard means.

Did you know?

- E-waste is the fastest growing waste stream in the world today. The EPA and National Safety Council put the annual number of discarded cell phones at more than 130 million with more than 250 million computers becoming obsolete in the next five years, and that's just in the U.S.
- According to the US Environmental Protection Agency, in 2005, discarded electronics totaled about 2 million tons. It's estimated that only about 15 to 20 percent of this was recycled.***

Going Green is Good for Business

Utilizing recycling programs, like the programs outlined on this page, can be good for your business. If you are currently planning new construction projects and are working on a LEED Certified building, AVI-SPL can be a resource for your project team.

Go Green
reduce. reuse. recycle.

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AVI SPL

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EQUIPMENT LIST

PREPARED FOR

City of Vero Beach
1053 20th Place
Vero Beach, FL 32960
0

Prepared By	Martin A. Lois
Date Prepared	June 7, 2010
Proposal Number	0
Room Name	Chambers AV System
Valid Until	August 6, 2010

ITEM	QTY	MFG	MODEL	DESCRIPTION	UNIT PRICE	EXTENDED PRICE	NOTES FOR CLIENT
	1			DISPLAY SYSTEM			
13	2	City of Vero	65" Displays	Owner Furnished Equipment	$0.00	$0.00	Miami Dade County School Board Bid 011-HH11 25% Discount
18	7	City of Vero	Disa Displays	Owner Furnished Equipment	$0.00	$0.00	
	1			SOURCE EQUIPMENT			
26	1	Extron	7067801	VGA Retractable Cable	$237.00	$237.00	Broward County School Board Bid 29008R 17% Discount
27	1	Extron	7067802	Audio Retractable Cable	$237.00	$237.00	Broward County School Board Bid 29008R 17% Discount
28	1	Extron	7067803	Network Retractable	$237.00	$237.00	Broward County School Board Bid 29008R 17% Discount
29	1	Extron	6071604	Cable Cubby	$300.00	$300.00	Broward County School Board Bid 29008R 17% Discount
30	1	Extron	7034902	USB Module	$61.82	$61.82	Broward County School Board Bid 29008R 17% Discount
	1			SWITCHING AND ROUTING			
54	1	Extron	6060701	RGB to HDMI Scaler	$458.20	$458.20	Florida State Contract 880-000-09-01
56	1	Crestron	DMMD16x16	Digital Media Switcher	$5,103.86	$5,103.86	AVI GSA Contract GS-03F-0037M
57	2	Crestron	DMCHDDSP	HDMI Input Card with DSP	$593.47	$1,186.94	AVI GSA Contract GS-03F-0037M
58	3	Crestron	DMCDVI	DVI Input Card	$474.78	$1,424.34	AVI GSA Contract GS-03F-0037M
59	2	Crestron	DMVIDBNC	Video Input Card	$474.78	$949.56	AVI GSA Contract GS-03F-0037M
60	1	Crestron	DMCO2222	Output Card for DM Switcher	$1,899.11	$1,899.11	AVI GSA Contract GS-03F-0037M
61	5	Crestron	DMRMC100	Digital Media CAT Receiver	$534.12	$2,670.60	AVI GSA Contract GS-03F-0037M
62	3	Crestron	CBLDVI12	Interface Cable	$34.42	$103.26	AVI GSA Contract GS-03F-0037M
63	3	Crestron	CBLAUDIO12	Interface Cable	$5.93	$17.79	AVI GSA Contract GS-03F-0037M
64	3	Crestron	CBLHD6	Interface Cable	$29.67	$89.01	AVI GSA Contract GS-03F-0037M
65	3	Crestron	CBLHD30	Interface Cable	$83.09	$249.27	AVI GSA Contract GS-03F-0037M
66	1	Crestron	DMCBLPSP500	Plenum Rated DM Cable	$949.55	$949.55	AVI GSA Contract GS-03F-0037M
67	1	Crestron	DMCONN20	DM Connectors	$308.61	$308.61	AVI GSA Contract GS-03F-0037M
68	1	Crestron	DMCO2000	Output Card for DM Switcher	$474.78	$474.78	AVI GSA Contract GS-03F-0037M
69	1	Extron	6069220	Audio DA	$348.60	$348.60	Broward County School Board Bid 29008R 17% Discount
72	2	Extron	6092201	HDMI DA	$592.50	$1,185.00	St Lucie County School Board Bid 08-05 21% Discount
73	1	Extron	2061401	HDMI to DVI Cable	$23.74	$23.74	AVI GSA Contract GS-03F-0037M
	1			AUDIO EQUIPMENT			
108	1	Clearone	910151001	Audio DSP Main Unit	$4,100.40	$4,100.40	Miami Dade County School Board Bid 011-HH11 24% Discount
109	2	Clearone	910151010	Audio DSP Input Unit	$3,132.00	$6,264.00	Miami Dade County School Board Bid 011-HH11 24% Discount
	1			CONTROL SYSTEM			
125	1	Crestron	AV2	Central Processor	$1,602.37	$1,602.37	AVI GSA Contract GS-03F-0037M
128	1	Crestron	CIENET2	Ethernet Input Card	$771.51	$771.51	AVI GSA Contract GS-03F-0037M
129	1	Crestron	CITBLOCK	Cresnet Distribution Block	$100.69	$100.69	AVI GSA Contract GS-03F-0037M
130	1	Crestron	PW2420RU	Power Supply	$149.17	$149.17	AVI GSA Contract GS-03F-0037M
132	1	Crestron	TPS15S	15" Touchpanel	$4,747.77	$4,747.77	AVI GSA Contract GS-03F-0037M
135	1	Crestron	STCOM	RS232 Controller	$415.43	$415.43	AVI GSA Contract GS-03F-0037M
136	1	Crestron	STRMK	Rack Mount Kit	$80.02	$80.02	AVI GSA Contract GS-03F-0037M
143	1	Comprehensive	ASW242G	Network Switcher	$129.56	$129.56	St Lucie County School Board Bid 08-05 21% Discount
	1			MISC EQUIPMENT			
159	1	Middle Atlantic	ERSA	Equipment Rack Accessories	$668.67	$668.67	St Lucie County School Board Bid 08-05 21% Discount
181	1	Furman	PLPLUCC	Rack Mount Power Supply	$212.51	$212.51	St. Lucie County School Board Bid 08-05 -21%
182	1	Furman	F1500UPS	UPS	$770.97	$770.97	St. Lucie County School Board Bid 08-05 -21%

Equipment Total	$30,543.31
Installation Materials	$1,948.45
Labor And Warranties	$18,702.00
Direct Costs	$0.00
General & Administrative	$1,398.05
Subtotal	$52,591.81
Tax	$0.00
TOTAL	$52,591.81

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Audio Visual Innovations - A wholly owned subsidiary of AVI-SPL

AVI SPL

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Deerfield Beach, FL 33442
(954) 938-9382 Fax (954) 776-4772
www.avispl.com

EQUIPMENT LIST

PREPARED FOR

City of Vero Beach
1053 20th Place
Vero Beach, FL 32960
0

Prepared By:	Martin A. Lois
Date Prepared:	June 7, 2010
Proposal Number:	0
Room Name:	Chambers Broadcast System
Valid Until:	August 6, 2010

ITEM	QTY	MFG	MODEL	DESCRIPTION	UNIT PRICE	EXTENDED PRICE	NOTES FOR CLIENT
	1			BROADCAST SYSTEM			
2	5	Panasonic	AW-E350	1/2" CCD Camera	$3,079.09	$15,395.45	GSA Contact GS-03F-4082B Panasonic
3	4	Panasonic	AW-PH360	Pan-Tilt Head	$3,934.51	$15,738.04	GSA Contact GS-03F-4082B Panasonic
4	5	Panasonic	IA-60A	Power Supply for Pan-Tilt Head	$277.08	$1,385.40	GSA Contact GS-03F-4082B Panasonic
5	5	Panasonic	AW-LZ16MD55	16X Fujinon Lens	$2,361.71	$11,808.55	GSA Contact GS-03F-4082B Panasonic
6	5	Panasonic	AW-CA50T9	Lens Control Cable	$103.78	$518.90	GSA Contact GS-03F-4082B Panasonic
7	1	Panasonic	AW-RP655	Multi Hybrid Remote Control Panel	$3,894.21	$3,894.21	GSA Contact GS-03F-4082B Panasonic
11	3	Marshall	VR-682P	3 x 1 Rack Mount LCD Monitors	$0.00	$0.00	GSA Contact GS-03F-4082B Panasonic
15	1	Newtek	TB080000-0101	Tricaster Broadcast	$10,583.82	$10,583.82	
22	1	Extron	6069201	Video DA	$268.60	$268.60	Broward County School Board Bid 29008R 17% Discount
29	1	Middle Atlantic	VCS	Video Console	$4,179.89	$4,179.89	St Lucie County School Board Bid 08-05 21% Discount
32	1	AVI	CUSTOM	Wallpte for Pressroom	$466.67	$466.67	

Equipment Total	$64,239.53
Installation Materials	$3,668.91
Labor And Warranties	$7,424.00
Direct Costs	$0.00
General & Administrative	$2,256.02
Subtotal	$77,586.46
Tax	$0.00
TOTAL	**$77,586.46**

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TERMS & CONDITIONS

1. Acceptance of Terms
This quotation shall not be binding upon the Company until signed by the Buyer and accepted in writing by a duly authorized representative of the Company. Any modification, addition to, or waiver of any of the terms and conditions of this quotation shall not be effective unless in writing and signed by an authorized representative of the company, and any different or conflicting terms appearing in Buyer's purchase order or other documents are expressly rejected by Company. Buyer's receipt of the Equipment shall constitute assent to all terms and conditions contained herein. No relaxation, forbearance or indulgence by the Company in enforcing any of the terms and conditions of this agreement or the granting of any time to any other party shall prejudice or restrict the rights and powers of the Company hereunder, nor shall waiver of any breach hereof operate as a waiver of any subsequent or continuing breach hereof.

2. Delivery
The company will use its best efforts to deliver the Equipment, herein defined as the total deliverable as defined in the quotation, in accordance with the Buyer requested delivery date subject to receipt of all necessary information from Buyer. Shipping dates are approximate only, and the Company shall not be liable for delays or for failure to manufacture due to causes beyond its reasonable control or due to compliance with any government regulations.

Any delay shall extend delivery dates to the extent caused thereby. Buyer shall reimburse the Company its additional expenses resulting from any Buyer-caused delay. When delivery of the Equipment is delayed at the request of the Buyer and the equipment has already been shipped to the Company, the Company will place the Equipment in storage and the Company will immediately invoice the Buyer 70% of the price, which will be promptly paid. The buyer shall have no right to cancel or rescind this agreement by reason of an excusable delay as defined herein, and shall accept such delayed performance by the company. The Buyer's receipt of the Equipment shall constitute a waiver of any claims for delay.

3. Payment Terms
Unless otherwise specified herein, the total contract price shall be paid as follows: 30% down payment at time of order, 40% upon delivery at Company; 30% upon completion or first beneficial use.. Unless otherwise specified, equipment is sold F.O.B. origin-Buyer to pay all shipping charges. If this quotation covers equipment for more than one system, room, suite, or location, for purposes of payment in accordance with payment terms stated on the face hereof each room, suite, or location shall be treated as if the subject of a separate sale and payment made accordingly. Company shall not be liable for failures of or delays in manufacture, delivery or installation resulting from any cause or causes beyond its reasonable control.

6. Installation & Site Preparation (Continued)
The Buyer shall be responsible for preparing, at its own expense, the installation site in accordance with the company's instructions, including the requirements specified in the quotation. In no event shall the Company be responsible for any high voltage electrical work, ceiling modifications, structural modifications, or mechanical systems modifications. Unless otherwise specified, Buyer shall provide the Company with source code for any non-Company programmed remote control system required to be modified under the terms of this agreement.

The Buyer shall provide the Company with reasonable access to the installation site before delivery, for purposes of determining site readiness for installation, and shall designate an individual on Buyer's staff to serve as a contact person for all site preparation and installation issues. Buyer shall provide the Company with free access to the installation site for the purpose of preparation for installation. The buyer shall indemnify the Company against any loss, damage or claim arising out of the condition of the storage and installation premises.

Buyer shall obtain at its expense and keep effective all permissions, licenses, and permits whenever required in connection with the installation and/or use of the Equipment and the premises where the Equipment shall be situated.

7a. Warranty
In the event the Equipment is in any way misused or altered or is repaired by someone other than a representative of the Company, which within the sole judgment of the Company results in an adverse effect, including effects upon performance or reliability of the Equipment, the warranty and the Company's obligations hereunder shall terminate without notice to Buyer.

7b. Warranty Service – Chargers
Warranty service will be provided in accordance with the Company's standard service terms. Where such terms are inconsistent with the terms herein, the terms herein will govern. Unless otherwise specified, each installation/system carries a ninety-day warranty covering defects in the installation portion of the sale. Components and materials carry the manufacturer's warranty as described below, which may be greater than the ninety-day listed above. The Company will attempt to reply to warranty service requests received from Buyer prior to 1:00 p.m. within forty-eight hours. In the event service is provided outside of normal working hours, Buyer will be charged for any overtime hours in accordance with the Company's then standard policy on overtime rates. Normal working hours are 9 a.m. to 5 p.m., Monday through Friday, excluding legal holidays.

8. Limitations Of Warranty – Products Of Others
Unless otherwise specified, No warranty whatsoever is provided by the Company hereunder as to products manufactured by other than the Company, including but not limited to, cables, lamps, batteries, glassware, and evacuated devices (including valve, cathode ray tubes, and other special electron tubes). The Company's sole obligation with respect to any material or part identified in the quotation, literature, or specifications furnished to the Buyer as manufactured or supplied by others, shall be to pass on to the Buyer the applicable manufacturer's warranties, if any.

9. Buyer Responsibilities

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4. Buyer In Arrears Or Default
In the event Buyer is in arrears with any payment whatsoever due from it to the Company at any time whatever, whether in respect of the purchase price or any other amount due from the buyer to the Company under the terms of this agreement, the amount in arrears shall bear interest at three (3) percent above the prime rate prevailing at the principal New York branch of Chase Manhattan Bank as from the date each amount falls due, pending actual payment thereof in full, without prejudice to any relief and remedy available to the Company. In the event of Buyer's default, the Company may, without notice, peaceably enter any premises in which the equipment is located and remove, hold and sell it in accordance with applicable law, to satisfy in whole or in part Buyer's obligations.

5. Title, Risk of Loss
Title to the Equipment shall pass to Buyer upon delivery, subject to a purchase money security interest retained by the Company in the Equipment sold and the proceeds thereof until payment of all amounts then due to the Company. The Company shall be entitled to remove the Equipment from the buyer's premises if all payments are not made when due. Buyer agrees to execute financing statements under the Uniform Commercial Code or other documents as the Company requests to protect its security interest. Risk of loss or damage to the Equipment or any part thereof shall pass to the Buyer upon delivery.

6. Installation & Site Preparation
Installation (field assembly, interconnection, equipment calibration and checkout) is to be performed by the Company's trained technical employees. The Company shall be entitled to employ sub-contractors and/or agents to assist in or carry out, in whole or in part, the installation. In the event installation by Company employees is prevented by trade unions, the Buyer shall arrange with the trade unions at its own expense to complete installation. The Company is thereafter liable only for engineering supervision of installation.

The Company shall coordinate and cooperate with other trades to facilitate satisfactory work progress. If the Company's work in progress is impeded by other trades and/or contractors (excluding the Companies own subcontractors) or by scheduling delays due to the Buyer, time delays in the final installation as well as additional charges including labor, travel and reasonable expenses may result.

Buyer or any user of the Equipment shall (i) notify the Company as soon as any unusual operating peculiarity appears, and (ii) operate the Equipment in a safe and competent manner in strict compliance with established safety operating procedures and applicable laws and government regulations. In the event the Buyer or any user of the Equipment fails to comply with any of the above-stated conditions, the Company's warranties and its obligations hereunder shall terminate without notice to Buyer.

10. Limitation Of Liability
The foregoing warranties are exclusive and in lieu of all other warranties, whether written or oral, implied or statutory. No implied warranty of merchantability or fitness for a particular purpose shall apply; in no event will the company be liable for any damages, other than the allocable charges paid by the buyer for the equipment, whether direct, indirect, special, incidental or consequential, arising from any warranty claims.

11. Taxes
Any and all taxes levied or based on the prices in this agreement, or the Equipment being sold hereunder, exclusive of any taxes based on net income, shall be added to the selling prices set forth in the quotation; otherwise, the Buyer shall provide the Company with a tax exempt certificate acceptable to the taxing authorities.

12. Choice Of Law And Severability
This agreement shall be interpreted in accordance with and governed in all respects by the law of Florida. Venue shall be Hillsborough County, Florida. Should any provision of this agreement be found invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other provision contained herein.

13. Restocking Fees
In the event Buyer wishes to return any Equipment based on reasons outside of the Company's control, Buyer agrees to pay any and all restocking fees.

14. General
The quotation shall be firm for the period shown on the face hereof, subject to withdrawal or change by the Company upon notice at any time prior to acceptance of an order. It supersedes all prior agreements and understandings between the parties relating to the subject matter and is intended by the parties as the complete and exclusive statement of the terms of the quotation and agreement. Any representation, affirmation of fact, course of prior dealings, promise or condition in connection shall not bind the parties therewith or usage of the trade not incorporated herein.

Client Acceptance

Signed Name

Company

Printed Name

Date

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COUNCIL AGENDA REPORT
MEETING OF JULY 20, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: July 13, 2010

SUBJECT: COMMERCIAL LEASE BETWEEN THE CITY OF VERO BEACH AND FERRELLGAS, LP.

Please find attached a memo from Ericson Menger, dated July 12, 2010, which provides background information and a recommendation on the above-referenced lease agreement.

It is the recommendation of the City Manager's Office that Council approve the Commercial Lease Agreement between the City of Vero Beach and Ferrellgas LP., for a parcel of land at the southeast corner of 34th Avenue/Airport Drive and Dodger Road, effective August 1, 2010.

James M. Gabbard

:jav
Attachments

xc: Ericson Menger
Stephen Maillet

N:\AGENDA\AIRPORT\2010\COMMERCIAL LEASE - FERRELLGAS LP.DOC

MEMORANDUM

TO: James M. Gabbard, City Manager

VIA: Charles P. Vitunac, City Attorney

FROM: Ericson W. Menger, Airport Director

DATE: July 12, 2010

SUBJECT: **COMMERCIAL LEASE AGREEMENT BETWEEN THE CITY OF VERO BEACH AND FERRELLGAS, LP.**

Attached are three original executed copies of a proposed Commercial Lease Agreement between the City of Vero Beach and Ferrellgas, LP., a Delaware limited partnership, for a parcel of land at the southeast corner of 34th Avenue/Airport Drive and Dodger Road.

BACKGROUND:

The proposed tenant under this new lease has been a tenant in good standing during the entire 10 year term on this same parcel under an existing lease set to expire on July 31, 2010. Ferrellgas, LP. has requested the privilege of extending their stay for at least three years with an option to extend the lease for an additional three years. The new lease upgrades the lease terms to the current standard forms and utilizes the current approved rental rates, as adjusted by the Consumer Price Index.

The attached lease will run for an initial period of three (3) years with an option to renew this lease for an additional three (3) years at an adjusted market rental rate. Any further occupancy by this tenant will necessitate the negotiation of a new lease at market value at the expiration of this proposed lease. This lease also includes the obligation of the tenant to remove the large gas tank and associated improvements prior to the termination or expiration of the lease term then in effect. The tenant is also required to provide, or to reimburse the City for the procurement of an updated Phase I Environmental Assessment of the property to assure that there has not been any environmental contamination of the leased premises during their tenancy.

Pursuant to City Code Section 18-42, the City Council has the authority to approve and execute leases for more than a year. The rental rate is $0.32 per square foot per year or $609.70 per month beginning August 1, 2001, subject to annual adjustment for increases in the CPI, plus sales tax. The total rent due during the initial three year term is an unadjusted $21,949.20. The tenant will continue being responsible for payment of all legally assessed ad-valorem and non-ad valorem taxes and assessments upon the leasehold.

The lease has been reviewed and approved by the City Attorney's office.

RECOMMENDATION:

I respectfully recommend approval of the Commercial Lease Agreement with Ferrellgas, LP., with an effective date of August 1, 2010.

EWM/jm

Attachment(s)

cc: Airport Commission Members (via email w/attachment)
Joyce Vonada, City Manager's Office (via email)

Ferrellgas

OFFICER'S CERTIFICATION
FERRELLGAS, INC.

The undersigned, Cathy S. Brown, hereby certifies that she is the duly elected and acting Assistant Secretary of Ferrellgas, Inc., a Delaware corporation (the "Corporation"); that the activities and authorizations described below are in accord with the guidelines and internal policies of said Corporation; and that said activities and authorizations are in full force and effect on the date hereof, without amendment or modification thereto:

> Trent Hampton, Vice President of Legal and Risk Management or Jason P. Cullen, Director of Real Estate and Office Services, are hereby authorized to execute the Commerical Lease Agreement ("Agreement"), and other related documents, on behalf of the Corporation and such execution shall bind the Corporation to the terms and conditions thereof.

Therefore the Corporation, acting as general partner for, and on behalf of, Ferrellgas, L.P., is hereby authorized to execute the Agreement leasing the property therein described in Vero Beach, Indian River County, Florida, from City of Vero Beach.

IN WITNESS WHEREOF, the undersigned has executed this Certificate and caused the corporate seal of said Corporation to be affixed hereto this 18th day of June 2010.

(corporate seal)

Cathy S. Brown
Assistant Secretary
Ferrellgas, Inc.

COMMERCIAL LEASE AGREEMENT
[Land only]

This Lease Agreement was made and entered into the date last written below (hereinafter effective date), by and between the **CITY OF VERO BEACH**, a municipal corporation organized and existing under the laws of the State of Florida, whose mailing address is P.O. Box 1389, Vero Beach, Florida 32961-1389 ("LANDLORD"); and **FERRELLGAS, LP.**, a Delaware limited partnership, whose mailing address is One Liberty Plaza, Attn: Real Estate Dept., Liberty, Missouri 64068-2971 ("TENANT").

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LANDLORD and TENANT agree as follows:

1. LEASED PREMISES.

LANDLORD hereby demises and leases to TENANT, and TENANT hereby hires, rents, and leases from LANDLORD, real property located at the Vero Beach Municipal Airport, Vero Beach, Indian River County, Florida. The Leased Premises consists of 22,751.20 square feet of land and is more particularly described in Attachment "A" to this Lease Agreement.

2. TERM; OPTION TO RENEW.

(a) The initial term of this Lease Agreement shall be three (3) years, commencing on August 1, 2010, and terminating on July 31, 2013.

(b) TENANT shall have the option to renew this Lease Agreement for one term of three (3) years at the conclusion of the initial term; provided, however, that TENANT is not in default hereunder, and provided that TENANT shall first give written notice to LANDLORD of TENANT's intention to exercise this option no less than three (3) months, and no more than eighteen (18) months, prior to the termination of the initial term. All terms and conditions herein shall apply during the second term unless otherwise provided herein.

3. RENT; RENT ADJUSTMENT.

(a) Subject to the adjustment, escalation, and other provisions of this Lease Agreement, including Vero Beach Resolution No. 2007-18, and Attachment B, (Effective date: May 15, 2007), as amended by SPECIAL PROVISIONS, if any herein, of this Lease Agreement, TENANT shall pay to LANDLORD, in lawful money of the United States, a total rent during the initial term of this Lease Agreement of $21,949.20. Pursuant to Section 8 of Attachment B of this Lease Agreement, TENANT also shall pay all legally imposed federal, state and local taxes, fees, and assessments accruing during the term of this Lease Agreement.

The monthly rent shall be $609.70. Pursuant to Section 8 of Attachment B of this Lease Agreement, TENANT also shall pay all legally imposed taxes, fees, or assessments accruing for that month. This rental rate is based on 22,751.20 square feet of land at $0.32 per square foot per year. Rent shall be due on the first day of each month. Failure to pay the monthly rent in full by the tenth day of each month shall result in the assessment of a late charge of five percent (5%) of the amount then owing or $50.00, whichever is greater.

(b) With the exception of structures and equipment described in Section 5(b), ownership interest in all structures built, improvements made, and fixtures installed by TENANT, or at TENANT'S direction, upon the Leased Premises during the initial term or any renewal term of the Lease Agreement shall automatically revert to LANDLORD'S ownership and vest in LANDLORD at the expiration or termination of the initial term or the renewal term in which they are built, made, or installed.

(c) If TENANT exercises the option to renew, TENANT's rent shall be adjusted as set forth in Attachment B.

4. STANDARD PROVISIONS.

The standard lease provisions for Airport Tenants, set forth in Attachment B to this Lease Agreement and entitled "Standard Lease Provisions For Airport Tenants,(Effective date:

May 15, 2007)", are incorporated into and made a part of this Lease Agreement, subject to the following amendments:

(a) Section 8 of Attachment B is amended as follows: TENANT shall not be required to elect the quarterly tax payment plan with the Tax Collector's Office.

(b) Section 10 (b) of Attachment B is amended as follows: TENANT shall not be required to obtain a property insurance policy as described in this Section.

(c) Section 12 of Attachment B, "Construction of Improvements," is deleted. There shall be no requirement for TENANT to construct additional permanent improvements to the leased premises.

5. SPECIAL PROVISIONS.

To the extent that any of the following Special Provisions are in conflict with any other provision of this Lease Agreement, the Special Provision shall govern.

(a) TENANT is not required by the terms of this Lease Agreement to construct buildings and/or other improvements upon the Leased Premises. However, TENANT shall, within 60 days after the commencement date, install and/or replace landscaping materials as may be required by current City of Vero Beach Zoning and Development Codes to comply with outdoor storage limitations.

(b) TENANT shall completely remove any and all LP Gas storage tanks, foundations, supports, and related equipment installed, owned, or maintained for bulk storage of LP Gas (hereinafter "structures and/or equipment) on the Leased Premises, by TENANT, no later than the expiration or early termination of this Lease Agreement. Such structures and/or equipment are owned by TENANT and LANDLORD shall make no claim of ownership. TENANT shall fill and grade any holes or ruts caused by removal of such structures and/or equipment and the Leased Premises shall be left in a condition substantially similar to the condition of the Leased Premises prior to the original July 19, 2000 Lease Agreement between the parties, to the reasonable satisfaction of the LANDLORD. If TENANT fails to timely remove such structures and/or equipment, LANDLORD may have the property removed at TENANT'S expense, and LANDLORD shall invoice such expense to TENANT, together with an administrative charge of ten (10%) percent of such cost, due and payable immediately upon receipt of the invoice by TENANT.

(c) Prior to the Lease Agreement commencement date, TENANT provided a security for the performance of this Lease Agreement in the amount of $1,957.14, and said amount shall immediately be forfeited by TENANT to LANDLORD in the event of a default under the terms of this Lease Agreement that is not immediately cured under

the terms herein, and shall be applied as a credit to any sums due to LANDLORD upon default. If LANDLORD applies any part of the security deposit to cure any default of TENANT, TANANT shall on demand deposit with LANDLORD the amount so applied so that LANDLORD shall have the full security deposit on hand at all times during the term of this Lease Agreement. TENANT'S failure to pay LANDLORD a sufficient amount to restore the security deposit to the required amount within five (5) days after receipt of a written demand for it shall constitute a default of the Lease Agreement. It is expressly understood and agreed by the parties that the security deposit shall not be considered an advance payment of rental or a measure of LANDLORD's damages in case of default by TENANT. Said deposit shall be returned to TENANT within thirty (30) days upon the successful conclusion of the performance by TENANT of the terms of this Lease Agreement.

(b) Attached hereto, and incorporated herein as Attachment C, is a copy of the Phase I Environmental Property Assessment, dated _____, by _____. LANDLORD and TENANT accept this report as an accurate representation of the environmental condition of the property as of the commencement date of this Lease Agreement.

(c) Upon expiration or termination of the Lease Agreement, TENANT shall procure and pay for a Phase I Environmental Assessment of the Leased Premises. The results of this report shall be compared to the results of the Phase I Environmental Property Assessment described in paragraph (c) above, to determine whether or not the Leased Premises was contaminated during the term of the Lease Agreement. If a Phase II Environmental Assessment is recommended by the Phase I Environmental Assessment, TENANT shall be responsible for any and all costs associated with the Assessment and environmental remediation pursuant to the terms of Section 19, Environmental Provisions, of Attachment B of this Lease Agreement.

(d) TENANT shall provide LANDLORD with certificates of insurance stating that the coverages, as provided by Section 10(a) of Attachment B of this Lease Agreement, are in force prior to the commencement date of this Lease Agreement, and for each term of coverage thereafter.

6. INTEGRATION; AMENDMENTS.

(a) This written Lease Agreement and Attachments A, B, and C contain the entire Agreement of the undertakings by and between the parties hereto relative to the leasing of the premises. No prior or present agreements, representations, statements, or promises, whether oral or written, made by any

party or agent of any party hereto which is not contained herein shall be binding or valid.

(b) No provision of this written Lease Agreement or Attachments A, B, or C may be amended, extended or modified except by written instrument executed by all parties to this Lease Agreement.

(c) The parties hereto acknowledge that they were given the opportunity to have their legal counsel review this Lease Agreement and Attachments "A", "B", and "C", and that the Lease Agreement and Attachments "A", "B", and "C" shall be construed neither against, nor in favor of, any party hereto, but rather in accordance with the fair meaning thereof.

(The remainder of this page is left blank intentionally.)

IN WITNESS WHEREOF, we LANDLORD and TENANT, have hereunto affixed our hands and seals.

LANDLORD - CITY OF VERO BEACH
(This section to be completed by LANDLORD only)

ATTEST:

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

LANDLORD:

Sign: _____
Print: Kevin Sawnick
Title: Mayor

Date of Signature _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Kevin Sawnick, as Mayor, and attested by Tammy K. Vock, as City Clerk of the City of Vero Beach, Florida. They are both known to me and did not take an oath.

NOTARY PUBLIC:

Sign: _____
Print: _____
State of Florida at Large [SEAL]
Commission No. _____
My Commission Expires: _____

TENANT - Ferrellgas, LP
(This section to be completed by TENANT only)

WITNESSED BY:

Sign: _____
Print: Kristi L. Guerrero

Sign: _____
Print: JAMES P GOETZ

[AFFIX CORPORATE SEAL HERE]

[SEAL]

TENANT

Print: FERRELLGAS, LP
By: FERRELLGAS, INC.
its General Partner
By: _____
Jason P. Cullen
Director of Real Estate and Office Services

Date: 6/18/10

STATE OF Missouri

COUNTY OF Clay

The foregoing instrument was acknowledged before me this 18 day of June, 2010, by Jason P. Cullen, as Director of Real Estate and Office Services, on behalf of Ferrellgas, LP. He is personally known to me or produced _____ as identification and did/did not take an oath.

PATRICIA S. SILVEY
NOTARY PUBLIC
STATE OF MISSOURI
NOTARY SEAL
#08491961
CLAY COUNTY
MY COMMISSION EXPIRES
August 21, 2012

NOTARY PUBLIC:

Sign: Patricia S. Silvey
Print: Patricia S. Silvey
State of ~~Florida~~ Missouri at Large [SEAL]
Commission No. _____
My Commission Expires: August 21, 2012

CITY MANAGEMENT
(This section to be completed by City Management Staff only)

Approved as to form and legal sufficiency:

Charles P. Vitunac
City Attorney

Approved as conforming to municipal requirements:

James M. Gabbard
City Manager

Date of Signature 7/13/10

Approved as to technical requirements:

Ericson W. Menger
Airport Director

EXHIBIT "A"
PROPERTY DESCRIPTION
VERO BEACH MUNICIPAL AIRPORT PARCEL 30
Parcel #32-39-26-00011-0300-00001.0

Situated in the State of Florida, County of Indian River, City of Vero Beach, and being a part of Section 3, Township 33 South, Range 39 East and being more particularly bounded and described as follows:

Commencing at the Northeast corner of said Section 3;

Thence North 89°45'39" West along the North line for said Section 3 for a distance of 1,769.76 feet to the point of beginning of Parcel 30;

Thence continue North 89°45'39" West along said North line for a distance of 134.92 feet to a point on the East right-of-way of 34th Avenue;

Thence South 09°29'33" West along said East right-of-way for a distance of 84.08 feet to the point of curvature of a non-radial curve concave to the West;

Thence Southwesterly along said curve having a radius of 1,215.14 feet, a delta angle of 3°20'45", a chord bearing of South 11°49'35" West, a chord distance of 70.96 for a distance of 70.96 to the Southwest corner of Parcel 30;

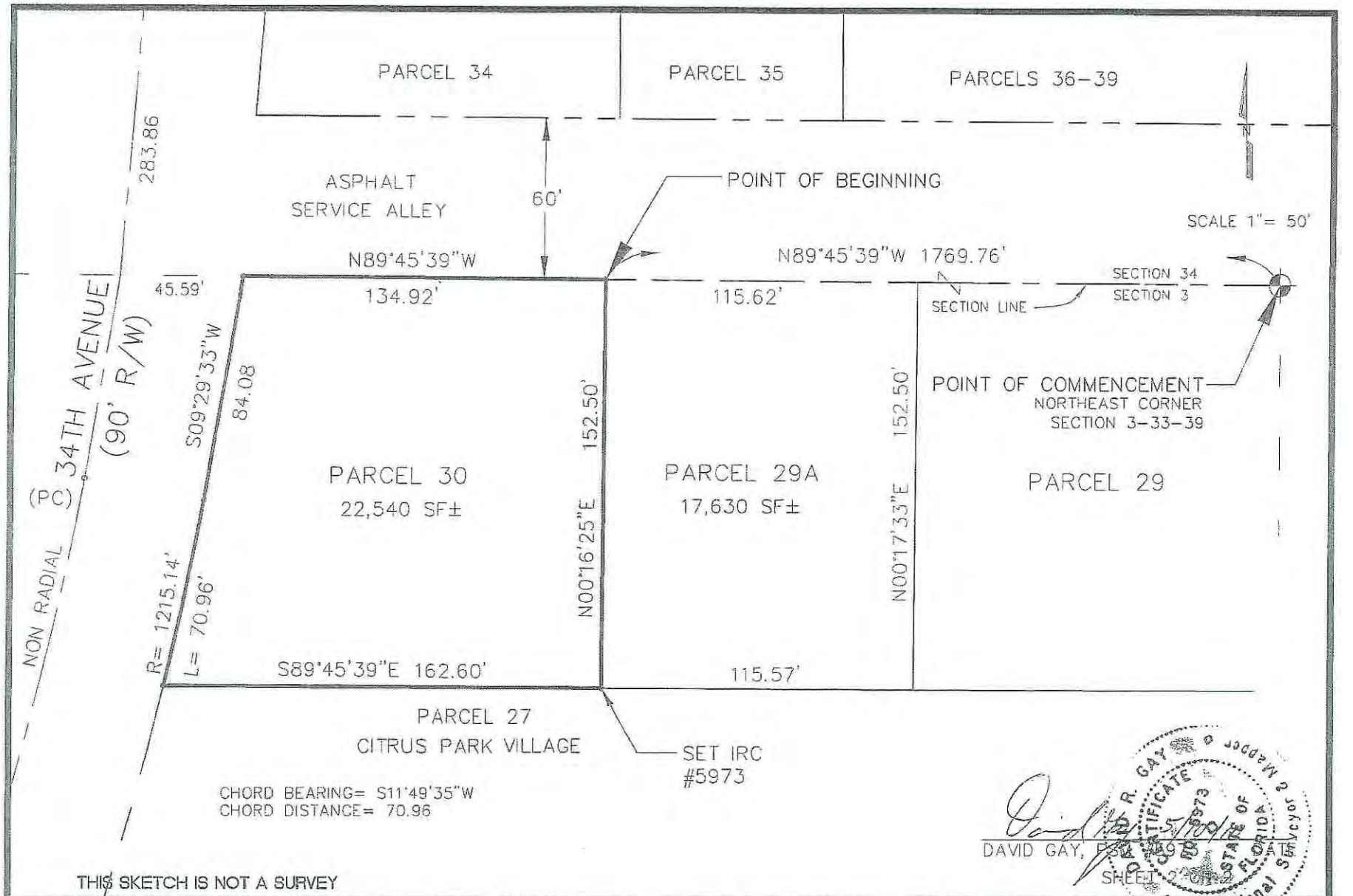
Thence South 89°45'39" East for a distance of 162.60 feet;

Thence North 00°16'25" East for a distance of 152.50 feet to the Point of Beginning;

Containing 22,540 square feet more or less.

David R. Gay, PSM #5973

S:\Property Descriptions\2010\2010-13_VB Airport Parcel 30_May 10 2010.doc



THIS SKETCH IS NOT A SURVEY

CITY OF VERO BEACH	SKETCH OF PROPERTY DESCRIPTION	ATTACHMENT "A"			REV. NO.	REVISED BY
DEPARTMENT OF PUBLIC WORKS	PARCEL 30	CITY PROJECT NO. 2010-13			DRWN BY	DATE
SURVEY DIVISION	VERO BEACH MUNICIPAL AIRPORT	DATE 05/2010	DRWN BY DG	CHKD BY MKF	DESCRIPTION	

COUNCIL AGENDA REPORT
MEETING OF JULY 20, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: July 13, 2010

SUBJECT: COMMERCIAL/OFFICE LEASE AGREEMENT BETWEEN THE CITY OF VERO BEACH AND LEGACY FLIGHT TRAINING, LLC.

Please find attached a memo from Ericson Menger, dated July 12, 2010, which provides background information and a recommendation on the above-referenced lease agreement.

It is the recommendation of the City Manager's Office that Council approve the Commercial/Office Lease Agreement between the City of Vero Beach and Legacy Flight Training, LLC., for 1,882 square feet of commercial office space located in the Airport Terminal Building. It is also recommended that Council approve and execute the Landlord Waiver submitted by Wells Fargo Bank.

James M. Gabbard

:jav
Attachments

xc: Ericson Menger
Stephen Maillet

N:\AGENDA\AIRPORT\2010\COMMERCIAL-OFFICE LEASE - LEGACY FLIGHT TRAINING LLC.DOC

MEMORANDUM

TO: James M. Gabbard, City Manager

VIA: Charles P. Vitunac, City Attorney

FROM: Ericson W. Menger, Airport Director

DATE: July 12, 2010

SUBJECT: **COMMERCIAL/OFFICE LEASE AGREEMENT BETWEEN THE CITY OF VERO BEACH AND LEGACY FLIGHT TRAINING, LLC.**

Attached are three original executed copies of a proposed Commercial/Office Lease Agreement between the City of Vero Beach and Legacy Flight Training, LLC., for 1882 square feet of commercial office space located in the Airport Terminal Building. There is also a "LANDLORD WAIVER" form submitted by Wells Fargo Bank for execution which gives them priority lien authority (on personal property only).

BACKGROUND:

On March 23, 2010, the City of Vero Beach entered into a lease for a term of one (1) year for three commercial office spaces in the Airport Terminal Building totaling 1293 square feet. The Tenant has been in the initial stages of setting up a new simulator flight training business utilizing the space for ground school classrooms, flight simulators, and general corporate offices. The tenant is currently awaiting closure on this new five year lease with a five year renewal option to satisfy a condition placed upon the business by the commercial financing institution for a 10 year leasehold opportunity. Intended use of the facility at the airport will be for simulator flight training and ground school only.

The attached lease terminates the current short term lease and increases the leasehold space to 1882 square foot for a period of five (5) years with an option to renew this lease for an additional five (5) years at fair market value. Any further occupancy by this tenant will necessitate the negotiation of a new lease.

Pursuant to City Code Section 18-42, the City Council retained the authority to approve and execute leases for more than a year. The rental rate is $18.00 per square foot per year or $1,939.50 per month from August through November and $3,020.61 per month beginning December 1, 2010, plus sales tax. The tenant is also responsible for payment of any ad valorem taxes legally assessed against the leasehold. The rental rate includes all utilities and the common use of existing parking and restroom facilities with other tenants.

The form of the lease is based primarily upon the standard form leases utilized for other long term leases of airport property, including numerous standard provisions more particularly set out in Attachment "B". The current form is intended for use only for office spaces within the airport terminal building, and as such, some of the terms have been revised or removed to accommodate this application. The lease has been approved by the City Attorney's office. In addition, the attached Landlord Waiver has been approved by the City Attorney's Office and may be executed by the City Manager.

RECOMMENDATION:

I respectfully recommend this item be placed on the City Council Agenda for July 20, 2010. I recommend approval of the Lease. I also recommend approval and execution of the Landlord Waiver.

EWM/jm

Attachment(s)

cc: Airport Commission Members (via email w/ attachment)
Joyce Vonada, City Manager's Office (via email)

N:\ADMINISTRATION\MEMOS 2010\JULY 2010\12 JGem LEGACY FLIGHT TRAINING Lease.docx

COMMERCIAL/OFFICE LEASE AGREEMENT
VERO BEACH MUNICIPAL AIRPORT TERMINAL BUILDING

This Commercial/Office Lease Agreement (**"Lease Agreement"**) is executed on this ___ day of _____, 2010, by and between the **CITY OF VERO BEACH**, a municipal corporation organized and existing under the laws of the State of Florida, whose mailing address is P.O. Box 1389, Vero Beach, Florida 32961-1389 (**"LANDLORD"**); and **LEGACY FLIGHT TRAINING, LLC.**, a Florida limited liability company, whose mailing address is 4005 57th Terrace, Vero Beach, Florida 32966 (**TENANT**).

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LANDLORD and TENANT agree as follows:

1. TERMINATION OF PRIOR COMMERCIAL/OFFICE LEASE AGREEMENT. LANDLORD and TENANT hereby agree that except as otherwise stated herein, and except for any continuing obligations enumerated in Paragraph 18, ENVIRONMENTAL PROVISIONS, which shall survive the early termination of the prior Lease Agreement, this Agreement supersedes and terminates for all other intents and purposes the prior existing Lease Agreement, originally dated March 23, 2010, between the **CITY OF VERO BEACH** and **LEGACY FLIGHT TRAINING, LLC.**, a Florida limited liability company.

2. LEASED PREMISES. LANDLORD hereby demises and leases to TENANT, and TENANT hereby hires, rents, and leases from LANDLORD, real property located at the Vero Beach Municipal Airport Terminal Building, Vero Beach, Indian River County, Florida. The Leased Premises consists of 1882 square feet of building space, together with use of common areas, in common with other tenants, their customers or clients, and members of the general

public, more particularly described in Attachment "A" to this Lease Agreement as Unit(s) 103, 104, 105, and 205. Units 103, 104, and 105 are currently occupied by TENANT and unit 205 will be available for occupancy beginning December 1, 2010.

3. TENANT'S staff and customers are authorized to utilize the parking area lying west of the Terminal Building and/or south of and across the street from the Leased Premises with others utilizing the Terminal Building facilities on a first come, first served basis. TENANT may submit a request to reserve one or more parking spaces at an annual price of $168.00 per space, up to an allocation of spaces proportional to the size of the Leased Premises compared to the total amount of available lease space and Airport Administrative Offices.

4. TERM, OPTION TO RENEW.

(a) The initial term of this Lease Agreement shall be five (5) years, commencing on August 1, 2010, and terminating on July 31, 2015.

(b) TENANT shall have the option to renew this Lease Agreement for one (1) term of five (5) years at the conclusion of the initial term; provided, however, that TENANT is not in default hereunder, and provided that TENANT shall first give written notice to LANDLORD of TENANT's intention to exercise this option no less than six (6) months prior to the termination of the initial term. All terms and conditions herein shall apply during the second term unless otherwise provided herein.

5. RENT; TAXES; RENT ADJUSTMENT; SECURITY DEPOSIT.

(a) Rent. Subject to the adjustment, escalation, and other provisions of this Lease Agreement, TENANT shall pay to LANDLORD, in lawful money of the United States, a total rent during the term of this Lease Agreement of $165,846.00. The monthly rent shall be $1,939.50 from August 1, 2010 through November 30, 2010, and $3,020.61 per month thereafter, subject to periodic adjustments. Pursuant to Paragraph 5(b) and Paragraph 10 of this

Lease Agreement, TENANT also shall pay all legally imposed taxes, fees, or assessments billed for that month. This initial rental rate is based on _1293_ square feet of building space at $18.00 per square foot per year from August 1, 2010 through November 30, 2010, and _1882_ square feet of building space at $18.00 per square foot per year beginning December 1, 2010, and continuing for the remainder of the term or terms thereafter, including reasonable usage of common area spaces. Rent shall be due on the first day of each month. Failure to pay the monthly rent in full by the tenth (10th) day of each month shall result in the assessment of a late charge of five percent (5%) of the amount then owing, or $50.00, whichever is greater.

(b) **Taxes.** Pursuant to Paragraph 10 of this Lease Agreement, TENANT also shall pay all legally-imposed federal, state and local taxes, fees, and assessments accruing during the term of this Lease Agreement.

(c) **Renewal Rental Rate Adjustment Procedure.** Upon receipt of a notice from TENANT of an intent to exercise TENANT'S option to renew the Lease Agreement for an additional term, a **"Renewal Rental Rate Adjustment Procedure,"** as hereinafter described, shall be initiated at least four (4) months, but not more than six (6) months, prior to the expiration of the Initial Term. LANDLORD shall initiate the "Renewal Rental Rate Adjustment Procedure," by notifying TENANT, in writing, of the current market rental rates in effect on the date TENANT'S notice is received or the rates intended to be in effect at the date the first monthly rent payment becomes due for the extension, whichever is greater. TENANT shall have thirty (30) days from the date of receipt of the notice of renewal rental rate, as adjusted, to accept the adjusted rental rate proposed by LANDLORD, in writing, or the reject the adjusted rental rate and provide a notice to LANDLORD that TENANT shall vacate the Leased Premises on or before the last day of the current lease term. TENANT may also, at TENANT'S sole discretion, propose terms for a new lease upon the same or different space at the Terminal Building.

(d) **Security Deposit**. Prior to the Lease Agreement commencement date, TENANT shall provide security for the performance of this Lease Agreement, in a form acceptable to LANDLORD, in the amount of $9,061.83 , and said amount shall immediately be forfeited by TENANT to LANDLORD in the event of a default under the terms of this Lease Agreement that is not immediately cured under the terms herein, and shall be applied as a credit to any sums due to LANDLORD upon default. If LANDLORD applies any part of the security deposit to cure any default of TENANT, TENANT shall on demand deposit with LANDLORD the amount so applied so that LANDLORD shall have the full security deposit on hand at all times during the term of this Lease Agreement. TENANT'S failure to pay LANDLORD a sufficient amount to restore the security deposit to the required amount within five (5) days after receipt of a written demand for it shall constitute a default of the Lease Agreement. It is expressly understood and agreed by the parties that the security deposit shall not be considered an advance payment of rental or a measure of LANDLORD'S damages in case of default by TENANT. Said deposit shall be returned to TENANT upon the successful conclusion of the performance by TENANT of the terms of this Lease Agreement.

6. **ASSIGNMENT.** TENANT shall not, either directly or indirectly by any means, assign, sublease, hypothecate or transfer the Lease Agreement or any interest therein, or any portion of the Leased Premises, including any improvements thereon, without the express written consent of LANDLORD. LANDLORD shall not unreasonably withhold consent. However, any proposed assignee, sublessee, or transferee shall meet all lease requirements for such assignment, subleases, or transfer. In no event shall LANDLORD'S granting of consent to one or more assignments, subleases, hypothecations, or transfers constitute a waiver of LANDLORD'S right to refuse consent as to subsequent assignments, subleases, hypothecations, or transfers. This prohibition against assigning or subletting shall be construed to include a prohibition against any

assignment or subletting by operation of law, without the express written consent of LANDLORD. TENANT agrees that use of the Leased Premises or any portion thereof by any subtenants, suboperators, or submanagement shall not diminish in any way rents due LANDLORD from TENANT. If this Lease Agreement is assigned, or if the Leased Premises or any part thereof is sublet or occupied by anybody other than TENANT, with or without LANDLORD'S consent, LANDLORD may collect rent directly from such assignee, sub-lessee or occupant, and apply the net amount collected to the rent herein reserved. However, no such collection of rent shall be deemed a waiver of this covenant, or shall be deemed the acceptance of such assignee, sub-TENANT or occupant as, or in place of, TENANT, or a release of TENANT for obligations on the part of TENANT herein contained. If there is a stock transfer which results in a change of more than fifty (50) percent of the ownership of TENANT, then: (a) TENANT shall provide written notice to LANDLORD within thirty (30) days after such transfer and (b) LANDLORD may terminate the Lease Agreement by providing ninety (90) days' advance written notice to TENANT if: (i) the change of control is reasonably likely to impede TENANT's ability to perform its obligations under this Lease Agreement and (ii) LANDLORD's written termination notice is provided to TENANT within thirty (30) days after TENANT notified LANDLORD about the transfer. Any assignment or sublease shall be subject to the terms of the Lease Agreement with TENANT and all attachments and amendments. Any assignment or sublease without the express written consent of LANDLORD shall be void ab initio, and TENANT'S lease shall remain in full force and effect.

7. ALTERATIONS.

(a) TENANT may be allowed to make alterations, changes, additions, or improvements to the interior of the Leased Premises necessary to accommodate the needs of TENANT'S business. TENANT shall not make any alterations, changes, additions, or

improvements to the Leased Premises without the prior express written consent of LANDLORD. All work shall be performed in a good and workmanlike manner and shall be made in accordance with plans and specifications approved by LANDLORD, and with all applicable laws, rules and regulations, including, without limitation, the Americans With Disabilities Act. In the event that any federal or state governmental authority directs any modification or alteration to the Leased Premises solely as the result of TENANT'S occupancy, TENANT shall pay for the cost of the modification or alteration. If, because of any act or omission of TENANT, its successors or assigns, any mechanic's, materialman's, laborer's, or any other lien or other order for payment of money shall be recorded against the Leased Premises, or any part thereof, or otherwise asserted against LANDLORD, then TENANT shall, at TENANT'S own cost and expense, cause the same to be satisfied, cancelled, and discharged of record, and further shall indemnify and hold harmless LANDLORD from and against any and all costs, expenses, claims, losses or damages, including reasonable attorney's fees, through trial and appeal, resulting therefrom or by reason thereof.

(b) LANDLORD shall not make any alterations to ingress, egress, common areas, or the parking area without the prior express written notice to TENANT, and such alterations shall not unduly impair TENANT'S ingress or egress to the Leased Premises.

8. **ASSIGNMENT OF RENTS.** As additional security under the Lease Agreement, TENANT assigns, transfers, and sets over unto LANDLORD all of the rents for the Leased Premises accruing to TENANT pursuant to any assignment or sublease whether approved by LANDLORD or not; this assignment shall become operative upon any default by TENANT under the terms of the Lease Agreement and shall remain in full force and effect so long as any default continues to exist in the making of any of the payments or performance of any of the

covenants of the Lease Agreement, and LANDLORD shall have the right to collect same directly from the person(s) or entity in possession.

9. NO ABATEMENT OF RENTS. Except as otherwise stated elsewhere in this Lease Agreement, the requirements of this Paragraph shall apply. No diminution or abatement of rent or offset shall be claimed or allowed. If TENANT has a disagreement or claim arising from the Lease Agreement or the Leased Premises, TENANT shall make such disagreement or claim known to LANDLORD in writing, but TENANT shall continue to pay to LANDLORD or pay to the court registry all rents, fees and applicable federal, state, and local taxes, fees, and assessments as they become due. Failure by TENANT to pay all monies as they become due may be deemed a default under the terms of the Lease Agreement at LANDLORD'S sole option.

10. TAXES.

(a) In the event that Section 212.031, Florida Statutes taxes are legally imposed as a result of this Lease Agreement, TENANT is solely responsible for all taxes, if any, imposed under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, accruing during the term of the Lease Agreement or any renewal thereof. In the event that taxes are legally imposed, TENANT is solely responsible for TENANT'S pro rata share (based on square footage) of ad valorem and non-ad valorem taxes, impact fees, and assessments levied, if any, against the Leased Premises as more particularly described in Attachment A to this Lease Agreement accruing during the term of the Lease Agreement or any renewal thereof. TENANT shall pay all such legally imposed taxes imposed under Section 212.031, Florida Statutes, directly to the LANDLORD pursuant to Section 212.031(2) (a), Florida Statutes. All ad valorem and non-ad valorem taxes that are legally imposed shall be advanced and paid by LANDLORD on behalf of TENANT

directly to the Indian River County Tax Collector's Office and reimbursed by TENANT to LANDLORD within thirty (30) days of delivery of an invoice therefor to TENANT.

(b) TENANT acknowledges that any taxes legally imposed on the leasehold under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, if any, are imposed on TENANT, and not on LANDLORD. TENANT acknowledges that any ad valorem taxes legally imposed on the leasehold under Section 196.199, Florida Statutes (taxation of government leaseholds), any non-ad valorem taxes, impact fees and assessments, if any, are imposed on TENANT, and that LANDLORD, as a governmental entity, is immune or exempt from such imposition.

11. INDEMNIFICATION AND HOLD HARMLESS. TENANT hereby agrees to indemnify and hold harmless LANDLORD, its elected officials, officers, employees, agents, their successors and assigns from and against any and all liabilities, damages, losses and costs, including, but not limited to, all costs and attorney's fees, through trial and appeal, that may be claimed or accrued by reason of the use, occupancy, or improvement of the Leased Premises by TENANT's Representatives (defined below), or caused by the act or neglect of TENANT's Representatives; provided, however, TENANT shall not have any obligation under the foregoing sentence if such liability, damage, loss, and costs is caused by the negligence, or willful misconduct of LANDLORD or any person other than TENANT's Representatives. For purposes of this Paragraph, the term **"TENANT's Representatives"** shall mean TENANT's officers, agents, employees, guests, and invitees while such officers, agents, employees, guests, and invitees are on the Leased Premises.

12. INSURANCE.

(a) Commercial General Liability Insurance. TENANT shall procure, maintain and pay for commercial general liability insurance providing all risks coverage which protects

LANDLORD, LANDLORD'S elected officials, employees, officers, and agents, and TENANT, from claims arising from bodily injury, property damage, operations, premises and fire legal liability. Such insurance coverage shall have a combined single limit of not less than $1,000,000.00. Coverage shall be provided in a form no more restrictive than the latest edition of the commercial general liability policy filed by the Insurance Services Office. TENANT'S insurance shall be primary and any other insurance maintained by the City shall be in excess of and shall not contribute with TENANT'S insurance.

(b) All insurance required by this Paragraph shall be with a company licensed to do business in the State of Florida, and be otherwise satisfactory to LANDLORD.

(c) TENANT agrees that LANDLORD shall have the right to periodically review the adequacy of the required insurance and amend the insurance requirements of this Paragraph. Factors which may be considered include, but are not limited to, changes in generally-accepted insurance industry standards and practices, changes in TENANT'S use of the premises, measurable changes in local and national economic indicators and changes in City policies and procedures.

(d) The insurance policies referred to above shall name LANDLORD as an additional insured and shall include provisions for at least thirty (30) days advance notice to LANDLORD by the insurer prior to any policy change, amendment, termination or expiration of coverage. TENANT shall direct its insurance agent to provide LANDLORD with a policy and certificates of insurance stating that the coverages as provided herein are in force prior to the commencement date of this Lease Agreement, and for each term of coverage thereafter.

(e) In the event that TENANT should fail for any reason to procure or maintain the above-referenced general commercial liability insurance coverage for the benefit of

LANDLORD at the minimum amounts required herein, or at the written request of TENANT, LANDLORD, at LANDLORD'S sole discretion, may declare TENANT in default.

(f) TENANT is strongly encouraged to procure, pay for, and maintain, a renter's policy of insurance covering TENANT for potential losses to its personal property, effects, and business income.

13. USE OF LEASED PREMISES; RESTRICTIONS ON USE.

(a) TENANT shall use and occupy the Leased Premises for office, flight simulator training, and classroom use only. LANDLORD represents that the Leased Premises are suitable for these uses and may lawfully be used for the stated purpose.

(b) TENANT expressly agrees for TENANT and TENANT'S successors and assigns, to prevent any use of the Leased Premises which would interfere with or adversely affect the operations or maintenance of the Terminal Building, or otherwise constitute a public hazard.

(c) TENANT shall have the right to use the Leased Premises for any use permitted in the zoning district in which the property is located, subject to applicable laws and ordinances.

14. CONSTRUCTION OF IMPROVEMENTS.

TENANT is prohibited from constructing any improvements or making structural changes to the Leased Premises without the express written permission of LANDLORD. Any improvements, if allowed, shall be made by an established general contractor properly licensed, insured, and authorized to work in the City of Vero Beach, and in compliance with any building permits required by the Indian River County Building Department.

15. RESPONSIBILITY FOR AND MAINTENANCE OF LEASED PREMISES.

(a) TENANT and LANDLORD both agree that the Leased Premises are leased in as-is condition and unfurnished.

(b) LANDLORD shall maintain the Terminal Building, and all structural attributes, including roofs, common areas, and all equipment located within the building, including, but not limited to, the air conditioning, machinery, plumbing, wiring, pipes, electrical fixtures, and all other equipment. LANDLORD shall maintain the grounds, landscaping and common parking areas on and adjacent to the Leased Premises.

(c) TENANT shall be responsible for all maintenance to the interior of the Leased Premises, reasonable wear and tear excepted.

16. DEFAULT.

(a) Default by TENANT in Payment of Rent. Should TENANT fail to pay to LANDLORD any installment of rent when due, TENANT shall be deemed in default of the Lease Agreement and TENANT shall either cure such default or surrender possession of the Leased Premises to LANDLORD within three (3) days after written notice of the default is served on TENANT.

(b) Defaults by TENANT Other than Rent. Should TENANT fail to perform or comply with any of its obligations, covenants, conditions, agreements, or assurances, other than payment of rent, TENANT shall be deemed in default of the Lease Agreement and TENANT shall either cure such default or surrender possession of the Leased Premises to LANDLORD within fifteen (15) days after written notice of the default is served on TENANT.

(c) Abandonment by TENANT. Should TENANT abandon the Leased Premises, whether such abandonment is actually known to LANDLORD or presumed, TENANT shall be deemed in default of the Lease Agreement. Absent actual knowledge by LANDLORD of abandonment of the Leased Premises by TENANT, abandonment shall be presumed when: (a) TENANT has been absent from the Leased Premises for a period of thirty (30) consecutive days; and (b) TENANT has not notified LANDLORD in writing of the absence being intended; and (c)

the rent is not current; and (d) ten (10) days have elapsed since service of a written notice on TENANT of the default and LANDLORD'S intent to retake possession.

(d) **Default by LANDLORD.** Should LANDLORD fail to perform or comply with any of its obligations, covenants, conditions, agreement, or assurances, LANDLORD shall either cure such default within fifteen (15) days after written notice of the default is served on LANDLORD, or TENANT may terminate the Lease Agreement. If TENANT chooses to terminate the Lease Agreement under this provision, TENANT shall pay to LANDLORD all rent, fees, taxes and other amounts due through the date of termination.

(e) **LANDLORD'S Right of Possession on TENANT'S Default.** LANDLORD may retake possession of the Leased Premises without judicial action upon surrender or abandonment of the Leased Premises by TENANT. Should TENANT fail to cure a default under the Lease Agreement or in the alternative to surrender or abandon possession of the Leased Premises within the time provided, LANDLORD shall have the right to recover possession of the Leased Premises as provided by law in an action for possession. LANDLORD'S retaking of possession of the Leased Premises, whether by TENANT'S surrender or abandonment of the Leased Premises, or by judicial action, shall not be deemed a waiver of any of LANDLORD'S other claims, rights or remedies. If LANDLORD retakes possession of the Leased Premises, then: (i) the Lease Agreement shall be terminated, (ii) LANDLORD may, at its option, declare the entire amount of the rent accelerated so it shall be immediately due and payable, and (iii) the parties shall remain liable to each other for all liabilities arising prior to the date on which LANDLORD retook possession.

(f) **LANDLORD'S Remedies In Addition To Repossession.** Should TENANT fail to cure a default under the Lease Agreement pursuant to Paragraph 16(a), (b), or (c) above, in

addition to recovery of possession of the Leased Premises as provided herein, LANDLORD shall have the right, at its sole option, to exercise one of the following remedies:

(1) Terminate the Lease Agreement and recover from TENANT all rents, fees, taxes and other amounts due through the date of termination together with any and all loss, expense, or damage which LANDLORD may suffer by reason of such termination, whether for the costs of reletting or through an inability to relet the Leased Premises, or through a decrease in rent, or any other reason, including, but not limited to, attorney's fees and costs, through trial and appeal.

(2) Terminate the Lease Agreement, declare the entire amount of the rent accelerated and to be due and payable immediately for the remainder of the full term of the Lease Agreement or the renewal term, in which event TENANT agrees to pay such sum at once, together with all arrearages, costs and expenses, including, but not limited to, attorney's fees and costs, through trial and appeal.

(3) Terminate the Lease Agreement, relet the premises for any term at such rent and on such terms as LANDLORD may choose during the remainder of TENANT'S term for the account of TENANT and recover from TENANT at the end of the term or at the time each payment of rent comes due under the Lease Agreement, whichever LANDLORD may choose, the difference between all the rent, costs and fees specified in the Lease Agreement and all the rent, costs and fees actually received from the reletting, together with any and all loss, expense, or damage which LANDLORD may suffer for the costs of reletting the Leased Premises or any other reason, together with all arrearages, costs and expenses, including, but not limited to, attorney fees and costs, through trial and appeal.

(g) **No Waiver By Extension.** Any extension of time to cure a default that may be granted to TENANT by LANDLORD after the aforementioned written notice is served shall not be deemed a waiver of LANDLORD'S right to retake possession without additional notice.

(h) **Notices.** The method for serving notices shall be as otherwise provided herein, or, if TENANT is absent from the Leased Premises or the address designated by TENANT for service of notices, by leaving a copy thereof at such place or by posting on the Leased Premises.

(i) **LANDLORD As Agent of TENANT.** Should TENANT fail to cure a default under the Lease Agreement pursuant to Paragraphs 16(a), (b) or (c) above, LANDLORD may, as agent of TENANT, do whatever TENANT is obligated to do, other than payment of rents, by the provisions of the Lease Agreement, and may enter the Leased Premises in order to accomplish this purpose. TENANT hereby grants LANDLORD irrevocable authority and permission to enter the premises for this purpose and agrees to reimburse LANDLORD immediately upon written demand for any expense which LANDLORD may incur in affecting compliance with the Lease Agreement on behalf of TENANT.

(j) In the event of any breach or threatened breach by TENANT of any of the terms, covenants, agreements, provisions or conditions in the Lease Agreement, LANDLORD shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as through reentry, summary proceedings, and other remedies not provided for in the Lease Agreement.

(k) Upon the termination of the Lease Agreement and the term created, or upon the termination of TENANT'S right of possession, whether by lapse of time or at the option of LANDLORD, TENANT will at once surrender possession of the Leased Premises to LANDLORD and remove all of its personal property (non-fixtures) from it. If possession is not

immediately surrendered, LANDLORD may obtain possession of the Leased Premises as provided by law (Section 83.05, Florida Statutes, or as that provision may be amended).

(l) Should TENANT, at any time during the term of this Lease Agreement, suffer or permit an involuntary or voluntary petition in bankruptcy to be filed against it, or institute a proceeding under Chapters 7, 11, or 13 of the United States Bankruptcy Code, as they may be amended, TENANT, and/or TENANT'S successor in interest, including but not limited to the trustee assuming or assigned the Lease Agreement, shall provide adequate protection and adequate assurances of future performance of the Lease Agreement as are required by the Bankruptcy Code, which will include but not be limited to the following:

(1) All monetary and non-monetary defaults existing prior to the institution of the filing of the bankruptcy petition shall be cured within forty-five (45) days of service of written demand made upon TENANT by LANDLORD which will include all costs and attorney's fees expended by LANDLORD to the date of the curing of the default; and

(2) An additional one (1) month of advance rental will be required as additional security of future performance which must be paid to LANDLORD within forty-five (45) days of the filing of the petition in bankruptcy; and

(3) All obligations of TENANT must be performed in accordance with the terms of the Lease Agreement.

If at any time during the pendency of the bankruptcy proceeding, TENANT or its successor in interest fails to perform any of the monetary or non-monetary obligations required under the terms of the Lease Agreement, or fails to cure any pre-filing default, or fails to make the additional security deposit required under the adequate protection and adequate assurances of future performance clause above, TENANT and/or its successor in interest stipulates and agrees

to allow LANDLORD total relief from the automatic stay under 11 U.S.C. 362 to enforce its rights under the Lease Agreement and under state law including, but not limited to, issuance and enforcement of a judgment for possession and writ of possession.

(m) **General Provisions Relating to Default**. Pursuit by LANDLORD of any of the foregoing remedies shall not preclude the pursuit of any of the other remedies herein provided or any other remedies provided by law. No act or thing done by LANDLORD or its agents during the term hereby granted shall be deemed an acceptance of a surrender of said Leased Premises, and no agreement to accept a surrender of said Leased Premises shall be valid unless the same be made in writing and subscribed by LANDLORD. The mention in the Lease Agreement of any particular remedy shall not preclude LANDLORD from any other remedy LANDLORD might have, either in law or in equity, nor shall the waiver of or redress for any violation of any covenant or condition in the Lease Agreement or any of the rules and regulations set forth herein, or hereafter adopted by LANDLORD, prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The acceptance by LANDLORD of any rent with knowledge of the breach of any covenant in the Lease Agreement, other than a breach by non-payment, shall not be deemed a waiver of such breach. Termination of the Lease Agreement by lapse of time or otherwise, prior to the ending thereof as agreed to by the parties, shall not affect LANDLORD'S right to collect rent for the period prior to the termination thereof.

17. **SURRENDER AT END OF TERM.** At the expiration or termination of the initial term or any renewal term of the Lease Agreement or earlier termination hereof, TENANT shall peaceably and quietly leave, surrender and deliver to LANDLORD the Leased Premises, together with any buildings, improvements, and fixtures, excluding any personal property of TENANT not affixed to the Leased Premises, broom clean, and in thorough repair, good order,

and safe condition, reasonable wear and tear excepted. TENANT shall remove all of TENANT'S unaffixed personal property from the Leased Premises upon termination. If TENANT fails to remove TENANT'S unaffixed personal property within fifteen (15) days after the date of expiration or earlier termination, such property shall be deemed to have been abandoned without notice to TENANT. LANDLORD may appropriate, sell, store, destroy, or otherwise dispose of any such abandoned property without notice to TENANT and without obligation to account therefor. Further, TENANT shall pay to LANDLORD the cost LANDLORD incurs in removing, selling, storing, destroying, and disposing of such abandoned property in excess of any value recovered for such abandoned property.

18. **HOLDOVER TENANCY.** If TENANT remains in possession of the Leased Premises after the Lease Agreement expires or terminates for any reason:

(a) TENANT will be deemed to be occupying the Leased Premises as a TENANT from month-to-month at the sufferance of LANDLORD. TENANT will be subject to all of the provisions of the Lease Agreement, except that, at LANDLORD'S discretion, the base rent will be at a monthly rate equal to twice the amount of a single monthly installment of fixed rent for the Leased Premises calculated at the then current rate in effect at the time of expiration or termination of the Lease Agreement; and

(b) TENANT shall reimburse LANDLORD for any additional damages which LANDLORD suffers by reason of TENANT'S continued occupancy; and

(c) TENANT shall indemnify LANDLORD from and against all claims made by any succeeding TENANT insofar as such delay is occasioned by TENANT'S failure to surrender the Leased Premises. For purposes of this Paragraph, **"Base Rent"** shall be that portion of the rent based on a square footage rate.

19. **ACCORD AND SATISFACTION/WAIVER.**

(a) If TENANT pays to LANDLORD an amount that is less than the full amount stipulated to be paid under the terms of the Lease Agreement, that payment shall be considered to be made only on account and applied to the stipulated amount due. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. LANDLORD may accept any check or payment without prejudice to LANDLORD'S right to recover the balance due or to pursue any other available remedy.

(b) Any default in the payment of the fixed or additional rent or other charges, or any failure of LANDLORD to enforce the provisions of the Lease Agreement upon any default by TENANT, shall not be construed as creating a custom of deferring payment or as modifying in any way the terms of the Lease Agreement, or as a waiver of LANDLORD'S right to terminate the Lease Agreement as herein provided, or otherwise to enforce the provisions thereof for any subsequent default.

20. <u>ENVIRONMENTAL PROVISIONS.</u>

(a) LANDLORD agrees that TENANT shall have no liability for any pre-existing environmental contamination of the Leased Premises, provided that pre-existing environmental contamination was a pre-occupancy event as defined in Paragraph (h) of this Paragraph. LANDLORD shall be solely responsible for all costs and expenses including, but not limited to, remediation, fines, attorneys' fees through trial and appeal, that arise in any manner out of environmental contamination not caused by TENANT, TENANT's agents, employees, contractors, or invitees while TENANT's agents, employees, contractors, or invitees are on the Leased Premises.

(b) TENANT shall be solely responsible for and indemnify LANDLORD for all costs and expenses including, but not limited to, remediation, fines, attorney's fees through trial and appeal, that arise in any manner out of environmental contamination caused during the lease term

by TENANT, TENANT'S agents, employees, contractors, or invitees while TENANT's agents, employees, contractors, and invitees are on the Leased Premises.

(c) Except as properly permitted under federal, state and local laws, rules, and regulations, TENANT shall not conduct, permit, nor authorize, any other person or entity to engage in the generation, storage, treatment, or disposal of any hazardous materials (as defined under federal, state, and local environmental laws), on or in any location that might adversely affect or contaminate the Leased Premises. This Paragraph (c) shall not apply to properly permitted storage, if any, allowed under the terms of the Lease Agreement.

(d) TENANT shall store, utilize, and dispose of all industrial, domestic, hazardous, and solid wastes permitted under the terms of the Lease Agreement in accordance with applicable federal, state, and local laws, rules, and regulations.

(e) TENANT shall immediately provide LANDLORD verbal notice of any spill or release of hazardous materials at or from the Leased Premises. TENANT shall promptly confirm the verbal notice to LANDLORD in writing providing the details of such spill or release and the remediation taken by TENANT.

(f) If TENANT is responsible for environmental contamination under Paragraph 18(b), then TENANT hereby agrees, at its expense, to immediately (1) remove hazardous materials from the Leased Premises; (2) comply with any and all orders or directives of any federal, state, or local agency or department relative thereof; and (3) return the Leased Premises to its pre-existing condition without any diminution in the value thereof.

(g) If LANDLORD is responsible for environmental contamination under Paragraph 18(a), then LANDLORD hereby agrees, at its expense, to immediately (1) remove hazardous materials from the Leased Premises; (2) comply with any and all orders or directives of any

federal, state, or local agency or department relative thereof; and (3) return the Leased Premises to its pre-existing condition without any diminution in the value thereof.

(h) As used herein, **"pre-occupancy event"** shall mean any condition, occurrence, or event, including, but not limited to, a spill, the storage, disposal, or use of a hazardous material or waste as defined by federal, state or local law, ordinance, rule or regulation, occurring prior to the commencement date of the Lease Agreement and not caused by TENANT, whether originating on or off of the Leased Premises, whether known or unknown at the time of the commencement date of the Lease Agreement, and whether or not any contamination is determined to be ongoing or continuous.

(i) Each party's responsibilities, obligations, and liabilities pursuant to this Paragraph 18 of the Lease Agreement shall survive the expiration or early termination of the Lease Agreement or any renewal term.

(j) Nothing in the Lease Agreement shall be deemed to be a waiver of LANDLORD'S right to take action against responsible parties for remediation of, or payment for, environmental contamination on the Leased Premises, nor be deemed to be an assumption by LANDLORD of the responsibility for such remediation or payment, except as may be imposed on LANDLORD as a matter of law.

(k) Nothing in the Lease Agreement shall be deemed to be a waiver of TENANT'S right to take action against responsible parties for remediation of, or payment for, environmental contamination on the Leased Premises, nor be deemed to be an assumption by TENANT of the responsibility for such remediation or payment, except as may be imposed on TENANT as a matter of law.

21. PAYMENT AND PERFORMANCE BONDS.

(a) TENANT shall cause TENANT'S contractor to obtain and provide a payment and performance bond, in the form approved by LANDLORD, for construction of any improvements on or to the Leased Premises for which the cost of completion will exceed $10,000.00. Such bond shall be payable in an amount equal to One Hundred Twenty-Five Percent (125%) of the estimated cost to complete the improvements and shall be underwritten by a surety acceptable to LANDLORD and authorized to do business in the State of Florida. TENANT'S contractor may substitute for a bond, a payment and performance irrevocable letter of credit, in the form approved by LANDLORD, from a bank authorized to do business in the State of Florida, and with an office located in Indian River County, Florida where such letter of credit may be drawn upon. All such bonds and letters of credit shall inure to the benefit of LANDLORD and TENANT and all other persons, companies and corporations entitled to make a claim for payment against the bond or letter of credit pursuant to the applicable provisions of Florida law. Such bond or letter of credit shall remain in effect through completion of the improvements and all guarantee and warranty periods. No improvements on or to the Leased Premises shall commence before the required bond or letter of credit is received and approved by LANDLORD.

(b) TENANT shall cause TENANT'S contractor to provide a contractor's final affidavit upon completion of the improvements, certifying to LANDLORD and TENANT that full payment was made to all subcontractors, materialmen, leasing companies, and any other person, company, or corporation providing goods, materials or services for the improvements.

22. <u>NOTICES.</u>

(a) Any notice required or permitted to be given hereunder shall be in writing and deemed to have been duly given: (i) upon delivery (personally, by courier service, or other messenger) to the address of the appropriate party; or (ii) upon receipt as evidenced by the appropriate form of the United States Postal Service after mailing by United States registered or

certified mail, return receipt requested, postage prepaid to such address; or (iii) upon mailing if such registered or certified mail is refused by the recipient or returned unclaimed to the sender.

(b) LANDLORD designates the Airport Director as its official representative with the full power to represent LANDLORD in all dealings with TENANT in connection with the Leased Premises and in administration of the Lease Agreement. LANDLORD may designate different or additional representatives from time to time by written notice to TENANT as provided herein. All notices shall be given to LANDLORD at the address set forth below or at such other address as specified by written notice delivered to TENANT as provided herein.

Original:	City of Vero Beach Airport Director's Office P.O. Box 1389 Vero Beach, FL 32961-1389	Copy:	Charles P. Vitunac, Esq. City Attorney P. O. Box 1389 1053 20th Place Vero Beach, FL 32961-1389

All notices shall be given to TENANT at the following address:

TENANT: Legacy Flight Training, LLC.
Attn: William Inglis
4005 57th Terrace
Vero Beach, Florida 32966

or such other address as specified by written notice by TENANT, delivered to LANDLORD as provided herein.

23. **REAL ESTATE COMMISSION.** LANDLORD and TENANT each covenant and warrant to the other that they have not authorized any person, firm, or corporation as a real estate agent or broker to deal on behalf of such party with respect to the Lease. TENANT agrees to indemnify and hold harmless LANDLORD from any claim for remuneration, commissions or broker's fees arising out of this transaction and Lease.

24. ENTRY OF LANDLORD. LANDLORD may enter the Leased Premises during all reasonable hours and at LANDORD'S expense, for any legal purpose, including, but not limited to:

(a) To inspect or protect the Leased Premises;

(b) To perform the required maintenance of the Leased Premises described herein;

(c) To determine whether TENANT is complying with the terms of the Lease Agreement, applicable laws, orders, or regulations of any lawful authority having jurisdiction over the Leased Premises or any business conducted therein; or

(d) To exhibit the Leased Premises to any prospective TENANT when TENANT is in default of the Lease Agreement or has notified LANDLORD of intention to terminate the Lease Agreement or during the last six (6) months of the term of the Lease.

(e) No authorized entry by LANDLORD shall constitute an eviction of TENANT or deprivation of TENANT'S rights under the Lease; nor shall such entry alter LANDLORD'S obligations hereunder or create any right in LANDLORD adverse to TENANT'S interest hereunder. LANDLORD'S entry under this Paragraph shall not to the extent possible unduly interfere with TENANT'S business operations.

25. CONSTRUCTION.

(a) The Lease Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(b) The Lease Agreement shall be subordinate and subject to the provisions of any existing or future contract between LANDLORD and the State of Florida or LANDLORD and the United States, relative to the development, operation, or maintenance of the Terminal Building, the execution of which has been or may be required as a condition precedent to the

expenditure of State or Federal funds for the development, operation, or maintenance of the Vero Beach Municipal Airport.

(c) If any part of the Lease Agreement is found invalid or unenforceable by any court or any branch of the federal government having jurisdiction over the operation of the Vero Beach Municipal Airport, including, but not limited to, Federal Aviation Administration (FAA), such invalidity or unenforceability shall not affect the other parts of the Lease Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effectuated. To that end, the separate provisions of the Lease Agreement are declared severable.

(d) If any branch of the state or federal government having jurisdiction over the operation of the Vero Beach Municipal Airport, including, but not limited to, the Florida Department of Transportation or the Federal Aviation Administration (FAA), deems any lease provision to be in non-compliance, the parties agree to delete, insert, or modify to the extent necessary any such provision to bring the Lease Agreement into compliance.

(e) If changes to the Lease Agreement pursuant to (b), (c), or (d) of this Paragraph have a materially adverse affect upon TENANT'S use of the Leased Premises for the purposes allowed herein, TENANT may terminate this Lease Agreement with sixty (60) days written notice to LANDLORD.

26. **MEDIATION; LITIGATION.** In the event of any disagreement or conflict arising out of or in any way connected with the Lease Agreement or use of the Leased Premises, and such disagreement or conflict cannot be resolved by the signatories hereto, the signatories may submit such disagreement to non-binding mediation prior to commencing any litigation or other dispute resolution procedure. The costs associated with any such mediation shall be equally shared. Each party shall be responsible for the payment of its own attorney's fees in connection

therewith. LANDLORD and TENANT expressly agree that in the event suit or any other legal action arising out of or in any way connected with the Lease Agreement or use of the Leased Premises is initiated:

(a) Venue shall be in Indian River County, Florida.

(b) Trial by jury is hereby waived, on any matter whatsoever, including, without limitation, any claim for injury or damage.

(c) The prevailing party shall be awarded their costs and all reasonable attorney's fees incurred through trial and appeal.

(d) In any eviction action initiated by LANDLORD, Section 83.232, Florida Statutes, or as that provision may be amended, shall apply.

(e) In any action or proceeding commenced by LANDLORD to recover possession of the Leased Premises, the parties stipulate that any counterclaim brought by TENANT shall be severed and tried separately from the action for eviction pursuant to Florida Rule of Civil Procedure 1.270(b) and other applicable law. The eviction action shall proceed pursuant to the summary procedure set forth in Chapter 51, Florida Statutes, or as that provision may be amended. Nothing in this Paragraph 26(e) shall constitute a waiver of TENANT's defenses to any action or proceeding commenced by LANDLORD to recover possession of the Leased Premises.

27. <u>MISCELLANEOUS PROVISIONS.</u>

(a) Notwithstanding anything herein contained that may be or appear to be to the contrary, it is expressly understood and agreed that the rights granted to TENANT under the Lease Agreement are non-exclusive and LANDLORD herein reserves the right to grant similar privileges to another TENANT or Tenants on other parts of the Airport. This provision shall in

no way diminish TENANT'S right to exclusive use of the Leased Premises for the approved use as stated in Paragraph 13(a) of this Lease Agreement.

(b) TENANT assures LANDLORD that it will undertake an affirmative action program as required by 14 Code of Federal Regulations Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in or receiving the services or benefits of any program or activity covered by subpart. TENANT assures LANDLORD that it will require that its covered suborganizations provide assurances to LANDLORD that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 Code of Federal Regulations, Part 152, Subpart E, to the same effect.

(c) TENANT expressly agrees for TENANT and TENANT'S successors and assigns, that no person, on the grounds of race, color, national origin or sex, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, national origin or sex shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; that TENANT and TENANT'S successors and assigns shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title IV of the Civil Rights Act of 1964, and as such regulations may be amended; that in the event of breach of any of the above nondiscrimination covenants, LANDLORD shall have the right to terminate the Lease Agreement and to retake possession pursuant to law. The provision shall not be effective until the procedures of Title 49, Code of

Federal Regulations, and Part 21 are followed and completed, including exercise or expiration of appeal rights.

(d) If TENANT is a corporation, partnership, or limited liability company, TENANT'S status shall continuously be in good standing, active, and current with the state of its incorporation or registration and the State of Florida, and TENANT shall keep its status active and current throughout the term of the Lease Agreement and renewal. Failure of TENANT to keep its status active and current shall constitute a default.

(e) LANDLORD reserves the right to develop, improve, repair, and alter the Airport and all roadways, parking areas, and associated facilities as it may deem appropriate. Such improvements, repairs, and alterations shall not prevent ingress or egress to the Leased Premises by TENANT or TENANT'S staff and clients.

(f) Any construction, reconstruction, remodeling, installation of improvements, or other work done to the Leased Premises by TENANT shall be performed in compliance with the requirements of the Americans with Disabilities Act (**"ADA"**), at TENANT'S expense. In the event that a regulatory agency, private party, organization, or any other person or entity makes a claim under the ADA against either (or both) parties, the party whose breach (or alleged breach) of responsibility under this Lease Agreement gave rise to the claim shall, in good faith and at that party's sole cost, promptly take whatever actions are necessary to bring the Leased Premises into compliance with ADA requirements. That party shall defend, save, and hold harmless the other party from any and all expenses incurred in responding to such a claim, including without limitation the fees of attorneys and other advisors, court costs, and costs incurred for bringing the Leased Premises into compliance.

(g) The captions and paragraphs or letters appearing in this Lease Agreement are inserted only as a matter of convenience and in no way affect, define, limit, construe, or describe the scope or intent of the sections or articles of this Lease Agreement.

(h) This Lease Agreement and all related attachments, agreements between LANDLORD, the Federal Aviation Administration and the Florida Department of Transportation, resolutions, and ordinances approved by the City of Vero Beach, set forth all the promises, agreements, conditions, and understandings between LANDLORD and TENANT relative to the Leased Premises. There are no other promises, agreements, conditions, or understandings, either oral or written, between them. No subsequent alteration, amendment, change, or addition to this Lease Agreement will be binding on LANDLORD or TENANT unless in writing and signed by them and made a part of this Lease Agreement by direct reference.

(i) The terms of this Lease Agreement shall be binding on the respective successors, representatives, and assigns of the parties.

(j) This Lease Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all which together will constitute one and the same instrument.

(k) In the event of a natural disaster, including but not limited to a hurricane, tornado, fire, earthquake or flood, and not a result of TENANT'S deliberate action or negligence, that renders the Leased Premises uninhabitable beyond sixty (60) days, the rent shall abate to the degree that TENANT'S use of the Leased Premises is impaired. If the Leased Premises remains uninhabitable after 180 days following the natural disaster, TENANT or LANDLORD may, at their option, and with written notice, terminate the Lease Agreement.

(l) Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(m) The parties hereto acknowledge that they were given the opportunity to have their legal counsel review this Lease Agreement and Attachments "A," and that the Lease Agreement and Attachments "A" shall be construed neither against, nor in favor of, any party hereto, but rather in accordance with the fair meaning thereof.

(The remainder of this page is left blank intentionally.)

IN WITNESS WHEREOF, we, LANDLORD and TENANT, have hereunto affixed our hands and seals.

LANDLORD – CITY OF VERO BEACH
(This section to be completed by LANDLORD only)

ATTEST:

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

LANDLORD:

Sign: _____
Print: Kevin Sawnick
Title: Mayor

Date of Signature _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

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

NOTARY PUBLIC:

Sign: _____
Print: _____
State of Florida at Large [SEAL]
Commission No. _____
My Commission Expires: _____

TENANT – LEGACY FLIGHT TRAINING, LLC.
(This section to be completed by TENANT only)

WITNESSED BY:

Sign: Joseph Malfait

Print: JOSEPH MALFAIT

Sign: Dorothy F. Wallace

Print: Dorothy F. WALLACE

TENANT

Sign: William L. Inglis

Print: William Inglis

Title: Managing Member of Legacy Flight Training, LLC.

Date signed: 7-8-10

[AFFIX CORPORATE SEAL HERE]

[SEAL]

STATE OF Florida

COUNTY OF Indian River

The foregoing instrument was acknowledged before me this 8th day of July, 2010, by William Inglis, as Managing Member of Legacy Flight Training, LLC., on behalf of the company. He is personally known to me or produced N/A as identification and did/did not take an oath.

Notary Public State of Florida
Dorothy F Wallace
My Commission DD916291
Expires 10/14/2013

NOTARY PUBLIC:

Sign: Dorothy F. Wallace

Print: Dorothy F. WALLACE

State of Florida at Large [SEAL]

Commission No. DD916291

My Commission Expires: 10/14/13

TENANT – LEGACY FLIGHT TRAINING, LLC.
(This section to be completed by TENANT only)

WITNESSED BY:

Sign: Joseph Malfait

Print: JOSEPH MALFAIT

Sign: Dorothy F. Wallace

Print: Dorothy F Wallace

TENANT

Sign: Diane Inglis

Print: Diane Inglis

Title: Managing Member of Legacy Flight Training, LLC.

Date signed: 7-8-10

[AFFIX CORPORATE SEAL HERE]

[SEAL]

STATE OF Florida

COUNTY OF Indian River

The foregoing instrument was acknowledged before me this 8th day of July, 2010, by Diane Inglis, as Managing Member of Legacy Flight Training, LLC., on behalf of the company. She is personally known to me or produced N/A as identification and did/did not take an oath.

Notary Public State of Florida
Dorothy F Wallace
My Commission DD916291
Expires 10/14/2013

NOTARY PUBLIC:

Sign: Dorothy F. Wallace

Print: DOROTHY F. WALLACE

State of Florida at Large [SEAL]

Commission No. DD916291

My Commission Expires: 10/14/13

CITY MANAGEMENT
(This section to be completed by City Management Staff only)

Approved as to form and legal sufficiency:

Charles P. Vitunac
City Attorney

Approved as conforming to Municipal policy:

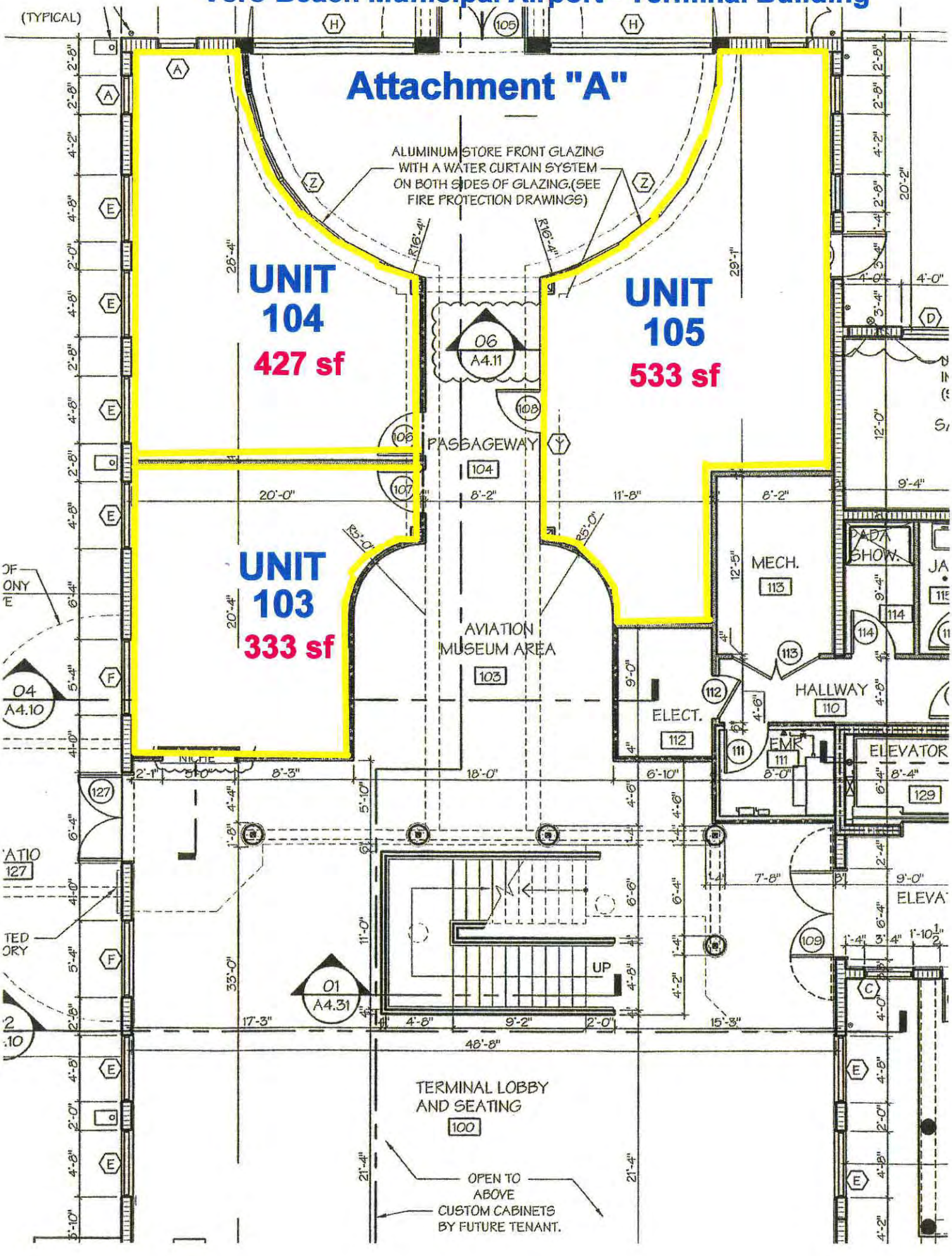
James M. Gabbard
City Manager

Date of Signature 7/18/10

Approved as to technical Requirements:

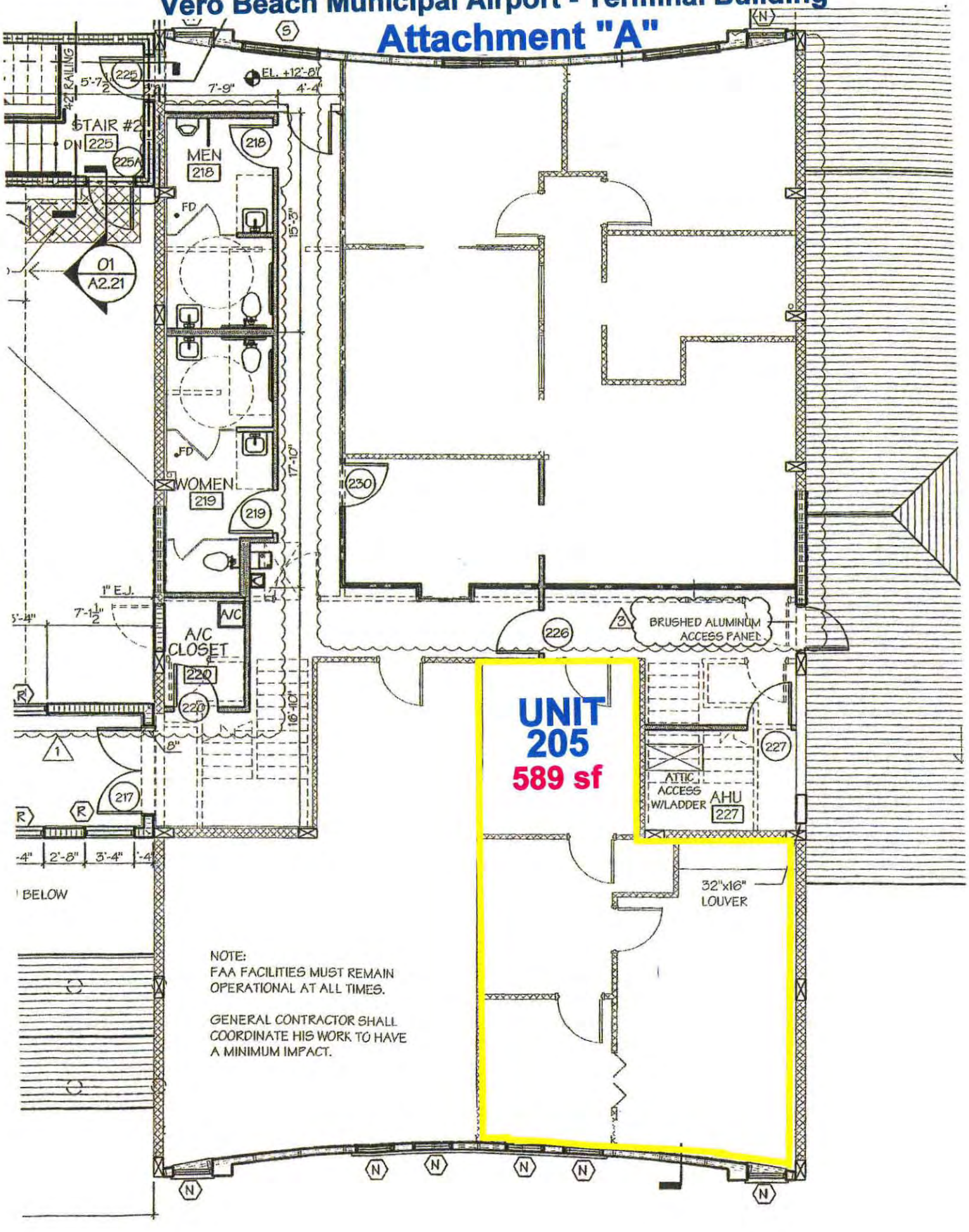
Ericson W. Menger
Airport Director

Vero Beach Municipal Airport - Terminal Building



Vero Beach Municipal Airport - Terminal Building

Attachment "A"



3-A)

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Kevin Sawnick and
City Councilmembers

FROM: Timothy J. McGarry, AICP
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

PARCEL I.D. NUMBER 33390100009001000007.0, 33390100009001000001.0
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

FEB 2010
City of Vero Beach
Planning Dept.

Applicant Signature Date

Property Owner Signature Date
SAME

Byron DeFoor
(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 2/23/10 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

PARCEL I.D. NUMBER 33390100009001000007.0, 33390100009001000001.0, 33390100009001000003.0, 33390100009001000015.0

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.

FEB 2010
City of Vero Beach Planning Dept.

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 showethe 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

FEB 2010

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, save 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 apace 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

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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.

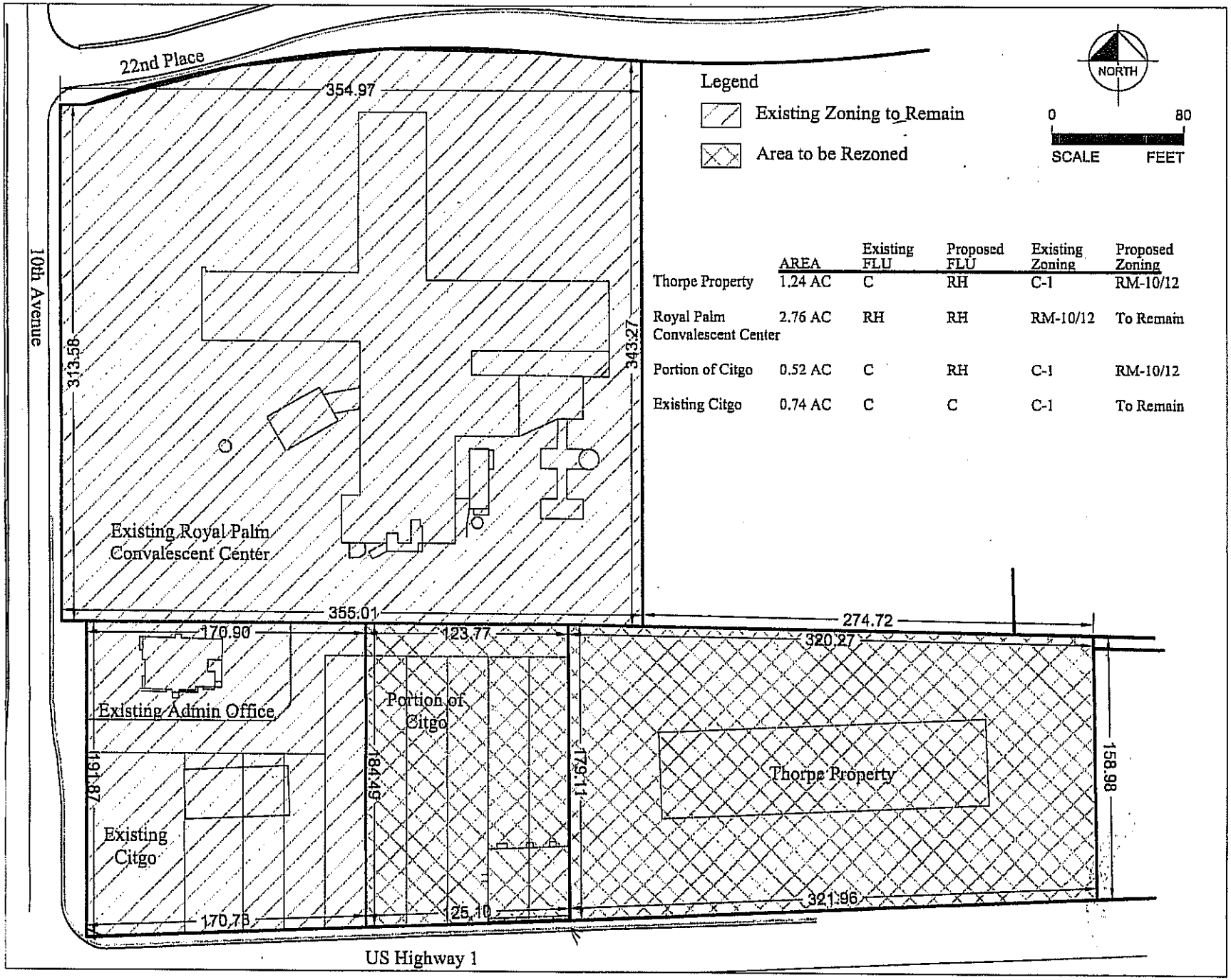
Kimley-Horn
and Associates, Inc.

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

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



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

Kimley-Horn and Associates, Inc.

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801 21ST STREET, SUITE 304, VERO BEACH, FL 32960
PHONE: 772-562-7961 FAX: 772-562-9659
WWW.KIMLEY-HORN.COM CA 00000696

DESIGN ENGINEER: KEITH A. PELAN
FLORIDA P.E. LICENSE NUMBER: 1688
DATE:

SCALE
DESIGNED BY
DRAWN BY
CHECKED BY

ZONING/ LAND USE EXHIBIT

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

Drawing name: K:\VRB_LDEV\147090000-Royal Palm Convalescent\CADD\EXHIBITS\ZONING EXHIBIT.dwg Layout1 Jan 26, 2010 10:13am by: leah.campbell

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be at owner's sole risk and without liability to Kimley-Horn and Associates, Inc.

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 (I 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 (I 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.

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Kevin Sawnick and
City Councilmembers

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

DATE: July 12, 2010

SUBJECT: **Document for Inclusion in Agenda Backup Materials on Proposed Ordinances Amending the Future Land Use and Zoning Maps for Vero Property Investment, LLC's Property**

As suggested by Councilmember Daige, the staff has prepared the attached language entitled "Notice of Conditional Concurrency." This language spells out to the applicant that "conditional concurrency" does not vest or waive the project from further concurrency analysis during the site development approval process nor waive any obligations of the applicant to pay impact fees or pay for required offsite improvements to serve the site.

This document should be inserted in the agenda package as part of the official record.

Attachment

NOTICE OF CONDITIONAL CONCURRENCY

Pursuant to the City's Comprehensive Plan and Land Development Regulations and Chapter 910 of the Indian River County Code, the City staff has performed a preliminary review of the proposed Future Land Use Map and Zoning Map changes for conditional concurrency with the City's road, storm drainage, potable water and sanitary sewer, recreation, and solid waste facilities. The staff has determined that adequate capacity exists at the present time to serve development associated with the proposed changes.

This conditional concurrency does not vest nor waive the requirements for obtaining a formal determination of final concurrency prior to site plan and building permit approval. Although not an element of the State-required concurrency process, any off-site improvements required for providing electrical service to the site will be also be determined by the City's Electric Utilities Department during the site plan and building permit approval process. If any required offsite improvements to serve the proposed development, such as, but not limited to electrical lines, water mains, sewer mains, storm water mains, lift stations, traffic turn lanes, and traffic signalization, are required to meet concurrency, then these improvements will be borne by the developer at no cost to the City and will be in accordance with City, Indian River County, Florida Department of Transportation, and state regulatory agencies specifications and standards, as appropriate.

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:

Tammy K. Vock
City Clerk

CITY OF VERO BEACH, FLORIDA

Kevin Sawnick
Mayor

Approved as to form and legal sufficiency:

Charles P. Vitunac
City Attorney

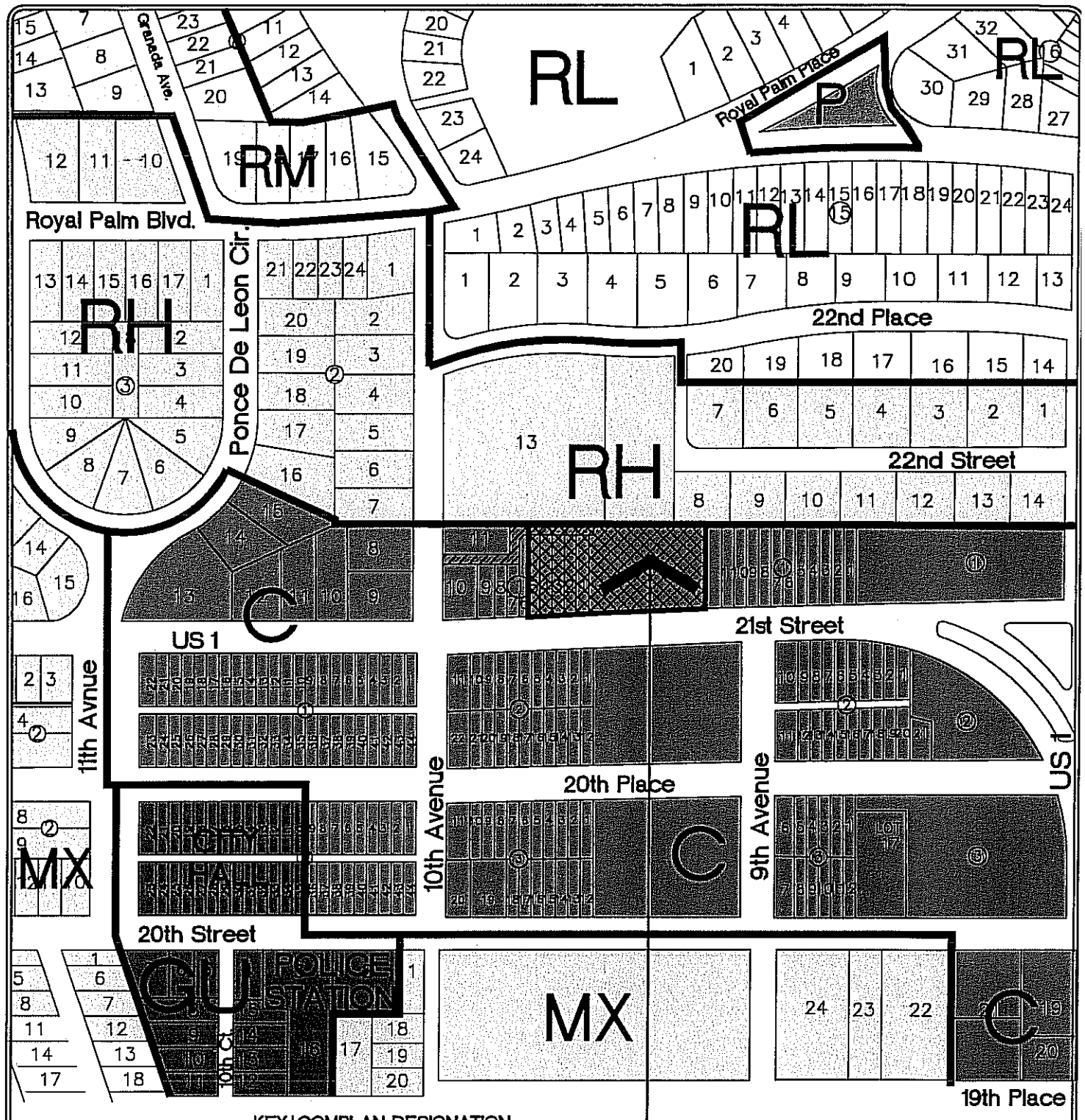
Approved as conforming to municipal policy:

James M. Gabbard
City Manager

Approved as to technical requirements:

Timothy J. McGarry, AICP
Planning and Development Director

Plus Exhibit(s) incorporated by reference



Planning & Dev. Dept. City of Vero Beach

LAND USE CHANGE APPLICATION # C10-000001-FLUM-MAP

LOCATION AND LAND USE OF SUBJECT PROPERTY

DATE 03/25/2010
SCALE—NTS
EXHIBIT A

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

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:

Tammy K. Vock
City Clerk

CITY OF VERO BEACH, FLORIDA

Kevin Sawnick
Mayor

Approved as to form and legal sufficiency:

Charles P. Vitunac
City Attorney

Approved as conforming to municipal policy:

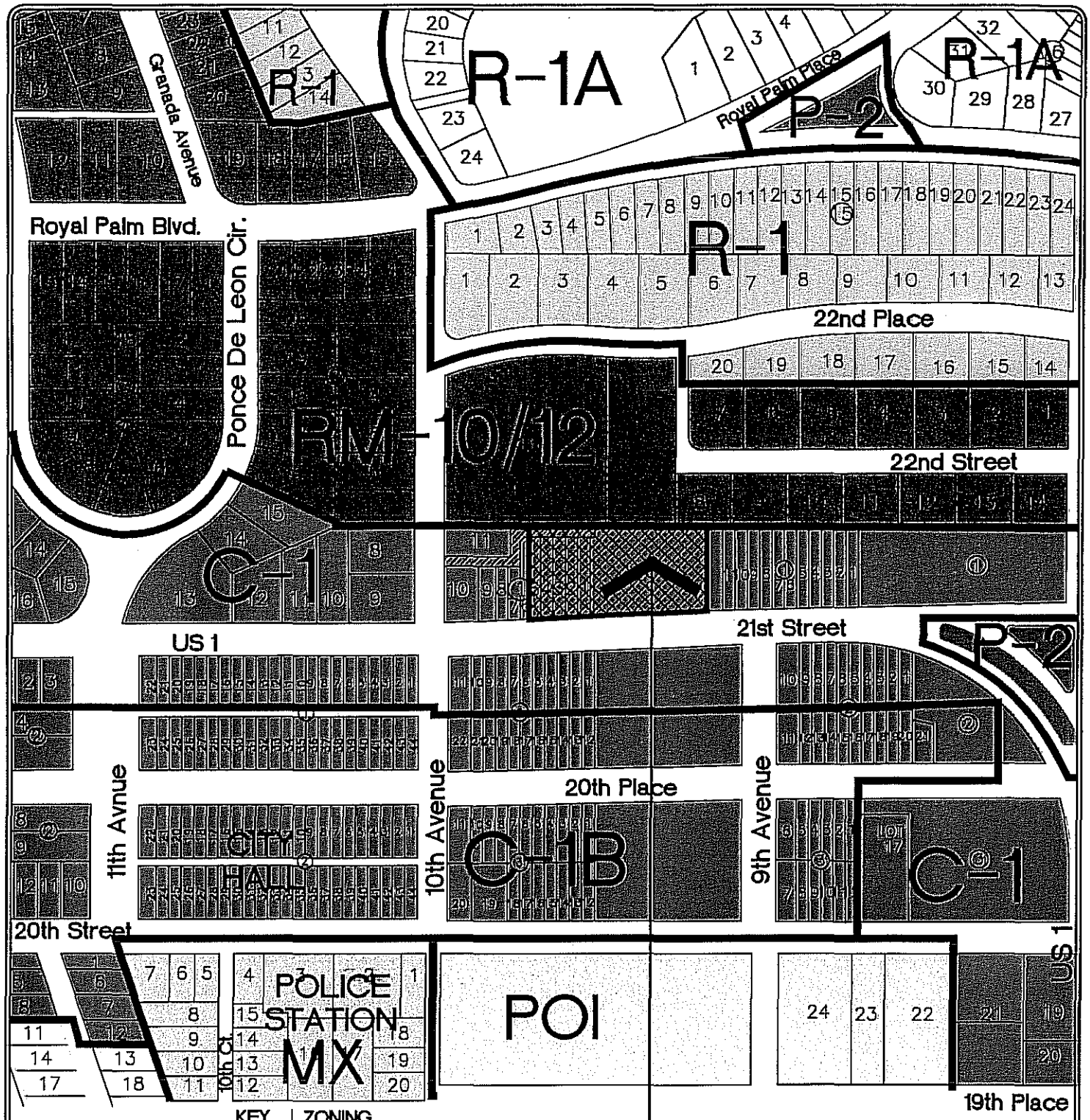
James M. Gabbard
City Manager

Approved as to technical requirements:

Timothy J. McGarry, AICP
Planning and Development Director

Plus Exhibit(s) incorporated by reference

CBF/ VPI-CC-Ordinance.RZ.5.18.10



KEY	ZONING
R-1	SINGLE FAMILY RESIDENTIAL
R-1A	SINGLE FAMILY RESIDENTIAL
RM-10/12	MEDIUM + HIGH DENSITY MULTIPLE FAMILY
C-1	HIGHWAY ORIENTED COMMERCIAL
C-1B	GENERAL COMMERCIAL TRADES + SERVICES
POI	PROFESSIONAL, OFFICE + INSTITUTIONAL
MX	MIXED USE
P-2	PARK

Planning & Development Dept. City of Vero Beach

ZONING MAP CHANGE APPLICATION # Z10-000002-MAP

LOCATION AND ZONING OF SUBJECT PROPERTY

DATE 03/25/2010
SCALE—NTS
EXHIBIT A

3-C)

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

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

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

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

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	☐ **Yes**	☐ **No**
Vice Mayor Sabin C. Abell	☐ **Yes**	☐ **No**
Councilmember Thomas P. White	☐ **Yes**	☐ **No**
Councilmember Brian Heady	☐ **Yes**	☐ **No**
Councilmember Kenneth J. Daige	☐ **Yes**	☐ **No**

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

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 conforming to municipal policy:

James M. Gabbard
City Manager

Approved as to technical requirements:

Timothy J. McGarry, AICP
Planning and Development Director

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

5-A)

ORDINANCE NO. __-____

A ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING CHAPTER 58 "PERSONNEL AND RETIREMENT," ARTICLE II, DIVISION 4 OF THE CODE OF ORDINANCES OF THE CITY OF VERO BEACH TO PROVIDE FOR COMPLIANCE WITH STATE AND FEDERAL LAWS AND REGULATIONS AND SECTION 401(a) OF THE INTERNAL REVENUE CODE; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Vero Beach, Florida, recognizes the requirement to maintain a police officers' retirement fund that complies with all State and Federal laws and regulations, and:

WHEREAS, recent changes to federal laws and regulations require that various amendments be made to the Plan in order to maintain its status as a qualified plan under Section 401(a) of the Internal Revenue Code; and

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

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

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

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

Section 4. Amendment.

Section 58-104 of Chapter 58, Article II, Division 4 of the Code of Ordinances of the City of Vero Beach is hereby amended as follows:

Sec. 58-104. ~~Maximum annual benefit~~ Internal Revenue Code Compliance.

~~(a) In no event may a member's annual benefit exceed the lesser of:~~

~~(1) Any limit established and adjusted for cost of living in accordance with section 415(d) of the Internal Revenue Code, but only for the year in which such adjustment is effective; or~~

~~(2) One hundred percent of the average annual compensation for the member's three highest paid consecutive years; however, benefits of up to $10,000.00 a year can be paid without regard to the 100 percent limitation if the total retirement benefits payable to a member under all defined benefit plans (as defined in section 414(j) of the Internal Revenue Code) maintained by the city for the present and any prior year do not exceed $10,000.00 and the city has not at any time maintained a defined contribution plan (as defined in section 414(j) of the Internal Revenue Code) in which the employee was a member.~~

~~(b) If the member has participated in the plan for less than ten years, the applicable limitation in subsection (a)(1) of this section shall be reduced by multiplying such limitation by a fraction, not to exceed one. The numerator of such fraction shall be the number of years of participation in the plan and the denominator shall be ten years. The same reduction shall apply to the limits (100 percent and $10,000.00) set forth in subsection (a)(2) of this section, except that the fraction shall be based on years of service with the city rather than years of participation in the plan.~~

~~(c) For purposes of this section, the term "annual benefit" means a benefit payable annually in the form of a straight life annuity with no ancillary or incidental benefits and with no member or rollover contributions. To the extent that ancillary benefits are provided, the limits set forth in subsection (a)(1) and (a)(2) of this section will be reduced actuarially, using an interest rate assumption equal to the greater of five~~

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption and the applicable mortality table described in §1.417(e)-1(d)(2) for that annuity starting date.

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to §417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (a), and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

b. "Dollar Limitation" means $160,000 (subject to the annual adjustments provided under Section 415(d) of the IRC). Said amount shall be adjusted based on the age of the participant when benefits begin, as follows:

(i) Except with respect to a participant who is a "Qualified Participant" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code) beginning before age 62 the Age-Adjusted Dollar Limitation is equal to the lesser of--

(I) the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same

expressing the participant's age based on completed calendar months as of the annuity starting date); and

(II) the section 415(b)(1)(A) Dollar limitation (as adjusted pursuant to section 415(d) and §1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan to the adjusted age 65 straight life annuity. The adjusted immediately commencing straight life annuity means the annual amount of the immediately commencing straight life annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are applied to offset accruals. For this purpose, the annual amount of the immediately commencing straight life annuity is determined without applying the rules of section 415. The adjusted age 65 straight life annuity means the annual amount of the straight life annuity that would be payable under the plan to a hypothetical participant who is 65 years old and has the same accrued benefit (with no actuarial increases for commencement after age 65) as the participant receiving the distribution (determined disregarding the participant's accruals after age 65 and without applying the rules of section 415).

(iii) There shall be no age adjustment of the Dollar Limitation with respect to benefits beginning between the ages of 62 and 65.

(2) The limitations set forth in this Subsection (a) shall not apply if the Annual Pension does not exceed $10,000 provided the participant has never participated in a Defined Contribution Plan maintained by the City.

plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.

(9) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the City shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this Subsection (a) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this Subsection (a) shall be used to decrease future employer contributions.

(b) Required Beginning Date:

Notwithstanding any other provision of the Plan, payment of a participant's retirement benefits under the Plan shall commence not later than the participant's Required Beginning Date, which is defined as the later of:

-April 1 of the calendar year that next follows the calendar year in which the participant attains or will attain the age of 70½ years; or

-April 1 of the calendar year that next follows the calendar year in which the participant retires.

(c) Required Minimum Distributions.

(1) Required Beginning Date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's Required Beginning Date as defined in Subsection (b) of this Section 58-104.

(2) Death of participant Before Distributions Begin.

a. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

immediately following the calendar year of the participant's death; or

(II) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(ii) No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

c. Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, Subparagraphs (2)(A) and 2(B) above shall apply as though the surviving spouse were the participant.

(3) Requirements For Annuity Distributions That Commence During participant's Lifetime.

a. Joint Life Annuities Where the Beneficiary Is Not the participant's Spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's Required Beginning Date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using

below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

a. General Annuity Requirements. If the participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(i) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(ii) the distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in Paragraphs 2 or 3 above, whichever is applicable, of this Subsection (c) ;

(iii) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(iv) payments will either be non-increasing or increase only as follows:

(I) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

(II) to the extent of the reduction in the amount of the participant's payments to

to the participant's Surviving Spouse) before the participant's Required Beginning Date (or, if to the participant's Surviving Spouse, before the date distributions are required to begin in accordance with Subparagraph (2)(A) above), the date distributions are considered to begin is the date distributions actually commence.

(6) Definitions.

a. *Designated beneficiary.* The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

b. *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's Required Beginning Date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Paragraph (2) of this Subsection (c).

c. *Life expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(d) Eligible rollover distributions:

(1) Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distribute in a direct rollover.

c. Distributee: A distributee includes a participant or former participant.

d. Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(e) Notwithstanding any other provision of this Plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the Code, payable under the Plan shall be $1000.

(f) Compensation Limitations Under 401(a)(17):

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual compensation of each participant taken into account under the Plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is $200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in the Plan to the limitation under Section 401 (a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.

(g) At no time prior to the satisfaction of all liabilities under the plan with respect to members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

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

Section 6. Repeal of conflicting ordinances.

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

Section 7. Severability.

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

Section 8. Codification.

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

Section 9. Effective date.

This ordinance shall take effect upon adoption.

S-B)

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: Mayor Sawnick and Members of the City Council

Via: Charles P. Vitunac, City Attorney

From: Wayne R. Coment, Assistant City Attorney

Subject: Dog-Friendly Dining Ordinance

Date: July 8, 2010

Pursuant to the City Council's direction, please find attached for your consideration and first reading an ordinance establishing a "Dog-Friendly Dining Program" for public food service establishments within the City. The ordinance provides the local exemption procedure authorized by F.S. § 509.233 for public food service establishments to obtain a variance to certain provisions of the United States Food and Drug Administration Food Code, as adopted by the Florida Division of Hotels and Restaurants, that will allow patrons' dogs within designated outdoor areas of participating public food service establishments.

The adoption and codification of this ordinance must be within the City's land development regulations pursuant to the statute. The ordinance provides that a public food service establishment desiring to participate in the program must make an application for a permit from the Planning and Development Department and may not allow dogs on their premises unless they possess a valid permit. The ordinance also provides for the minimum regulations and enforcement procedures for the program required by the state statute authorizing the program and found necessary to promote, protect, and maintain the health, safety, and welfare of the public.

Please let us know of any questions you may have on this subject or if there are any other materials you require or would like to have for consideration.

ORDINANCE NO. 2010-_____

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF VERO BEACH, PART III LAND DEVELOPMENT REGULATIONS, TITLE VII LAND DEVELOPMENT, BY ADDING CHAPTER 78 TO BE ENTITLED "DOG-FRIENDLY DINING"; ESTABLISHING THE CITY OF VERO BEACH "DOG-FRIENDLY DINING PROGRAM" PROVIDING A LOCAL PROCEDURE AND REGULATIONS PURSUANT TO FLORIDA STATUTES SECTION 509.233 TO PERMIT EXEMPTION FROM CERTAIN PROVISIONS OF THE UNITED STATES FOOD AND DRUG ADMINISTRATION FOOD CODE AS ADOPTED BY THE FLORIDA DIVISION OF HOTELS AND RESTAURANTS IN ORDER TO ALLOW PATRONS' DOGS WITHIN CERTAIN DESIGNATED OUTDOOR PORTIONS OF PUBLIC FOOD SERVICE ESTABLISHMENTS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature by enactment of section 509.233, Florida Statutes, has provided that the governing body of a local government may establish, by ordinance, a local exemption procedure to certain provisions of the United States Food and Drug Administration Food Code, as adopted by the Florida Division of Hotels and Restaurants, in order to allow patrons to bring and have their dogs within certain designated outdoor portions of public food service establishments; and

WHEREAS, pursuant to section 509.233, Florida Statutes, the adoption of a local exemption procedure is at the sole discretion of the governing body of a participating local government; and

WHEREAS, the City Council of the City of Vero Beach has received requests to adopt the local exemption procedure provided for by the statute in order to allow patrons to bring and have their dogs within certain designated outdoor portions of local public

food service establishments and has been assured by persons making such requests that compliance with the regulations required for implementation of a local exemption procedure and enforcement of the regulations will not be problematic; and

WHEREAS, pursuant to section 509.233, Florida Statutes, the adoption of an ordinance implementing a local exemption procedure under the statute must provide for codification within the land development code of the participating local government; and

WHEREAS, any local exemption procedure adopted pursuant to section 509.233, Florida Statutes, may only provide a variance to certain portions of the currently adopted United States Food and Drug Administration Food Code in order to allow patrons' dogs within certain designated outdoor portions of public food service establishments granted a permit under such procedure; and

WHEREAS, in order to protect the health, safety and general welfare of the public, section 509.233, Florida Statutes, requires that the local exemption procedure adopted by a local government governing body must require participating public food service establishments to apply for and receive a permit from the governing body before allowing patrons' dogs on their premises and that the local government must require from the applicant such information as the local government deems reasonably necessary to enforce the provisions of section 509.233, Florida Statutes; and

WHEREAS, section 509.233, Florida Statutes, provides that participating local governments shall have such powers as are reasonably necessary to regulate and enforce the provisions of the statute and requires participating local governments to monitor permitholders for compliance in cooperation with the Florida Division of Hotels and Restaurants; and

WHEREAS, section 509.233, Florida Statutes, requires, should a local exemption procedure be adopted, the establishment of a procedure to accept, document, and respond to complaints and to timely report to the Florida Division of Hotels and Restaurants all such complaints and the participating local government's enforcement responses to such complaints; and

WHEREAS, section 509,233, Florida Statutes, requires a participating local government to provide the Florida Division of Hotels and Restaurants with a copy of all approved applications and permits issued and requires that all applications, permits, and other related materials contain the appropriate license number issued by the Florida Division of Hotels and Restaurants for each participating public food service establishment,

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

Section 1 — Amendment of the Code of the City of Vero Beach, Part III Land Development Regulations, Title VII Land Development:

Chapter 78, Dog-friendly dining, is hereby created as follows:

PART III LAND DEVELOPMENT REGULATIONS

TITLE VII LAND DEVELOPMENT

CHAPTER 78. DOG-FRIENDLY DINING.

Sec. 78.01. Dog-friendly dining program established.

The local exemption procedure and regulations provided in this chapter are hereby established pursuant to F.S. § 509.233 and shall be known as the City of Vero Beach "Dog-Friendly Dining Program."

Sec. 78.02. Purpose and intent.

It is the purpose and intent of this chapter to establish a local exemption procedure and regulations as authorized by F.S. § 509.233 for public food service establishments within the city to obtain a variance to certain provisions of the United States Food and Drug Administration Food Code, as adopted by the Florida Division of Hotels and Restaurants, in order to allow patrons' dogs within certain designated outdoor portions of participating public food service establishments while providing for regulation and enforcement required to promote, protect, and maintain the health, safety, and welfare of the public.

Sec. 78.03. Definitions.

As used in this chapter, the following terms shall be defined as set forth herein unless the context clearly indicates or requires a different meaning:

Department means the city planning and development department.

Director means the director of the city planning and development department.

Division means the Division of Hotels and Restaurants of the State of Florida Department of Business and Professional Regulation.

Dog means an animal of the subspecies *Canis lupus familiaris.*

Outdoor area or *portion* means an area of the public food service establishment premises which area is predominately or totally free of any physical barrier on all sides and above such that it is not enclosed by walls, doorways, closeable windows, or roofs.

Patron means any guest or customer of a public food service establishment.

Premises means all of the area encompassing a public food service establishment.

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Program means the Dog-Friendly Dining Program established by this chapter.

Public food service establishment and *food service establishment* mean any building, vehicle, place, or structure, or any room, division, or area in or adjacent to a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

Sec. 78.04. Permit requirements.

(a) *Permit required.* No public food service establishment within the city shall have or allow any dog on its premises unless the food service establishment possesses a valid permit issued in accordance with this chapter, or unless otherwise permitted pursuant to Florida Statutes.

(b) *Permit application.* A food service establishment desiring to participate in the Program shall submit an application for a permit to the department on a form provided for such purpose by the director together with the applicable fees.

(c) *Form of application.* The director shall require from each applicant such information as he deems reasonably necessary for the city to enforce the provisions of this chapter, but shall require, at a minimum, the following information:

(1) The name, location, and mailing address of the food service establishment.

(2) The appropriate and current division-issued license number for the public food service establishment on all application materials.

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(3) The name, mailing address, and telephone contact information of the owner of the public food service establishment.

(4) The name, mailing address, and telephone contact information of the manager of the public food service establishment.

(5) The name, mailing address, and telephone contact information of the permit applicant.

(6) A diagram and description of the outdoor area to be designated as available to patrons' dogs, including the following:

a. Dimensions of the designated area;

b. A depiction of the number and placement of tables, chairs, and restaurant equipment, if any;

c. The entryways and exits to the designated outdoor area;

d. The boundaries of the designated area and of other areas of outdoor dining not available for patrons' dogs;

e. Any fences or other barriers; and

f. Surrounding property lines and public rights-of-way, including sidewalks and common pathways.

The diagram or plan shall be accurate and to scale but need not be prepared by a licensed design professional.

(7) A description of the days of the week and hours of operation that patrons' dogs will be permitted in the designated outdoor area.

(d) *Fees.* The director shall establish a reasonable fee to cover the cost of processing an initial application and issuing the permit, including a portion for

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program monitoring, for renewal applications, and for initial permit inspections and compliance re-inspections. Fees shall be non-refundable except as determined solely by the director if an application is withdrawn before department review commences or, as to inspection fees, before the inspection.

(e) *Permit application review and approval.* Permit applications submitted under this chapter shall be reviewed and approved by the director in accordance with the following:

(1) The permit application shall be submitted at least thirty (30) days prior to the date anticipated by the food service establishment for inception of the Program in the designated outdoor area.

(2) The applicant shall be required to prominently display a notice within the food service establishment that application has been made for a permit for participation in the Program. The notice shall indicate the portion of the seating area for which permitting is requested and the anticipated start date of service. The notice shall be displayed commencing the date application is made and continue until such date the permit is issued or the application is withdrawn or abandoned.

(3) No permit shall be issued for any outdoor seating area which has not been properly authorized by the city or which does not meet all applicable criteria of the city's land development regulations and regulations of the division.

(4) For permits authorizing the Program within the outdoor areas of a food service establishment located on any right-of-way or other property of the

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city or any other governmental entity, the director shall require the applicant to produce evidence of the following:

a. A valid right-of-way, sidewalk, or other permit, license, or lease showing the food service establishment has the right to occupy and use the area; and

b. A properly executed insurance endorsement providing commercial general liability insurance coverage in an amount no less than $500,000.00 per occurrence and $1,000,000.00 aggregate. The policy shall not have any exclusion for animals or animal bites. All insurance shall be from companies duly authorized to do business in the State of Florida. All liability policies shall be endorsed to provide that the city or any other appropriate governmental entity is an additional insured as to the operation of the outdoor dining area on such government property

(5) After the director determines the application for a permit to be complete and in compliance with this chapter and state law, the director shall cause inspection of the outdoor portions of the food service establishment designated in the application for compliance with the provisions of this chapter and Code. A food service establishment found not in compliance upon such inspection shall have a reasonable time in which to correct any deficiencies found. Upon correction of such deficiencies, the public food service establishment shall request re-inspection and pay a re-inspection fee.

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(6) An application shall be deemed abandoned if it remains incomplete in the determination of the director for a period of ninety (90) days after notice to the applicant of the deficiencies in the application or if inspection of the food service establishment revealed deficiencies in compliance with this chapter or Code and the applicant has not requested re-inspection within such period.

(f) *Permit conditions and requirements.* Each permit issued pursuant to this chapter shall be subject to and conditioned upon the following requirements:

(1) The permit and all related materials shall contain the division-issued license number of the food service establishment.

(2) Each permit issued under this chapter shall expire on the December 31 next following issuance, regardless of when issued.

(3) A food service establishment possessing a valid and unexpired permit issued under this chapter and desiring to continue participation in the Program shall submit an application for permit renewal to the department on a form provided for such purpose by the director together with the applicable fees. The food service establishment shall be inspected for compliance before a renewal permit is issued. An expired or revoked permit shall not be renewed but shall require application for a new permit.

(4) A food service establishment making application for or issued a permit under this chapter shall provide access to the premises of the food service establishment upon request of any code enforcement officer or other official of the city or the division for periodic inspections and monitoring for

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compliance. Neither advance notice nor written request shall be required for such inspections.

(5) A permit issued under this chapter may be revoked by the director if, after notice and reasonable time in which the grounds for revocation may be corrected, the food service establishment fails to comply with any condition of approval, fails to comply with the approved diagram, fails to maintain any required state or local license or permit, fails to pay when due any permit, renewal, inspection, or re-inspection fees, is found to be in violation of any provision of this chapter or Code or regulations of the division, or there exists any other threats to the health safety, or welfare of the public. The director may suspend the permit and the food service establishment shall cease service under the permit pending correction of the grounds for revocation. If the grounds for revocation are a failure to maintain any required state or local license or permit, the revocation may take effect immediately upon giving notice of revocation to the food service establishment owner or manager. A suspension or revocation by the director shall be appealable as provided in the general appeal provision of this Code, but shall remain in effect during the course of such appeal.

(6) If a permit issued to a food service establishment under this chapter is revoked, no new permit may be approved or issued for such food service establishment until the expiration of one hundred eighty (180) days following the date of such revocation.

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(7) A permit issued pursuant to this chapter shall not be transferrable and shall expire automatically upon the sale, lease, or other transfer of an interest in the food service establishment and service under such expired permit shall cease. The subsequent owner, lessee, or other person acquiring an interest in the food service establishment may apply for a permit pursuant to this chapter if such person desires the food service establishment to continue participation in the Program.

Sec. 78.05. General regulations.

Participating food service establishments shall observe and comply with the following regulations, limitations, and requirements in order to protect the health, safety, and general welfare of the public:

(1) All food service establishment employees shall wash their hands promptly after touching, petting, or otherwise handling dogs. Employees shall be prohibited from touching, petting, or otherwise handling dogs while serving food or beverages or handling tableware or before entering other parts of the food service establishment.

(2) Patrons in the designated outdoor area shall be advised that they should wash their hands before eating. Waterless hand sanitizer shall be provided at all tables in the designated outdoor area.

(3) Employees and patrons shall be instructed that they shall not allow dogs to come into contact with serving dishes, utensils, tableware, linens, paper products, or any other items involved in food service operations.

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(4) Patrons shall keep their dogs on a leash at all times and shall keep their dogs under reasonable control. Patrons shall not leave their dogs unattended for any period of time.

(5) Dogs shall not be allowed on chairs, tables, or other furnishings.

(6) All table and chair surfaces shall be cleaned and sanitized with an approved product between seating of patrons. Spilled food and drink shall be removed from the floor or ground between seating of patrons.

(7) Accidents involving dog waste shall be cleaned immediately and the area sanitized with an approved product. A kit with the appropriate materials for this purpose shall be kept near the designated outdoor area.

(8) A sign or signs reminding employees of the applicable rules shall be posted on the premises in a manner and place as determined by the department.

(9) A sign or signs reminding patrons of the applicable rules shall be posted on the premises in a manner and place as determined by the department.

(10) A sign or signs shall be posted in a manner and place as determined by the department that places the public on notice that the designated outdoor area is available for the use of patrons and patrons' dogs.

(11) Dogs shall not be permitted to travel through indoor or non-designated outdoor portions of the food service establishment, and ingress and egress to the designated outdoor portions of the food service establishment must not require entrance into or passage through any indoor area of the food service establishment.

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(12) The food service establishment and designated outdoor area shall comply with all permit conditions and the approved diagram.

(13) The owner, manager, employees and patrons of the food service establishment shall not allow any dog to be in the designated outdoor area of the food service establishment if a violation of any of the requirements of this chapter or Code exists.

(14) The permit issued under this chapter shall be conspicuously displayed in the designated outdoor area and presented for inspection upon request of any code enforcement officer or other official of the city or the division.

Sec. 78.06. Reporting requirements and complaints.

(a) *Report of application and permit.* The director shall promptly provide the division with a copy of all approved applications and permits issued.

(b) *Complaints.* The director shall establish a procedure for timely accepting, documenting, and responding to complaints related to the program and shall promptly report to the division all complaints and the city's response to such complaints. All complaints, reports, warnings, citations, and related materials shall contain the appropriate division-issued license number for the food service establishment subject of the complaint or enforcement action.

Sec. 78.07. Enforcement.

The provisions of this chapter may be enforced pursuant to any method provided for by this Code or general law. In addition to all other authority granted, the code enforcement board and magistrates of the city having jurisdiction of a code enforcement action for a violation of this chapter shall have authority to suspend or revoke a permit

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as provided in this chapter. Any court of competent jurisdiction shall likewise have such authority.

Section 2 – Conflict and Severability.

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

Section 3 — Codification.

The provisions of chapter 78 created herein shall be codified in the Code of the City of Vero Beach, Florida, Land Development Regulations, Title VI Zoning.

Section 4 – Effective Date.

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

****

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

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

ATTEST:

_____
Tammy P. Vock
City Clerk

Approved as to form and legal sufficiency:

Charles P. Vitunac
City Attorney

Approved as to Technical Requirements:

Timothy J. McGarry
Planning & Development Director

CITY OF VERO BEACH, FLORIDA

_____
Kevin Sawnick
Mayor

Approved as conforming to municipal policy:

James M. Gabbard
City Manager

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5-C)

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: Mayor Sawnick and Members of the City Council

Via: Charles P. Vitunac, City Attorney CPV

From: Wayne R. Coment, Assistant City Attorney WRC

Subject: Chumming Ordinance / Amendment of Chap. 54

Date: July 8, 2010

Pursuant to the City Council's direction, please find attached for your consideration and first reading an ordinance amending Chapter 54 of the Code to define and include a prohibition on "bloodbaiting" and "chumming" from any park or beach within the city limits or within one-half mile of the shore. The ordinance also amends certain other parts of the water activities provisions which amendments were drafted after consultation with the Recreation Director and are recommended to provide clarification and consistency in application and enforcement of the regulations.

The chumming provision is intended to avoid conflict with state law which preempts the regulation of saltwater fishing solely to the State of Florida. The distance from shore of one-half mile (2,640 feet) wherein chumming would be prohibited is toward the high end of the range used by other Florida local governments for similar regulations.

Please let us know of any questions you may have on this subject or if there are any other materials you require or would like to have for consideration.

ORDINANCE NO. 2010-_____

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF VERO BEACH, CHAPTER 54 PARKS AND RECREATION, SECTION 54-2 DEFINITIONS, BY ADDING DEFINITIONS FOR "BLOODBAITING" AND "CHUMMING" AND AMENDING CERTAIN OTHER DEFINITIONS FOR CLARIFICATION AND CONSISTENCY; AMENDING SECTION 54-49 WATER ACTIVITY AND SURFING, BY ADDING SUBSECTION 54-49(e) MAKING UNLAWFUL BLOODBAITING AND CHUMMING FROM ANY PARK OR BEACH WITHIN THE CITY AND IN THE WATERS OF THE ATLANTIC OCEAN WITHIN ONE-HALF MILE OF THE MEAN HIGH-WATER LINE WITHIN THE CITY LIMITS AND AMENDING CERTAIN OTHER PROVISIONS FOR CLARIFICATION AND CONSISTENCY; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the beaches and waters of the Atlantic Ocean within the City of Vero Beach are a natural asset of the community enjoyed by residents and visitors alike, including regular use for recreational bathing and similar water activities, and should be treasured, protected, and preserved for the benefit and use of the public; and

WHEREAS, the City Council has learned that some residents or visitors to the City occasionally attract or attempt to attract marine life close to shore and the beaches within the City by practices commonly known as "bloodbaiting" and "chumming"; and

WHEREAS, the City Council finds that the marine life attracted or intended to be attracted by such practices present a serious and dangerous risk of harm to persons engaged in recreational bathing and similar water activities in the ocean waters off the beaches within the City; and

WHEREAS, a fundamental purpose of municipal government is to promote, protect, and improve the health, safety, and general welfare of the public and the citizens of the municipality; and

WHEREAS, the City Council finds it necessary and proper, based on the foregoing, to adopt regulations deemed appropriate to reduce unnecessary risks to citizens and visitors and promote their safe enjoyment of the beaches and ocean waters within the City; and

WHEREAS, the City Council finds that certain other portions of section 54-49 are subject to potentially varying interpretations and should be amended to provide clarification and consistency in the City's regulations concerning the use of the beaches and ocean waters within the City; and

WHEREAS, the City Council finds that the regulations provided herein are the minimum necessary for the protection and conservation of the public health, safety, and welfare,

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

Section 1 — Amendment of Section 54-2.

Section 54-2 Definitions is hereby amended as follows:

Chapter 54 PARKS AND RECREATION

ARTICLE I. IN GENERAL

Sec. 54-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized person means any person who is an ~~city~~ employee or agent of the city or another governmental entity carrying out an official duty, or any person who has been issued a permit by the city manager to engage in the permitted activity.

Beach means that zone of unconsolidated material that extends landward from the low-water mark of the Atlantic Ocean within the city limits to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Bloodbaiting means placing, depositing, or using in or on saltwaters blood or oil from any fish, meat, animal, or bait, or any natural, chemical, or synthetic attractant for the purpose of attracting marine life of any species to a particular area.

Chumming means placing, throwing, depositing, or using in or on saltwaters any fish or parts of fish in any form, meat, fowl, or animal parts in any form, or any other substance or material upon which marine life might feed for the purpose of attracting marine life of any species to a particular area, but such term shall not include or prohibit fishing with baited hooks or live traps.

Ocean park means that portion of the Atlantic Ocean from the low-water mark to a line 200 feet seaward and running parallel to the shore within the city limits.

Outdoor public assembly means any ceremony, show, exhibition, concert, pageant, rally, demonstration, picnic, or assembly of any kind calculated to attract at

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any one time the attendance or attention of over 50 persons which is held in any park out-of-doors.

Park means a tract of land, playground, beach, recreation center, or any other area in the city owned or used by the city and devoted to active or passive recreation. The beach and ocean within the city limits shall be considered a park for the purpose of this Code. ~~The beach is that territory between the low-water-mark and the mean high-water line. The ocean park is that territory 200 feet seaward of the low-water-mark.~~

Park facilities means any improvements or structures, either natural or artificial, including, but not limited to, buildings, shelters, benches, tables, playground equipment, bird feeders, walls, fences, fountains, walkways, toilet facilities, and signs located in the park area.

Resident means any person who owns real property located within the city limits, who is a registered voter qualified to vote in city elections, or who is qualified to become a registered voter qualified to vote in city elections. A minor shall be presumed to have the same residence as the parent or guardian of the minor.

Section 2 — Amendment of Section 54-49.

Section 54-49 Water activity and surfing is hereby amended to read as follows:

ARTICLE II. USE OF PARKS AND RECREATION AREAS

DIVISION 1. GENERALLY

Sec. 54-49. Water activitiesy and surfing.

(a) *Activities generally.* It shall be unlawful for any unauthorized person in any park in a marked area to engage in a water activity not permitted by the a posted sign designating the area for a particular such water activity.

(b) *Surfing and similar activities prohibited at bathing beaches.* It shall be unlawful for any unauthorized person to have or use a surfboard, kite board, windsurfing board, surfing kayak, skim board, or other similar hard, rigid equipment on the beach or in any part of the Atlantic Ocean lying within the city limits of the city ocean park that is directly in front of the public bathing beaches known as Jaycee Beach, Conn Beach, Sexton Plaza, Humiston Beach, and South Beach. These bathing beach areas shall be plainly marked with signs designating these beaches as bathing beaches only.

(c) *Surfboard tether required.* It shall be unlawful for any person to use a surfboard, surfing kayak, or other similar hard, rigid equipment in any park of the city the Atlantic Ocean within the city limits without having such equipment securely fastened tethered to the person utilizing such equipment.

(d) *Watercraft prohibited in ocean park.* It shall be unlawful for any unauthorized person to have or operate any No power boats, sailboat, jet skis, personal watercraft, or the like shall operate in any other watercraft of a like nature on the beach or in any part of the ocean unprotected park directly in front of the public bathing beaches known as Jaycee Beach, Conn Beach, Sexton Plaza, Humiston Beach, and South Beach or within one hundred fifty (150) feet on either side of said bathing beaches. It shall be unlawful for any unauthorized person to

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operate any such watercraft in any other part of the ocean park within the city limits ~~during the hours of daylight, except on official business, authorized by the city manager or~~ except as necessary to traverse the area from the beach to the 200-foot mark, utilizing the most direct route, and then only at idle speed.

(e) *Bloodbaiting and chumming prohibited.* It shall be unlawful for any unauthorized person to engage in the practice of bloodbaiting or chumming from any park or beach within the city or in or on the waters of the Atlantic Ocean within one-half mile seaward of the mean high-water line within the city limits.

Section 3 — Conflict and severability.

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

Section 4 — Inclusion in the Code.

It is the intention of the City Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made a part of the Code of the City of Vero Beach; that the chapter, sections and subsections of this Ordinance may be renumbered or re-lettered to accomplish such codification; and that the word "Ordinance" may be changed to "Chapter" or any other appropriate word.

Section 5 – Effective Date.

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

****

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

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

ATTEST:

_____
Tammy P. Vock
City Clerk

CITY OF VERO BEACH, FLORIDA

_____
Kevin Sawnick
Mayor

Approved as to form and legal sufficiency:

Charles P. Vitunac
City Attorney

Approved as conforming to municipal policy:

James M. Gabbard
City Manager

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Approved as to Technical Requirements:

Donald A. Dappen
Chief of Police

Approved as to Technical Requirements:

Timothy J. McGarry
Planning & Development Director

Approved as to Technical Requirements:

Rob Slezak
Recreation Director

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5-D)

OFFICE OF THE CITY ATTORNEY

MEMORANDUM

To: Mayor Sawnick and Members of the City Council

Via: Charles P. Vitunac, City Attorney

From: Wayne R. Coment, Assistant City Attorney WRC

Subject: Amendment of Red Light Camera Ordinance

Date: July 13, 2010

Attached for your consideration and first reading is a proposed ordinance amending the City's Intersection Safety Enhancement Ordinance which concerns the enforcement of red light violations by means of intersection video cameras. Amendment is necessary to bring the City's ordinance and program into compliance with the provisions and requirements of the recently enacted "Mark Wandall Traffic Safety Act," Laws of Florida, Chapter 2010-80.

The newly enacted state legislation preempts the City's current ordinance and provides the regulations and procedures for implementation and operation of a red light camera enforcement program. Therefore, most of the City's existing ordinance is deleted and replaced with what is mainly authorizing language to implement the program provided under the state legislation.

Many of the provisions of the state adopted program are similar to that which was previously adopted by the City Council, with the main difference now being appeal of violations will go to the County Court rather than to the City's Code Enforcement Board. The new legislation also provides for a two step process where a "notice of violation" is first sent to a violator and then, only if the penalty is not paid or an exception shown, a "citation" is issued and sent to the violator. The state legislation also requires warning signs and a public awareness campaign.

Please let us know of any questions you may have on this subject or if there are any other materials you require or would like to have for consideration.

ORDINANCE NO. 2010-_____

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF VERO BEACH, CHAPTER 74 TRAFFIC AND VEHICLES, ARTICLE V INTERSECTION SAFETY, IN ORDER TO COMPLY WITH THE "MARK WANDALL TRAFFIC SAFETY ACT," LAWS OF FLORIDA, CHAPTER 2010-80; PROVIDING FOR IMPLEMENTATION OF THE "MARK WANDALL TRAFFIC SAFETY PROGRAM" AND THE USE OF TRAFFIC INFRACTION DETECTORS IN THE CITY; AUTHORIZING TRAFFIC INFRACTION ENFORCEMENT OFFICERS TO ISSUE NOTICES AND CITATIONS PURSUANT TO THE PROGRAM; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Vero Beach, recognizing the serious safety hazard affecting every citizen and traveler in the City of Vero Beach presented by the failure of drivers to obey red light traffic control signals, previously adopted and codified the City's "Intersection Safety Enhancement Ordinance" in the Code of the City of Vero Beach as Article V Intersection Safety in Chapter 74 Traffic and Vehicles; and

WHEREAS, the Florida Legislature subsequently adopted CS/CS/HB 325, also known as the "Mark Wandall Traffic Safety Act," during the 2010 Legislative Session regarding the use of traffic infraction detectors to enforce certain provisions of Florida Statutes Chapter 316 regarding obedience to red light traffic controls and providing procedures for enforcement which preempt those adopted by the City Council; and

WHEREAS, the Governor of the State of Florida signed CS/CS/HB 325 into law on May 13, 2010, resulting in the creation of Laws of Florida, Chapter 2010-80, taking effect on July 1, 2010; and

WHEREAS, the City's "Intersection Safety Enhancement Ordinance" previously adopted by the City Council requires amendment to comply with the provisions of the "Mark Wandall Traffic Safety Act," Laws of Florida, Chapter 2010-80; and

WHEREAS, the City Council finds that violations of red light traffic control signals continue to be a serious safety hazard affecting citizens and travelers in the City of Vero Beach; and

WHEREAS, the City Council finds that implementation of the "Mark Wandall Traffic Safety Act" in the City will encourage a reduction in the number of red light traffic control signal violations and thereby help to promote and protect the public health, safety, and welfare;

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

Section 1 — Amendment of Chapter 74 Traffic and Vehicles, Article V Intersection Safety:

Chapter 74, Article V is hereby amended as follows:

Chapter 74 TRAFFIC AND VEHICLES

ARTICLE V. INTERSECTION SAFETY

~~Sec. 74-171. Title.~~

~~This article shall constitute and may be cited as the "Intersection Safety Enhancement Ordinance" of the City of Vero Beach~~.

~~Sec. 74-172. Intent and application~~ Sec. 74-171. Purpose.

~~It is the intent of~~ The purpose of this article is to promote, protect, and improve the health, safety, and welfare of the ~~citizens of the City of Vero Beach~~ public by enhancing intersection safety through ~~encouragement of driver obedience to traffic~~

WHEREAS, the City's "Intersection Safety Enhancement Ordinance" previously adopted by the City Council requires amendment to comply with the provisions of the recently adopted "Mark Wandall Traffic Safety Act," Laws of Florida, Chapter 2010-80; and

WHEREAS, the City Council finds that violation of red light traffic control signals continues to be a serious safety hazard affecting every citizen and traveler in the City of Vero Beach; and

WHEREAS, the City Council desires to encourage a reduction in the number of red light traffic control signal violations by amending the Code of Ordinances to conform with the implementation and procedures of the "Mark Wandall Traffic Safety Act";

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

Section 1 — Amendment of Chapter 74 Traffic and Vehicles, Article V Intersection Safety:

Chapter 74, Article V is hereby amended as follows:

Chapter 74 TRAFFIC AND VEHICLES

ARTICLE V. INTERSECTION SAFETY

~~**Sec. 74-171. Title.**~~

~~This article shall constitute and may be cited as the "Intersection Safety Enhancement Ordinance" of the City of Vero Beach~~.

~~**Sec. 74-172. Intent and application**~~ **Sec. 74-171. Purpose.**

~~It is the intent of~~ The purpose of this article is to promote, protect, and improve the health, safety, and welfare of the ~~citizens of the City of Vero Beach~~ public by enhancing intersection safety through ~~encouragement of driver obedience to traffic~~

~~control signals by the use of automated traffic control signal cameras and intersection monitoring equipment and technologies to identify and record traffic control signal violations~~ implementation of the "Mark Wandall Traffic Safety Program" provided for in F.S. § 316.0083 and authorized by the "Mark Wandall Traffic Safety Act," Laws of Florida, Chapter 2010-80. The ~~traffic signal violation automated enforcement program provided for in this article~~ use of traffic infraction detectors for enforcement is intended as an additional deterrent to the commission of ~~traffic control signal~~ red light violations ~~and~~ to help reduce automobile crashes and the resulting injuries and property damage associated with such crashes. ~~No provision of this article shall prohibit any law enforcement officer from issuing a uniform traffic citation for a violation of any state law in accordance with traditional traffic enforcement methods and procedures. This article shall not supersede, infringe, curtail, or impinge upon any state law related to traffic control signal, red light, or intersection violations, and shall be interpreted to avoid conflict with such laws. The provisions of this article shall apply only to intersections within the city monitored pursuant to the enforcement program provided for in this article.~~

~~Sec. 74-173~~ Sec. 74-172. Definitions.

As used in this article:

Program means the "Mark Wandall Traffic Safety Program," F.S. § 316.0083, together with all other provisions and requirements of the "Mark Wandall Traffic Safety Act," Laws of Florida, Chapter 2010-80.

~~*Intersection* means the area embraced within the prolongation or connection of the lateral curb lines; or if none, then the lateral boundary lines of the roadways of two~~

~~roads or highways that join or intersect one another at, or approximately at, right angles; or the area within which vehicles traveling upon different roads or highways joining at any other angle may come in conflict. As to unlawful turns from an intersection, the turn can include, but is not necessarily limited to, entering into an alley, private road, service road, or driveway.~~

~~*Leased vehicle* means any motor vehicle for which a motor vehicle dealership or manufacturer has, pursuant to a written document, vested exclusive possession, use, and control of and responsibility for the motor vehicle in the lessee during the periods the vehicle is operated by or for the lessee.~~

~~*Motor vehicle* means every self-propelled device in, upon, or by which any person or property is, or may be, transported or drawn upon a road, street or highway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, moped, or such vehicles as run only upon a track.~~

~~*Owner* means the person identified as the registered owner of the motor vehicle by the Florida Department of Highway Safety and Motor Vehicles, or other applicable agency of whatever state of the United States, country or territory where the respective motor vehicle was registered, as of the date of the noticed violation. Such term also means the person identified as the lessee or conditional vendee of a motor vehicle with an immediate right of possession pursuant to a lease or conditional sales contract.~~

~~*Person* means and includes natural persons, corporations, partnerships, firms, companies, agencies, associations, and any other legal entity.~~

~~*Recorded image* means an image recorded by a traffic signal violation detector by photographs, electronic or digital images, digital or video movie or recording, or by any other medium.~~

~~*Roadway* means that portion of a street, road, or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder.~~

~~*Traffic* means pedestrians, ridden or herded animals, and vehicles and other conveyances either singly or together while using any street, road, or highway for the purposes of travel.~~

~~*Traffic signal violation enforcement officer* means any duly sworn law enforcement officer of the city designated or assigned to perform traffic signal violation review duties pursuant to this article.~~

~~*Traffic control signal* and *traffic signal* mean any device, whether manually, electrically, or mechanically operated, by which traffic is either alternately directed to stop and then permitted to proceed, or directed to stop and then proceed, or permitted without first stopping to proceed with caution, including but not limited to such devices that exhibit different colored lights of green, yellow, and red, or one or more such colored lighted arrows, successively one at a time or in combination, or that exhibit a flashing red light, or flashing yellow light.~~

~~*Traffic signal violation detector* means any image capture technology, equipment, or systems consisting of one or more vehicle sensors or other monitoring equipment, working in conjunction with a traffic control signal and one or more image capture devices, automated cameras, video recording devices, and related equipment and technologies, designed and operated to automatically capture and record two or more~~

~~sequenced photographic, digital, or electronic images, or streaming video of a motor vehicle at the time and subsequent to when such motor vehicle enters the intersection, including at least one recorded image of the motor vehicle license plate. The recorded images shall also display, the time, date, and location.~~

~~*Violation notice* means a written notice of a traffic control signal violation issued pursuant to this article for violation of a provision of section 74-174 that was identified and recorded by a traffic signal violation detector.~~

~~Definitions in Florida Statutes and this Code may be referred to if relevant and as the context herein permits. Singular words include the plural and plural words include the singular where the context requires.~~

Sec. 74-173. Use of traffic infraction detectors authorized.

The City of Vero Beach is hereby authorized to use traffic infraction detectors pursuant to the provisions and requirements of the program to enforce within its jurisdiction F.S. §§ 316.074(1) and 316.075(1)(c)1. of the Florida Uniform Traffic Control Law.

~~**Sec. 74-174. Obedience to traffic control signals.**~~

~~(a) Steady red light. The driver of a motor vehicle facing a steady red light indication displayed by a traffic control signal shall stop the motor vehicle before any portion of the front most part of that motor vehicle encroaches over a vertical extension of the nearest part of the intersection, intersection line, crosswalk line, or "stop here on red" line, as applicable at the intersection, and shall cause the motor vehicle to remain stopped and standing until a steady green light indication facing the motor vehicle is displayed on the traffic control signal. However, the~~

~~driver of a motor vehicle that has stopped as required may make a right turn unless such right turn is otherwise prohibited by a properly posted sign or other traffic control device, but shall yield the right of way to other traffic proceeding as directed by the traffic control signal and to pedestrians at the intersection. A steady red light indication includes a steady red circle, a steady red turn arrow, or a steady red circle or turn arrow in conjunction with a properly posted "no turn on red" sign or substantially similar sign that prohibits turning a motor vehicle at that intersection at that time.~~

~~(b) Flashing red light. The driver of a motor vehicle facing a flashing red light indication displayed by a traffic control signal shall stop the motor vehicle before any portion of the front most part of that motor vehicle encroaches over a vertical extension of the nearest part of the intersection, intersection line, crosswalk line, or "stop here on red" line, as applicable at the intersection, and shall obey such flashing red light indication as if a stop sign. The motor vehicle driver's right to proceed after stopping shall be subject to the rules applicable after making a stop at a stop sign. A flashing red light indication includes a flashing red circle, a flashing red turn arrow, or a flashing red circle or red turn arrow in conjunction with a "no turn" sign or substantially similar sign that prohibits turning a motor vehicle at that intersection at that time.~~

~~(c) Inoperative or malfunctioning traffic control signal. The driver of a motor vehicle approaching an intersection at which the traffic control signal or signals are inoperative or malfunctioning shall treat such inoperative or malfunctioning traffic control signal as a stop sign and stop the motor vehicle in the manner required~~

~~for a stop intersection. The motor vehicle driver's right to proceed after stopping shall be subject to the rules applicable after making a stop at a stop sign. In the event that only some of the traffic control signals or traffic signal lights at an intersection are inoperative, the driver of a vehicle approaching an inoperative light shall stop in the above-prescribed manner.~~

Sec. 74-174. Implementation of program.

The city manager, or his designee, is authorized to implement the provisions and requirements of the program and may take any action, subject to the purchasing limitations of this Code, which is necessary for such purpose.

~~**Sec. 74-175. Penalties.**~~

~~(a) Each violation of section 74-174 shall be punishable by a civil penalty of $150.00.~~

~~(b) No driver's license points or effect on driving privilege. No admission or finding of responsibility for any violation of section 74-174 shall be deemed a conviction under any state motor vehicle law, nor shall it result in assessment of any driver's license points, as provided in F.S. § 322.27, or otherwise, nor be any basis for suspension or revocation of any driving privilege.~~

Sec. 74-175. Issuance of citations authorized.

A traffic infraction enforcement officer under F.S. § 316.640 is authorized to issue notices and traffic citations pursuant to the provisions and requirements of the program for violations of F.S. §§ 316.074(1) and 316.075(1)(c)1.

~~**Sec. 74-176. Traffic signal violation automated enforcement program.**~~

~~(a) *Enforcement program established; administration*. There is hereby established a traffic signal violation automated enforcement program for enforcement of this~~

~~article, which enforcement program shall be administered by the police department of the city pursuant to this article and in consultation with the city manager.~~

~~(b) *Traffic signal violation detectors.* The traffic signal violation automated enforcement program shall utilize traffic signal violation detectors as a means of monitoring compliance with the provisions of section 74-174 and assisting law enforcement personnel with enforcement. Traffic signal violation detectors shall be utilized to capture recorded images of violating motor vehicles.~~

~~(c) *Intersection locations.* The enforcement program shall be implemented and operated for those intersections identified by the city manager with advice from the police department. Intersections chosen for the enforcement program may be located throughout the city.~~

~~(d) *Warning signs.* Each intersection that has a traffic signal violation detector shall be identified by appropriate warning signs informing drivers of motor vehicles approaching the intersection that a traffic signal violation detector is in use or that traffic signal violations at the intersection are photo enforced. Such warning signs shall be posted for each intersecting roadway no less than 300 feet before the intersection, unless conditions exist that necessitate placement of the signs closer to the intersection. The presence, location, or absence of any warning sign for any particular roadway or intersection shall not affect the validity of a violation notice issued for a violation of section 74-174 at that intersection and shall not constitute a defense or grounds for an appeal of the violation notice.~~

~~(e) *Program implementation and operation.* The city manager may, as the city manager finds reasonably necessary and subject to the purchasing provisions of this Code, employ city labor and materials and contract with third-party vendors for implementation and operation of the traffic signal violation automated enforcement program, including but not limited to, providing recorded images by installation and operation of traffic signal violation detectors; preparation and mailing of courtesy notices, violation notices, and other notices; receipt of and accounting for civil penalties and costs; receipt of hearing requests; and collection of unpaid civil penalties and costs. However, no vendor contract shall limit the city in performing any such functions. Administration of appeals shall be as provided in this article and Chapter 2, Article VII, of this Code.~~

~~(f) *Public awareness campaign; grace period.* The city shall make a public announcement and conduct a public awareness campaign of the intended implementation of the traffic signal violation automated enforcement program and use of traffic signal violation detectors at least 30 days before commencing enforcement under this article. In addition, there shall be a grace period of 30 days after the first traffic signal violation detector is activated or used for the first time. The motor vehicle owner shall be sent by first class mail a courtesy notice, with no penalty assessed, for any violation of section 74-174 recorded by a traffic signal violation detector during such grace period.~~

~~Sec. 74-177. Owner responsibility; defenses.~~

~~(a) The registered owner of the motor vehicle, whether domiciled within or without this state, the images of which are captured by a traffic signal violation detector~~

~~evidencing a violation of section 74-174, shall be responsible for the violation and liable for payment of the civil penalty, together with administrative and enforcement costs assessed, if any. However, it shall be a defense to a violation of section 74-174 that:~~

~~(1) The driver of the motor vehicle was issued a uniform traffic citation for a violation of state law at that intersection at that same date and time for the conduct that comprises the violation of section 74-174;~~

~~(2) The violation occurred at any time subsequent to which the motor vehicle or its assigned state license plates were reported to a law enforcement agency as having been stolen and the motor vehicle or its license plates had not been recovered by the owner at the time of the violation;~~

~~(3) The motor vehicle was leased to another person at the time of the violation and, within 21 days after the violation notice was mailed to or otherwise served on the registered owner, or at an appeal hearing before the code enforcement board or special magistrate, such noticed owner submits in writing, the correct name and address of the lessee of such leased vehicle, together with a copy of the lease agreement and any additional information as may be required by the police department. Where the noticed owner complies with the provisions of this sub-section, the lessee of the motor vehicle at the time of the violation shall be deemed to be the owner of the motor vehicle for purposes of this article and a violation notice shall be mailed to such lessee within 30 days of such compliance with this sub-section. Failure of the noticed owner to comply with the~~

~~provisions of this sub-section shall constitute a waiver of the leased vehicle defense;~~

~~(4) The motor vehicle was an authorized emergency vehicle or other motor vehicle owned or controlled by a federal, state, or local government and such motor vehicle's driver was authorized by applicable law, rule, or regulation to disregard that traffic control signal at that time and place;~~

~~(5) The motor vehicle passed through the intersection in order to yield the right-of-way to an emergency vehicle or as part of a lawful funeral procession;~~

~~(6) The motor vehicle passed through the intersection at the direction of a law enforcement officer;~~

~~(7) The motor vehicle driver was required to violate the applicable traffic control signal in order to comply with another applicable law that supersedes section 74-174;~~

~~(8) The motor vehicle driver was reasonably required to violate the traffic control signal to protect valuable tangible property or to prevent physical injury or death to any individual;~~

~~(9) The person cited for the violation was not the owner or lessee of the cited motor vehicle at the time of the violation;~~

~~(10) The defense asserted would excuse the noticed violation if it had been cited by a uniform traffic citation issued for a violation of state law; or~~

~~(11) There exists any other valid defense why the violation notice should be voided, dismissed, or excused as found by the code enforcement board or special magistrate after an appeal hearing.~~

~~(b) Nothing in this article shall be construed to limit or excuse the liability of a driver of a motor vehicle for any violation of state statute enforced as provided by law nor form the basis for any defense to such a violation.~~

~~**Sec. 74-178. Enforcement.**~~

~~(a) Civil offense. Each violation of section 74-174 documented by recorded images captured by a traffic signal violation detector shall be deemed a civil offense and a violation of this Code punishable as provided in this article.~~

~~(b) Jurisdiction. Jurisdiction over violations of section 74-174 and appeals of violation notices issued for such violations shall be vested in the code enforcement board and special magistrates of the city pursuant to Chapter 2, Article VII, of this Code, and not in the county court.~~

~~(c) Issuance of violation notice; grounds. Notice of a violation of section 74-174 and assessment of the civil penalty shall be by a city traffic signal violation notice and not by a uniform traffic citation. A traffic signal violation enforcement officer shall review and issue or authorize issuance of each violation notice pursuant to this article. Each decision to issue or not issue a violation notice shall be made by the reviewing officer after personally viewing the recorded images. The reviewing officer shall also verify that the traffic signal violation detector that captured the recorded images was functioning properly at the time the recorded images were captured. Recorded images evidencing a violation of section 74-174 shall provide reasonable and probable grounds for the reviewing officer to issue or authorize the issuance of the violation notice and shall be admissible for all purposes at any hearing. The violation notice shall be issued no later than 30 days after the~~

~~date of the violation or determination of the identity of the owner, whichever is later. In no event shall a violation notice be issued more than 90 days after the date of the violation.~~

~~(d) Contents of violation notice. The traffic signal violation notice shall include the following information:~~

~~(1) Date of issuance;~~

~~(2) Name of the reviewing officer and division or department issuing or authorizing issuance of the violation notice;~~

~~(3) Name and address of the motor vehicle owner as of the date of the violation;~~

~~(4) License plate number of the violating motor vehicle;~~

~~(5) Make and year, and, if ascertainable, the model and color of the violating motor vehicle;~~

~~(6) Date and time of the violation;~~

~~(7) Location of the intersection where the violation occurred;~~

~~(8) Section number of this article that was violated and a brief factual statement of the nature of the violation;~~

~~(9) Amount of the civil penalty assessed;~~

~~(10) Instructions and due date for paying the civil penalty and instructions for requesting an administrative hearing to appeal the violation notice;~~

~~(11) Notice that failure to request a hearing to contest the violation notice within 21 days after mailing or other service of the violation notice shall constitute a~~

~~waiver of the right to a hearing and that such waiver shall constitute an admission of the violation and liability for the civil penalty;~~

~~(12) Notice that the owner will be liable for the costs of the administrative hearing and costs of enforcement if, after the hearing, the violation notice is upheld;~~

~~(13) A statement that the signing officer viewed and thereby observed the recorded images evidencing the violation, and that those images constitute reasonable and probable grounds for the officer to conclude that the noticed violation was committed at the cited date, time and intersection, with the specified motor vehicle; and~~

~~(14) A copy of two or more recorded images documenting the violation, including a copy of the recorded image that identifies the letters and numbers on the motor vehicle license plate and the state, country or territory shown on that license plate. Information directing the owner to a website providing access to the recorded images may also be included.~~

~~(e) Service of notices. The violation notice and any other notices may be served by depositing the notice in the United States mail, first class, postage prepaid, addressed to the owner at the owner's last known mailing address furnished to the Florida Department of Highway Safety and Motor Vehicles or other applicable agency of whatever state of the United States, country or territory where the violating motor vehicle was registered, or such other address furnished to the city by the owner. Service by first class mail as provided shall be evidenced by a certificate of mailing and shall be deemed sufficient and complete upon such~~

~~mailing. The certificate of mailing shall be admissible in any administrative or legal proceeding and shall constitute sufficient proof of service. Any violation notice or other notice may be served by any other method provided in Chapter 2, Article VII, of this Code for service of a code enforcement citation.~~

~~Sec. 74-179. Rights of owner; appeal hearings.~~

~~(a) Rights of owner. An owner who has been served with a traffic signal violation notice shall, within 21 days after service of the violation notice, either:~~

~~(1) Pay the civil penalty in the manner specified on the violation notice; or~~

~~(2) Appeal by administrative hearing the violation notice by making a request for a hearing in the manner specified on the violation notice. The appeal shall include the owner's name, mailing address and telephone number, and must state in clear, meaningful detail all grounds upon which the violation notice is being contested. Failure of the owner to appeal within the prescribed time period or failure of the owner to attend the scheduled hearing if requested shall constitute a waiver of the owner's right to an administrative hearing on the violation notice. Such waiver of the right to an administrative hearing shall be deemed an admission of the violation and of liability for the civil penalty.~~

~~(b) Scheduling and notice of hearing. Upon receipt of a request for an administrative hearing to contest a violation notice, the actual date and time of receipt shall be noted on the request. If the request for a hearing is timely, the matter shall be set and noticed for the next regularly scheduled code enforcement hearings or as soon thereafter as possible. An untimely request shall be returned with written explanation for its return.~~

~~(c) Notice of hearing; contents. At least ten days before the hearing, a notice of hearing shall be sent to the owner. The notice of hearing shall include the following information:~~

~~(1) Place, date and time of the hearing.~~

~~(2) Right of the owner to be represented by an attorney.~~

~~(3) Right of the owner to present witnesses and evidence.~~

~~(4) Notice that failure of the owner to attend the hearing will constitute a waiver of the right to a hearing on the violation notice and that such waiver shall be deemed an admission of the violation alleged and liability for the civil penalty.~~

~~(5) Notice that the owner will be responsible for insuring that a verbatim record of the hearing is made should the owner desire to appeal an adverse decision.~~

~~(6) Notice that requests for postponement of the hearing will only be considered if received at least five days prior to the date set for the hearing.~~

~~(d) Conduct of hearings; orders. The hearing shall be conducted by the code enforcement board or special magistrate and appropriate orders entered pursuant to Chapter 2, Article VII, of this Code.~~

~~(e) Findings after hearing; penalties and costs. If, after the hearing, the board or special magistrate finds that the violation occurred and that the owner is responsible pursuant to this article, a civil penalty in the amount specified on the violation notice shall be assessed against the owner, together with the costs of the administrative hearing and the costs of enforcement. The owner shall not be~~

~~liable for the payment of any civil penalty or costs if the finding is that the violation did not occur or that a valid defense to the violation exists.~~

~~Sec. 74-180. Collection of unpaid penalties and costs.~~

~~(a) Civil penalties and costs unpaid and owing after liability for the violation and the penalties and costs assessed has become final and the owner has exhausted or failed to exhaust any available appeals, may be collected by any method provided in this article or in Chapter 2, Article VII, of this Code.~~

~~(b) The city may withdraw a violation notice, following reasonable collection efforts for unpaid penalties and costs, when the violation notice was issued to an owner who is deceased at the time collection efforts are undertaken and such unpaid penalties and costs are not otherwise secured by a lien.~~

~~Sec. 74-181. Conflict and severability.~~

~~In the event any provision of this article conflicts with any other provision of this Code or any other ordinance or resolution of the city, the provisions of this article shall apply and supersede on the subject matter of this article. 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 2 — Conflict and severability.

In the event any provision of this ordinance conflicts with any other provision of this Code or any other ordinance or resolution of the city, the provisions of this chapter shall apply and supersede on the subject matter of this chapter. If any provision of this

ordinance is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this ordinance, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

Section 3 — Inclusion in the Code.

It is the intention of the City Council, and it is hereby ordained, that the provisions of this ordinance shall become and be made a part of the Code of the City of Vero Beach; that the chapter, sections and subsections of this ordinance may be renumbered or re-lettered to accomplish such codification; and that the word "ordinance" may be changed to "chapter" or any other appropriate word.

Section 4 – Effective Date.

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

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

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

ATTEST:

_____
Tammy P. Vock
City Clerk

CITY OF VERO BEACH, FLORIDA

_____
Kevin Sawnick
Mayor

Approved as to form and legal sufficiency:

Charles P. Vitunac
City Attorney

Approved as conforming to municipal policy:

James M. Gabbard
City Manager

Approved as to Technical Requirements:

Donald A. Dappen
Chief of Police

5-E)

DEPARTMENTAL CORRESPONDENCE

TO: James M. Gabbard, City Manager

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

DATE: July 12, 2010

SUBJECT: **First Reading on Resolution to Transmit an Ordinance Amending the Text of the Comprehensive Plan to the Florida Department of Community Affairs (DCA)**

Overview

The proposed Transmittal Resolution and draft ordinance amending the text of the Comprehensive Plan is requested to be placed on the City Council's agenda for First Reading. The staff sponsored text amendments to the Comprehensive Plan are intended to accomplish the following two purposes: 1) provide policies supporting the location of the proposed Amtrak station and other multi-modal facilities in the downtown; and 2) revise the Level of Service standard for A1A north of Beachland Boulevard (State Route 60).

The Planning and Zoning Board recommended unanimous approval of the proposed comprehensive plan amendments at an advertised public hearing held on June 17, 2010.

The attached staff reports to the Planning and Zoning Board provide the background information and analyses on the proposed amendments. For efficiency reasons, although the Planning and Zoning Board considered the proposed amendments as two separate agenda items, all the amendments have been included in one adoption ordinance.

Recommendation

The staff recommends that the transmittal resolution and draft ordinance be placed on the City Council's July 20, 2010, agenda for First Reading.

Attachments

DEPARTMENTAL CORRESPONDENCE

TO: Chairman Dennis J. Ryan and Planning and Zoning Board Members

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

DATE: May 24, 2010

SUBJECT: **Public Hearing on Proposed Text Amendments to the Traffic Circulation and Capital Improvements Elements of the Comprehensive Plan to Change the Level of Service Standard for SR A1A from SR 60 to the North City Limits #C10-000002-CLP-TXT**

Overview

The Planning and Development staff proposes the following amendments to the City of Vero Beach Comprehensive Plan (attached as Exhibit One):

A. Amending Policy 1.1 of the Transportation Element to:

1. Identify as an exception to the Level of Service (LOS) Standards 27th Avenue from south City limits to State Route (SR) 60 to address an oversight when the LOS for this roadway was amended in the annual update to the Capital Improvements Element adopted on November 17, 2009;

2. Revise the LOS standard for State Route (SR) A1A from SR 60 (Beachland Boulevard) to the north City limits from a LOS standard of "D" to "D" plus 30% and include it as an exception to the LOS standards for arterials and collectors;

3. Include clarifying language that specifically indicates that LOS is based on the Peak Hour/Peak Season/Peak Direction traffic volumes.

B. Amending Table 9.1, Level of Service Standards, under the Capital Improvements Element to:

1. Include SR A1A from SR 60 (Beachland Boulevard) to north City limits to reflect the LOS "D" plus 30% in the revised Policy 1.1 above.

2. Include clarifying language that specifically indicates that LOS is based on the Peak Hour/Peak Season/Peak Direction traffic volumes.

Data and Analysis

In accordance with 9J-11.007, Florida Administrative Code (FAC), all proposed comprehensive plan amendments are required to be supported by data and analysis similar to that for the original comprehensive plan. Since the proposed amendments amending Policy by adding 27th Avenue as an exception of the LOS Standards and the clarification language regarding the use of Peak Hour/Peak Season/Peak Direction in both Policy 1.7 and Table 9.1 are only to correct earlier omissions and provide greater clarity to the text, no supporting data and analysis are needed or required.

The data and analysis for the proposed amendment to revise the LOS standard for SR A1A from SR 60 to the north City limits, are presented in the following sections:

Road Segment Description. The subject segment of SR A1A is a 1.5 mile segment of running from Beachland Boulevard to the north City limits, is a 2-lane facility with median (e.g., a two-way left turn lane) and is shown in Exhibit Two attached. It has exclusive left-hand turn lanes at major intersections. The roadway is classified as an Urban Minor Arterial and serves as the single major north-south roadway providing access to commercial centers, hotels, and residential neighborhoods on the Barrier Island. It provides connections to the mainland via SR 60, CR 510, and south SR A1A and is a hurricane evacuation route.

The right-of-way (ROW) width is 100 feet, except for a .45 mile segment of 80 feet between Greytwig and Beachland Boulevard that traverses a single family residential development north of Beachland Boulevard. The roadway has numerous curb cuts to adjacent abutting properties with exclusive right-hand turn lanes for larger commercial and condominium developments.

A sidewalk borders the roadway along its entire west side and partially on its east side near Beachland Boulevard. No regular regional transit service is provided along the length of roadway corridor, except for limited service to the Village Beach Market located near the very northern end of this segment of SR A1A.

Development Characteristics. Properties with immediate access or requiring access to this segment of SR AIA are almost all fully developed with retail, office, seasonal condominiums and hotels uses. Single family and multi-family development surround the SR AIA roadway corridor to the east and west.

North of the City limits, SR A1A runs through the Town of Indian River Shores. The Town is almost entirely built out with little room for additional development.

The primary concentration of commercial, office, hotels, and transient residential uses in the SR A1A corridor are located north of the City's Jaycee Park. Except for a couple of isolated cases, properties located south of this park abutting the roadway are zoned single family.

Excluding isolated single family lots of record, the concentration of vacant lands abutting the roadway are located north of Bahia Mar, except for a single parcel of one acre zoned C-1A (tourist commercial uses -30 hotel units/acre). Eleven of the vacant parcels, totaling 10 acres are zoned C-1A. Three parcels, totaling 0.8 acres, are zoned RM-13 (13 units/acre). Two parcels, totaling 0.5 acres are zoned RM-10/12 (12 units/acre).

Traffic Volumes and Capacity. In accordance with the Florida Statutes and Rule 9J-5, F.A.C., the City adopted a Level of Service (LOS) standard for arterials and collectors of "D" in Policy 1.1 of the Comprehensive Plan and Table 9.1 of the Capital Improvements Element. Therefore, as a minor arterial, this segment of SR A1A has a LOS standard of "D" with a maximum service volume (capacity) of 924 peak hour direction according to the *2009 FDOT Quality/Level of Service Handbook.*[1]

Under Florida Statutes and the City's Comprehensive Plan Policy 1.7, no development permit may be approved if insufficient capacity exists on a roadway. Therefore, if a roadway has determined LOS below its adopted LOS, that segment has no available capacity unless specific improvements are programmed as stipulated in Policy 5.12 of the Capital Improvements Element. This deficiency affects development on any property that will generate vehicle trips on the subject roadway, even for properties outside its immediate vicinity.

Based on data from the Indian River County *2006 Comprehensive Plan Evaluation Appraisal Report*, Addendum Table A-2.07 of the Vero Beach Comprehensive Plan shows that the LOS in 2006 for this segment of SR A1A was "F" falling from a LOS of "C" in 1995. This deficiency was identified in the recent update to the Capital Improvements Element. Although in preparation of this report, it has been determined that this table did not account for a 5 percent additional service volume needed to be added to maximum level of service due to the presence of the two-way left turn lane, the segment would still have been a "F" LOS under the FDOT's 2002 Quality/Level of Service Manual.[2]

A partial review of data provided by Indian River County, which maintains the transportation currency data base for both the City and County on a real time basis as new permits are issued, showed a peak hour directional volume of 1,025 in September, 2009, which is a LOS of "F."[3] In May of this year, the peak hour directional service volume was 897, which is a LOS of "D."

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[1] For both Indian River County and the City of Vero Beach, FDOT's maximum service volumes for roadways published in that agency's latest *Quality/Level of Service Manual* are followed to establish the LOS for roadways. The manual states "maximum service volume deals with the highest number of vehicles for a given LOS, while capacity deals with the maximum number of vehicles that can pass a point during a specific during a specified time." Although not technically correct, the terms "maximum service volume" and "highway capacity" are used interchangeably in report.

[2] Indian River County has subsequently revised its data base to reflect this change.

[3] The peak hour direction volume figures contain both existing background trips and vested trips.

The LOS has fluctuated between LOS of "D" and "F" over the last several years with the peak trip volume declining overall due to the economy. It is highly likely that once the economic recession abates the peak hour directional traffic volume on this segment will increase resulting in a fairly consistent LOS of "F" as little reserve service volume is available to retain a LOS of "D."

Recent modeling run forecasts by the Indian River County MPO for the MPO 2035 Long Range Transportation Plan (LRTP), using the Florida Standard Urban Transportation Model Structure, reveal that this segment of SR A1A is not likely to improve and will be deficient during the 25-year planning period. No capacity improvements for this roadway have been identified in the State's Seven Year Work Program or identified in the MPO's draft Initial 2035 LRTP Base Needs Plan.

Available Options. The following are available options to the City in response to the LOS deficiency on this segment of SR A1A:

- *Do Nothing*: The "do nothing" is not a viable alternative. Although the LOS for this roadway has been fluctuating between a LOS of "D" and "F," and was recently determined to be a LOS of "D," it has degraded to a LOS "F" in the past. In all likelihood, it will degrade to a consistent LOS of "F" once the economy returns, especially as the roadway has little additional reserve service volume to retain a LOS of "D".

  The City has already been placed on notice by a law firm representing owners of vacant properties abutting this segment of SR A1A that its clients will seek legal relief as they are being denied reasonable use of their properties due to the "de facto" moratorium. Although the latest data from Indian River County indicates that the segment is at an acceptable level of service, the issuance of any development permit for proposed development projects on many of these vacant properties zoned C-1A may be problematic. Furthermore, as noted previously, this concurrency issue may affect other nonresidential properties outside the immediate area if any these properties should move forward to seek development approval that adds new vehicle trips to this segment of SR A1A.

  The City is obligated under the Florida Statutes and its comprehensive plan to adopt LOS standards, eliminate existing service deficiencies, and provide infrastructure to accommodate new growth in its adopted comprehensive plan. Therefore, either the LOS standard for this segment of SR A1A needs to be revised or improvements to highway capacity made, especially as no other alternative north-south roadway or potential route corridor is available to divert traffic from this facility.

- *Improvements to Highway Capacity*: Policy 1.4 of the Comprehensive Plan requires the City to review the existing roadway network to determine whether to consider restricting the widening of roadways that have specific physical and/or environmental constraints. SR A1A is specifically identified as an example of such a facility.

The policy further states that a roadway should be considered "constrained" based on but not limited to the following: historic, cultural or scenic character; right-of-way limitations; high land values and cost of right-of-way acquisition; and environmental or socio-economic impacts on surrounding properties.

In the early 1990's, this segment of SR A1A was programmed by the FDOT to be upgraded to a 4-lane divided highway as shown in Table 2.3 of the Comprehensive Plan. However, due to significant right-of-way costs and socio-economic impacts, this segment of SR A1A was subsequently improved with only a median two-way turn lane.

The situation has not changed since completion of these improvements. More infill of abutting lots has occurred further increasing potential right-of-way costs and disruption to existing businesses and residences. A 4-lane divided facility generally requires 120 to 150 feet of ROW and SR A1A has only 80 to 100 feet of ROW.

Furthermore, such an improvement would more than double the current maximum service volume, which is not needed or desired to support existing and anticipated development on the Barrier Island. Such improvements in capacity could be argued to be inconsistent with Objective 2 and supporting policies of the Capital Improvements Element regarding limiting public expenditures in coastal high hazard areas that support or encourage an increase overall increase in the density and intensity of development beyond that indicated on the Future Land Use Map.

Therefore, improvements to this segment of highway that involve any further widening of the roadway were eliminated from further evaluation. This decision is reflected in the MPO's existing adopted 2030 LRTP and in its draft Initial 2035 LRTP Basic Needs Plan.

Other access or congestion management measures, if appropriate would be difficult to implement due to lack of available ROW and numerous existing access points and would not materially affect maximum level of service volumes during peak hour traffic as calculated in the FDOT manual. Extended and expanded transit service would have negligible impact due to low density land use patterns and amount of traffic using the roadway from outside the City limits.

- *Change in LOS Standard.* The third option, a change in the LOS standard for the facility is considered the most practical and cost-effective solution, and is more consistent with other policies in the Comprehensive Plan to limit further increases in density and intensity in Coastal High Hazard Areas. The questions then becomes what is the appropriate LOS consistent with the policies of the Comprehensive Plan?

  In Table 7, Peak Hour Directional Volumes for Florida's Urbanized Areas, in the *2009 FDOT Quality/Level of Service Handbook*, Class 1 State signalized arterials

have no LOS standard of E. Any volume beyond the maximum service volume for LOS "D" automatically falls under a LOS of "F."

Therefore a revision to the existing LOS standard requires the use of the maximum service volume for LOS "D" plus a percentage of this maximum service volume. For example, the LOS standard could be set at "D" plus 20% (924 + 185=1,109 vehicles per peak hour direction) or "D" plus 30% (924+277=1201 vehicles per peak hour direction).

Assuming little or no development outside the City that would add new trips to SR A1A, it is anticipated that vacant properties, if fully developed along this segment of SR A1A, would conservatively result in approximately 200 new peak hour vehicle trips to this roadway during peak hour. Assuming 55 percent of these trips are assigned to the peak southbound lane (based on existing trip distribution pattern), the number of new peak hour trips would be 110.[4]

Adding this number of new peak hour vehicle trips to the peak hour trips of 1,025 (2009), the total peak hour trips would result in 1,135 vehicle trips per hour. [Although higher than 2010 figures, using the 2009 figure provides leeway for accommodating background traffic volume when the economy recovers.]

Therefore, a reasonable LOS standard to assign would be "D" plus 30%, which should accommodate future anticipated development. Should conditions make this LOS standard inadequate, the issue will be re-evaluated at that time.

Consistency with Comprehensive Plan

This amendment must be found to be internally consistent with the Vero Beach Comprehensive Plan as required by Chapter 163, Florida Statutes and Section 65.22 of the Vero Beach Code. The following are the pertinent objectives and policies to which this amendment is consistent:

- Land Use Element, Policy 5.3: *For all facilities and services, the minimum levels of service established in the Capital Improvements Element (CIE) and other elements of the Comprehensive Plan shall be maintained.*

- Traffic Circulation Element, Objective 1: *The traffic circulation system, and improvements thereto, shall be coordinated with new development depicted on the Future Land Use Map in order to retain the appropriate level of service or*

[4] The staff's "rough" trip generation projections were based on the following assumptions for vacant properties in the SR A1A corridor: (1) all multi-family lots would be developed at allowable densities; (2) commercial property not fronting the ocean would develop at full intensity at 50 percent retail and 50 percent office; and (3) ocean front commercial would fully develop as 50 percent condominiums (15 units/acre) and 50 percent resort hotel (30 units/acre). The staff then applied trip rates to these land uses based on the new trip rates for traffic impact studies set forth in the Indian River County Code. These trip volumes were modified by staff to yield the peak hour trips based on rates from the Institute of Traffic Engineers, *Trip Generation, 7th Edition, 2003.*

otherwise provide for adequate and safe access concurrent with such new development or redevelopment.

- Traffic Circulation Element, Policies 1.4 and 1.11:

  * *The City shall review the existing roadway network to determine whether to consider restricting the widening of roadways that have specific physical and/or environmental constraints. SR A1A on the Barrier Island is an example of such a facility. Criteria to consider as part of the analysis to determine whether a roadway should be considered "constrained" shall include, but not limited to, the following: historic, cultural or scenic character, right-of-way limitation, high land values and cost of right-of-way acquisition, and environmental or socio-economic impacts on surrounding properties.*

  * *The City shall review the transportation system based on the County's evaluation on an annual basis. Traffic count data shall be collected on all thoroughfare roads on an annual basis. This data shall be utilized to develop an annual report by the County on the Level of Service provided on major area roads. These findings shall then be used by the City to identify improvement needs and associated costs required to maintain the Level of Service identified in Policy 1.1.*

- Traffic Circulation Element, Policy 6.1: *Major roadways (i.e., minor and principal arterials) and intersections shall, to the extent possible, be located and designed such as to not adversely affect existing neighborhoods nor produce excessive traffic on local roads through residential areas. The following are some of the characteristics by which the City will determine whether neighborhoods are adversely impacted: severs existing neighborhoods, more traffic other than local traffic using roadways, widening of roadways which results in roadways constructed closed to residential homes, and other similar characteristics.*

- Capital Improvements Element, Objective 2: *The City shall limit public expenditures to coastal high hazard areas in accordance with the objectives and policies in the Coastal Management Element that limit the overall density or intensity to existing levels indicated for those areas on the Future Land Use Map.*

- Capital Improvements Element, Policies 2.1 (2.) and 2.2:

  * *The City shall only expend public funds for capital improvements in coastal high hazard areas that:*

2. *Do not support or encourage a net increase in the overall density and intensity of development beyond that indicated on the Future Land Use Map.*

* *Capital improvements in coastal high hazard areas shall not be planned or designed to create any capacity beyond that necessary to accommodate the existing overall intensity and density of development of these areas as indicated on the Future Land Use Map.*

Findings

The staff concludes that based on the analysis above, SR A1A is a constrained roadway as defined in Policy 1.7 and that the proposed change in the LOS for this roadway is consistent with the Vero Beach Comprehensive Plan and compliant with Florida Statutes and the text amendment requirements of the City Code.

Recommendation

The staff recommends that the Planning and Zoning Board recommend to the City Council approval of the proposed attached text amendments.

TJM/tf
Attachments

EXHIBIT ONE
AMENDMENTS TO THE
CITY OF VERO BEACH
COMPREHENSIVE PLAN

1. Policy 1.1 of the Traffic Circulation Element is hereby revised as follows:

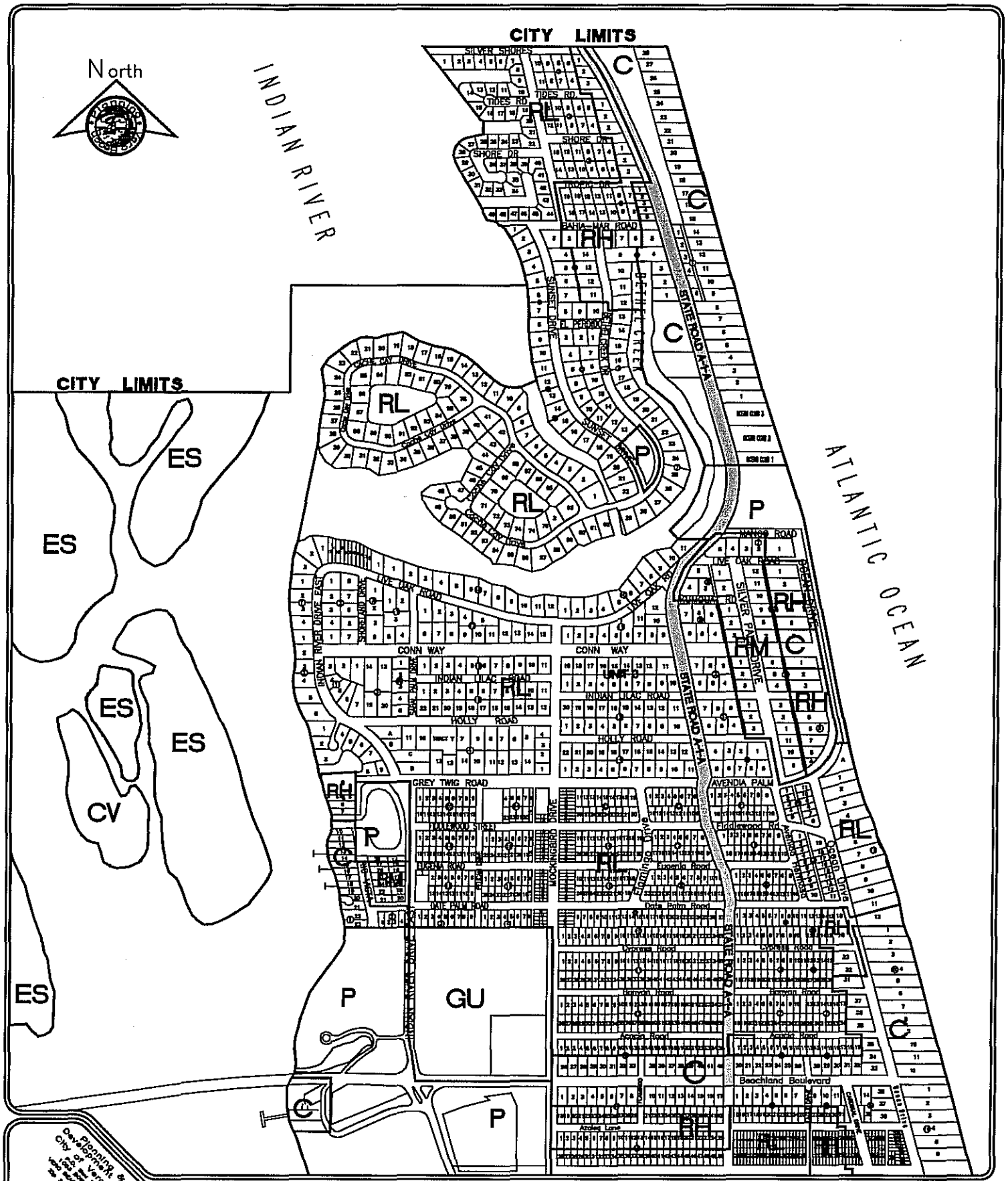
"1.1 The operating level of service standards for roadways shall be ~~as herein established:~~ Level of Service "D" (Peak Hour/Peak Season/Peak Direction) or better on all arterial and collector roadways and Level of Service "E" (Peak Hour/Peak Season/Peak Direction) or better for all other ~~local~~ roadways, except for the following:

- 27th Avenue from South City Limits to State Route 60 –"E" plus 20%.
- A1A from State Route 60 to North City Limits – "D" plus 30%.

2. Under the "Roads" category in Table 9.1, Level of Service Standards (LOS) for Facilities, City of Vero Beach, of the Capital Improvements Element is hereby revised as follows:

"Roads

~~Principal~~ Arterials and Collectors*	Level of Service D (Peak Hour/Peak Season/Peak Direction)
All Other Roadways	Level of Service E (Peak Hour/Peak Season/Peak Direction)
*Except the following roads:	
• 27th Avenue from South City Limits to State Route 60	Level of Service E (Peak Hour/Peak Season/Peak Direction) plus 20%
• A1A from State Route 60 to North City Limits	Level of Service D (Peak Hour/Peak Season/Peak Direction) plus 30%"



SR A1A SEGMENT PROPOSED FOR A CHANGE IN LEVEL OF SERVICE

DATE 05/24/2010
SCALE--NTS
EXHIBIT TWO

DEPARTMENTAL CORRESPONDENCE

TO: Chairman Dennis J. Ryan and Planning and Zoning Board Members

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

DATE: May 26, 2010

SUBJECT: **Public Hearing on Proposed Text Amendments to the Land Use and Traffic Circulation Elements of the Comprehensive Plan Related to Supporting Amtrak Passenger Rail Station Facilities #C10-000003-CLP-TXT**

Overview

The Planning and Development staff proposes the following amendments to the City of Vero Beach Comprehensive Plan (attached as Exhibit One):

A. Amend Policy 1.9 under Objective 1 (Land Uses) of the Land Use Element to include reference to the need for access to multi-modal transportation alternatives in areas designated as Mixed Use on the Future Land Use Map, which generally covers the downtown and adjacent inner city neighborhoods.

B. Create new Policy 3.9 under Objective 3 (Multi-modal Transportation System) of the Traffic Circulation Element to direct revisions to the City's Land Development Regulations to authorize multi-modal facilities within the DTW (Downtown) zoning district.

C. Create new Policy 3.10 under Objective 3 (Multi-modal Transportation System) of the Traffic Circulation Element that establishes the City's support for locating an Amtrak passenger rail station in the downtown and the re-establishment of passenger rail service in the Florida East Corridor.

Data and Analysis

The 1992 Vero Beach Comprehensive Plan paid little attention to the issue of passenger rail service, which had been discontinued in 1968 to communities along the east coast of Florida between Jacksonville and West Palm Beach. No discussion of any issues regarding passenger rail service was included in the technical support section of the Traffic Circulation Element.

The only reference to passenger rail is Policy 8.2, that states that the City will "ensure adequate access to the one public use airport, passenger rail station, transit transfer points, and other intermodal facilities by supporting roadway and transit improvements identified in this [Traffic Circulation] element." The City's Evaluation Appraisal Report adopted in 1999 did not mention passenger rail service.

In the late 1990s, the issue of reinstating passenger rail service in the Florida's east coast corridor was introduced by FDOT and Florida East Coast Railroad in conjunction with plans by Amtrak to expand its passenger rail services nationwide. The proposal was to establish Amtrak service between Jacksonville and West Palm Beach and seven cities in between, including the City of Vero Beach. The service and construction of new passenger rail stations was to be partially funded by a FDOT grant. The restructuring of Amtrak in the early decade terminated this effort.

Despite this setback, the re-establishment of passenger rail service continued to be a priority for Treasure Coast communities. The Treasure Coast Regional Planning Council's (TCRPC) Strategic Regional Policy Plan encourages the creation of a balanced and integrated transportation system, especially a regional mass transit system. The east coast passenger rail service was included in the FDOT's 2006 Florida Rail Plan as a new corridor passenger rail service between Jacksonville and the City of Miami with intermittent stops at cities in between these two points.

In March 2009, the TCRPC adopted Resolution 09-04 requesting that the State of Florida prioritize the Amtrak/FEC Corridor Project (aka, establishment of passenger rail service between Miami and Jacksonville) for Federal stimulus funding under the "American Recovery and Reinvestment Act." The FDOT officially prioritized the project and coordinated its efforts with Amtrak and Rail America (owner of the FEC railroad).

The Vero Beach City Council passed a resolution in 2009 supporting the effort to re-establish passenger rail service to the east coast of Florida from Jacksonville to Miami. The resolution indicated the City Council's commitment to participate with FDOT, Amtrak, FEC, Treasure Coast Regional Planning Council, and other local communities in securing federal economic stimulus funding for the construction of passenger stations and other infrastructure improvements.

FDOT is currently moving forward with the preparation of necessary environmental, planning, and engineering supporting materials required for submission of the application. It is anticipated that the application will be ready for submittal to the Federal Rail Administration by July 2010.

With the advent of this new opportunity to secure funding for the construction of a passenger rail station and re-establishment of passenger rail service to the City, it is very desirable that the City amend its Comprehensive Plan to address passenger rail service to improve its chances to secure grant funding. With that said, it is also desirable that the current Comprehensive Plan be amended to formally establish the City's long-term policy commitment to supporting passenger rail service, and, very importantly, to provide a policy framework for appropriately linking rail passenger service with other transportation modes and coordinating planning and development activities in a manner that maximizes the benefits and opportunities for transient oriented development in revitalizing the City's historic downtown.

Transit oriented development is an approach to development that focuses land uses around a transit station (one-quarter of a mile or a 5 to 7 minute walk of the transit station) or within a transit corridor. It is typically characterized by:

- A mix of uses
- Moderate or higher density
- Moderate or higher intensity of nonresidential uses
- Pedestrian orientation/connectivity
- Reduced parking
- High quality design

Although Vero Beach doesn't have the potential for the density and intensity of transit oriented development typically found in larger urban areas, some opportunities do exist to capitalize on the accessibility and value to place which a passenger rail station would bring to the downtown. It will provide further opportunities for attracting private and public investment that will help revitalize the Downtown.

As the City is currently preparing its Evaluation Appraisal Report, which will result in comprehensive revisions to the current Comprehensive Plan to address changes in Chapter 163, Florida Statutes, regarding mobility and sustainability, the amendments proposed at this time are the minimum necessary to establish the City's support for passenger rail service and the need to locate any future passenger rail station in the downtown. In doing so, these amendments will provide the enabling policy necessary to implement amendments to the City's Land Development Regulations to permit passenger rail, bus stations, and other inter- and multi-modal facilities in the downtown.

Therefore, the staff has identified one existing policy to be revised and two policies to be created as interim measures until a more thorough data analysis and evaluation is completed during the preparation of the EAR and EAR-based amendments. The rationale for each of the proposed amendments, which are provided in Exhibit One, are discussed below:

A. Revision of Policy 1.9 of the Land Use Element. This policy which describes the Mixed Use (MX) Future Land Use category inserts language requiring such areas to have access to multi-modal transportation alternatives. Such a requirement reinforces the principle that the downtown and other centrally located mixed use areas should have adequate access to multi-modal transportation alternatives.

B. Creation of new Policy 3.9 of the Traffic Circulation Element. This new policy provides the enabling language for amending the City's Land Development Regulations to accommodate rail, bus and other inter- and multi-modal facilities. The current Land Development Regulations do not permit rail, bus, or other inter- and multi-modal facilities within the City, except that bus terminals are allowed in the Industrial District and airport terminals are allowed in the Airport District.

C. Creation of new Policy 3.10 of the Traffic Circulation Element. This new policy expresses the City's support and commitment for locating a passenger rail station in the downtown in conjunction with resumed passenger rail service. The end purposes of this policy are to increase the mobility choices and opportunities for transit oriented development.

Consistency with Comprehensive Plan

This amendment must be found to be internally consistent with the Vero Beach Comprehensive Plan as required by Chapter 163, Florida Statutes and Section 65.22 of the Vero Beach Code. The following are the pertinent objectives and policies to which this amendment is consistent:

- Land Use Element, Objective 7: *The City shall facilitate urban infill and redevelopment using land development regulations and implement a long-range strategy for revitalizing its Downtown commercial core and older residential neighborhoods.*

- Land Use Element, Policy 7.3: *The City shall reinforce downtown as a mixed-use office, employment and government center as well as a unique cultural, arts, entertainment and residential enclave, with shopping and dining opportunities that support the district and its surrounding neighborhoods.*

- Traffic Circulation Element, Objective 3 (Multi-modal Transportation System): *Provisions shall be made for a safe, convenient, and efficient multi-modal transportation system.*

- Traffic Circulation Element, Policy 8.2: *The City shall ensure adequate access to the one public use airport, passenger rail station, transit transfer points, and other intermodal facilities by supporting the roadway and transit improvements identified in this element.*

- Traffic Circulation Element, Policy 10.3: *The City shall pursue and support transportation programs that will help to maintain or improve air quality and help conserve energy.*

Findings

The staff concludes that based on the analysis above, the proposed amendments are consistent with the Vero Beach Comprehensive Plan and compliant with Florida Statutes and the text amendment requirements of the City Code.

Recommendation

The staff recommends that the Planning and Zoning Board recommend to the City Council approval of the proposed text amendments.

TJM/tf
Attachments

EXHIBIT ONE
AMENDMENTS TO THE
CITY OF VERO BEACH
COMPREHENSIVE PLAN

1. Policy 1.9 of the Land Use Element under Objective 1 (Land Uses) is hereby amended as follows:

   1.9 The Mixed Use (MX) land use designation shall be applied to those areas that are suitable for urban scale development and intensities. Those areas shall be limited to lands near arterial or collector streets with adequate public facilities, access to multi-modal transportation alternatives, existing mixed use central locations, including the central core of the city and the downtown area. This land use category shall allow a mixture of residential and commercial uses, which may be located in the same building. Additional allowed uses include park and recreation uses, public facilities, institutional uses, schools, cultural and civic uses, utilities, professional office uses, and tourist-oriented facilities.

2. The Traffic Circulation Element is hereby amended by creating a new Policy 3.9 under Objective 3 (Multi-modal Transportation System) that reads as follows:

   3.9 The City shall through amendments to its Land Development Regulations authorize bus, rail, and other inter- and multi-modal facilities within areas zoned Downtown District (DTW).

3. The Traffic Circulation Element is hereby amended by creating a new Policy 3.10 under Objective 3 (Multi-modal Transportation System) that reads as follows:

   3.10 The City shall support efforts to locate an Amtrak passenger rail station in downtown Vero Beach in conjunction with resumed passenger rail service in the Florida East Coast Corridor to increase mobility and enhance opportunities for transit oriented development.

RESOLUTION NO. 2010 – ___

A RESOLUTION OF THE CITY OF VERO BEACH, FLORIDA, APPROVING THE TRANSMITTAL TO THE STATE OF FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS OF A PROPOSED CITY OF VERO BEACH COMPREHENSIVE PLAN AMENDMENT TO AMEND THE TEXT OF THE LAND USE ELEMENT, TRAFFIC CIRCULATION ELEMENT AND CAPITAL IMPROVEMENTS ELEMENT; PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, the Planning and Zoning Board, acting as the Local Planning Agency, held a public hearing on the comprehensive plan amendment request on June 17, 2010, after due public notice; and

WHEREAS, the Planning and Zoning Board made a recommendation of approval to the City Council; and

WHEREAS, the Vero Beach City Council held a transmittal public hearing on _____, after advertising pursuant to F.S. 163.3184(15)(b)(1); and

WHEREAS, the City Council announced at the transmittal public hearing the intention to hold and advertise a final public hearing at the adoption stage of the plan amendment process.

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

Section 1. Comprehensive Plan Amendment (Transmittal Phase)

The following proposed amendment, attached as Exhibit One, is approved for transmittal by the Planning and Development Director of the City of Vero Beach, Florida, to the State of Florida Department of Community Affairs for review.

Section 2. Repeal of Conflicting Provisions

All previous ordinances, resolutions, or motions of the Vero Beach City Council, which conflict with the provisions of this resolution, are hereby repealed to the extent of such conflict.

Section 3. Effective Date.

This Resolution shall be effective upon adoption.

This Resolution 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	☐ **Yes**	☐ **No**
Councilmember Thomas P. White	☐ **Yes**	☐ **No**
Councilmember Brian Heady	☐ **Yes**	☐ **No**
Councilmember Kenneth J. Daige	☐ **Yes**	☐ **No**

ATTEST:

Tammy K. Vock
City Clerk

CITY OF VERO BEACH, FLORIDA

Kevin Sawnick
Mayor

Approved as to form and legal sufficiency:

Charles P. Vitunac
City Attorney

Approved as conforming to municipal policy:

James M. Gabbard
City Manager

Approved as to technical requirements:

Timothy J. McGarry, AICP
Planning and Development Director

ORDINANCE NO. 2010 – ___

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING THE TEXT OF THE LAND USE ELEMENT, TRAFFIC CIRCULATION ELEMENT, AND CAPITAL IMPROVEMENTS ELEMENT OF THE CITY OF VERO BEACH COMPREHENSIVE PLAN BY REVISING OR CREATING POLICIES TO ENCOURAGE THE LOCATION OF MULTI-MODAL TRANSPORATION FACILITIES INCLUDING AN AMTRAK PASSENGER RAIL STATION IN DOWNTOWN VERO BEACH; REVISING THE LEVEL OF SERVICE STANDARD FOR A1A NORTH OF STATE ROUTE 60 (BEACHLAND BOULEVARD) AND CLARIFYING LANGUAGE DESCRIBING ROADWAY LEVEL OF SERVICE STANDARDS; PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, Sections 163.3184, 163.3187 and 163.3189 Florida Statutes and Chapter 9J-5 Florida Administrative Code provides authority to adopt this Ordinance amending the Comprehensive Plan; and

WHEREAS, the Planning and Zoning Board, acting as the Local Planning Agency, held a public hearing on the comprehensive plan amendments request on June 17, 2010, after due public notice; and

WHEREAS, the Planning and Zoning Board made a recommendation that the City Council adopt the comprehensive plan amendments listed below and transmit same to the Florida Department of Community Affairs; and

WHEREAS, the Vero Beach City Council held a Transmittal Public Hearing on _____, after advertising pursuant to F.S. 163.3184(15)(b)(1); and

WHEREAS, the City Council approved the transmittal of the comprehensive plan amendment to the Florida Department of Community Affairs for review; and

WHEREAS, the City Council announced at the transmittal public hearing the intention to hold and advertise a final public hearing at the adoption stage of the plan amendment; and

WHEREAS, the Florida Department of Community Affairs received the Comprehensive Plan Amendment on _____, pursuant to F.S. 163.3184(4); and

WHEREAS, the Florida Department of Community Affairs reported a finding of _____ following review of the proposed Comprehensive Plan amendment and documented the same in correspondence dated _____; and

WHEREAS, the Vero Beach City Council held a Comprehensive Plan Amendment Adoption Public Hearing on _____, after advertising pursuant to F.S. 163.3184(15)(b);

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

Section 1. Comprehensive Plan Amendment Adoption and Transmittal

The amendments to the Vero Beach Comprehensive Plan identified in Section 2 is hereby adopted, and three (3) copies are to be transmitted to the State of Florida Department of Community Affairs and one (1) copy each is to be transmitted to the Treasure Coast Regional Planning Council and Indian River County.

Section 2. Amendments to the Comprehensive Plan

The amendments include the following: 1) a revision to Policy 1.9, Land Use Element and new Policies 3.9 and 3.10, Traffic Circulation Element related to supporting Amtrak Passenger Rail Station and other multi-modal transportation facilities in

downtown Vero Beach, attached as Exhibit A; and 2) a revision to Policy 1.1, Traffic Circulation Element and Table 9.1, Level of Service Standards (LOS) for Facilities, Capital Improvements Element that revise the Level of Service for A1A north of State Road 60 (Beachland Boulevard) and clarifying language describing Level of Service standards for roadways, attached as Exhibit B.

Section 3. Authorization to Transmit Plan Amendments

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. Repeal of Conflicting Provisions

All previous ordinances, resolutions, or motions of the Vero Beach City Council, which conflict with the provisions of this ordinance, are hereby repealed to the extent of such conflict.

Section 5. Effective Date

The effective date of this ordinance and, therefore, these plan amendments shall be the date a final order is issued by the Florida Department of Community Affairs or Administration Commission finding the amendments in compliance with Section 163.3184(1)(b), Florida Statutes, whichever occurs earlier.

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	☐ **Yes**	☐ **No**
Councilmember Thomas P. White	☐ **Yes**	☐ **No**
Councilmember Brian Heady	☐ **Yes**	☐ **No**
Councilmember Kenneth J. Daige	☐ **Yes**	☐ **No**

ATTEST:

Tammy K. Vock
City Clerk

CITY OF VERO BEACH, FLORIDA

Kevin Sawnick
Mayor

Approved as to form and legal sufficiency:

Charles P. Vitunac
City Attorney

Approved as conforming to municipal policy:

James M. Gabbard
City Manager

Approved as to technical requirements:

Timothy J. McGarry, AICP
Planning and Development Director

EXHIBIT A
AMENDMENTS TO THE
CITY OF VERO BEACH
COMPREHENSIVE PLAN

1. Policy 1.9 of the Land Use Element under Objective 1 (Land Uses) is hereby amended as follows:

   1.9 The Mixed Use (MX) land use designation shall be applied to those areas that are suitable for urban scale development and intensities. Those areas shall be limited to lands near arterial or collector streets with adequate public facilities, access to multi-modal transportation alternatives, existing mixed use central locations, including the central core of the city and the downtown area. This land use category shall allow a mixture of residential and commercial uses, which may be located in the same building. Additional allowed uses include park and recreation uses, public facilities, institutional uses, schools, cultural and civic uses, utilities, professional office uses, and tourist-oriented facilities.

2. The Traffic Circulation Element is hereby amended by creating a new Policy 3.9 under Objective 3 (Multi-modal Transportation System) that reads as follows:

   3.9 The City shall through amendments to its Land Development Regulations authorize bus, rail, and other inter- and multi-modal facilities within areas zoned Downtown District (DTW).

3. The Traffic Circulation Element is hereby amended by creating a new Policy 3.10 under Objective 3 (Multi-modal Transportation System) that reads as follows:

   3.10 The City shall support efforts to locate an Amtrak passenger rail station in downtown Vero Beach in conjunction with resumed passenger rail service in the Florida East Coast Corridor to increase mobility and enhance opportunities for transit oriented development.

EXHIBIT B
AMENDMENTS TO THE
CITY OF VERO BEACH
COMPREHENSIVE PLAN

1. Policy 1.1 of the Traffic Circulation Element is hereby revised as follows:

"1.1 The operating level of service standards for roadways shall be ~~as herein established:~~ Level of Service "D" (Peak Hour/Peak Season/Peak Direction) or better on all arterial and collector roadways and Level of Service "E" (Peak Hour/Peak Season/Peak Direction) or better for all other ~~local~~ roadways, except for the following:

- 27th Avenue from South City Limits to State Route 60 –"E" plus 20%.
- A1A from State Route 60 to North City Limits – "D" plus 30%.

2. Under the "Roads" category in Table 9.1, Level of Service Standards (LOS) for Facilities, City of Vero Beach, of the Capital Improvements Element is hereby revised as follows:

"Roads

~~Principal~~ Arterials and Collectors*	Level of Service D (Peak Hour/Peak Season/Peak Direction)
All Other Roadways	Level of Service E (Peak Hour/Peak Season/Peak Direction)
*Except the following roads:	
• 27th Avenue from South City Limits to State Route 60	Level of Service E (Peak Hour/Peak Season/Peak Direction) plus 20%
• A1A from State Route 60 to North City Limits	Level of Service D (Peak Hour/Peak Season/Peak Direction) plus 30%"

CITY OF VERO BEACH, FLORIDA
JULY 20, 2010 9:30 A.M.
REGULAR CITY COUNCIL MINUTES
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA

1. CALL TO ORDER

A. Roll Call

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

B. Invocation

The invocation was given by Dr. Tim Harris of First Presbyterian Church.

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

The Clerk removed items 3-A) and 3-B) off of the agenda at the request of the applicant.

Mr. Abell made a motion that items 9A) 1-9 and 9B) 1-2 be deleted from the agenda because backup material was not provided. He also wanted to make part of the motion that the City Clerk not put anything further on City Councilmatters, Old Business or New Business unless there is backup provided. Mayor Sawnick seconded the motion.

Mayor Sawnick read through all the items that Mr. Abell requested be removed from the agenda.

Mr. Daige requested that under Councilmembers Reports, because of today's lengthy meeting, that they put their reports off until their next meeting.

Mr. Heady commented that they have asked that a couple of things be done. They have asked under this item which is agenda additions, deletions and adoption, to delete items and then further have asked to change the way Councilmembers add things to the agenda or have the City Clerk be a gatekeeper of what is placed on the agenda. It seems to him that these are two very different items and they would need to separate them. They are discussing matters under additions and deletions and not under the way that they do business.

Mayor Sawnick agreed with Mr. Heady and asked Mr. Abell to restate the motion not including the second part (not putting items on the agenda if backup material is not provided). He felt that Council should have prior notice of that before hand and put it on their agenda for the next meeting with proper backup. He withdrew his second to the motion.

Mr. Abell made a motion to remove items 9A) 1-9 and 9B) 1-2 from the agenda because there is no backup material. Also they have been warned by their Attorney not to discuss some of these items because they are potentially part of the lawsuit that Mr. Heady has brought before the Council. Mayor Sawnick seconded the motion.

Mr. Heady wanted the record to reflect that every single thing that he has put on the agenda under Old Business and New Business is being removed.

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

Mr. Daige thought that they had agreed at previous meetings that backup material should be provided with each item that is on the agenda.

Mr. Charles Vitunac, City Attorney, recalled that Council made that as a policy, but they did not direct the City Clerk not to accept items without backup material. He felt that since it is already their policy that they could direct the City Clerk not to accept items for the agenda unless backup material is provided.

Mayor Sawnick made a motion that in the future any items based on City Council policy that does not have backup material, the City Clerk is not to put the items on the agenda. Mr. Daige seconded the motion.

Mr. Heady wanted to make sure that he had this clear. What they have before them is a motion to delete anything without backup and there is no backup on this motion. He asked if that was correct. He said that they (other Councilmembers) are going to put something on without any backup and the item is not to discuss things that have no backup.

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

Mayor Sawnick made a motion to adopt the agenda as amended.

Mr. Daige asked if Councilmember's Matters could be heard at their next meeting. He made a motion that they put Councilmembers Matters off until the next meeting because he feels that this meeting is going to be quite lengthy. Mr. White seconded the motion.

Mr. Heady commented that now that they have all of his items taken off of the agenda, now what they want to do is take and remove all Councilmembers items because one Councilmember feels that the meeting might take a long time. He said they (Councilmembers) are paid to come in here and have a couple meetings a couple times a

month. He said if it takes a long time, they bought into this when they agreed to do this $900.00 a month job. It seems to him that it doesn't make a difference how long it takes. They are here to deal with people's business, which includes open public business and this is beyond absurd what they are doing. He clearly is opposed to having Councilmember's Matters taken off the Council agenda.

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

Mr. Heady made a motion that an item be added to the agenda – "Discussion on Special Call Agendas." The motion died for lack of a second.

Mr. Heady made a motion to add to the agenda discussion of the definition of unick (spelling may not be correct). The motion died for lack of a second.

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

B. Proclamations

1. Certificate of Completion to be awarded to Councilmember Brian Heady for completing the Advanced Institute for Elected Municipal Officials

Mayor Sawnick presented Councilmember Heady with a certificate for completing the Advanced Institute for Elected Municipal Officials.

Mr. Heady mentioned that what they teach at this Institute, which the Mayor has not taken, is how important it is for government to have open public discussions on the issues that face the City. He said clearly that is not the intent of the majority of this Council. They have no desire to discuss anything that is not important to them. They would rather control the public discussion. He thinks that maybe all four of the Councilmembers need to go take a good course in what principles make this Country great because they certainly are ignoring them.

2. Treasure Coast Waterway Cleanup Day – July 24, 2010

Mayor Sawnick read and presented the Proclamation.

C. Public Comment

1. Mr. Don Voss to speak on Marina Cleaning Initiative

Mr. Don Voss, of Ft. Pierce, Florida, commented that for the last nine years he has been holding Marine cleanup dives to remove debris. He received some grant money to do cleanup and needs matching money from all the different municipalities in order for the program to work. He displayed an invention that he has come up with and that is a

devise that someone would hang up in their car and the aroma would be the smell of the beach.

2. Corporal Darryl Rivers to speak about PBA Negotiations

Corporal Darryl Rivers, who is a proud Police Officer with the City of Vero Beach, was at today's Council meeting to talk about current negotiations.

Mr. Vince Champion, President of the Coastal Florida Police Benevolent Association, commented that the reason he was at their meeting was that there may be some misunderstanding as to where they are in regards to negotiations. He said that one of the biggest misunderstandings has to do with furlough days. He has heard that they have accepted or bought into furlough days. He told Council that they have only had two negotiation meetings this year and it was brought up one time. He said that there have not been any decisions made and it has not gone back to their membership. He wanted it made clear to Council that they have not bought into this and at their next negotiation meeting set for July 27th these things will be discussed. He said that the Sebastian Police Officers do take furlough days, but they also received a pay raise. What the Police Officers who work for Vero Beach are really looking for at this point is just to be left alone. They are willing to sit down and discuss the issues and the Police Officers have tried to help the City as much as they can. One way is through overtime. They have tried to cut down on overtime as much as they can. Mr. Champion mentioned that the Police Officers are also seeing other things that are occurring. They are seeing issues where there have been six Officer positions that never have been filled. Then all of a sudden they hire three new Police Officers at $110,000. He said they fill these positions and then in the next breath they are asked to take furlough days. So the Officers do not understand what is being done here. They are trying to save on overtime to do their part to help. He said they managed without the six new Police Officers. Then they find out that three new Police Officers have been hired and they may be asked to take furlough days. He said if you have any questions he would be glad to answer them. The Police Officers want to continue working for the City of Vero Beach and at this point they would like to leave things as they are and just "weather" this storm and do it together.

Mayor Sawnick expressed how important safety is and said that Council will do what they can.

Mr. Brad Mitts, Detective of the Vero Beach Police Department, commented that he has been employed with the Police Department for three years and in that short time has been involved in very stressful situations. He said that law enforcement is one of the most dangerous occupations there is. He gave some instances and showed on the screen some accidents that have occurred. He explained that being a Police Officer requires a lot of sacrifices, but they will continue to work hard for the safety of their citizens.

Mr. Phil Huddy, Corporal of the City of Vero Beach Police Department, has worked for the Department for ten years. He said that when he first started with the force he thought this would be a good organization for a successful career in law enforcement. Recently

he has been concerned for the Department and for the City of Vero Beach as a whole. It appears that there are forces at work seeking to dismantle this City and its Police Department – Department by Department, brick by brick. He has seen morale in his Department drop dramatically over the last couple of weeks. It has been difficult for him to come to work lately. There are two things that keep him going. One is his sense of duty and responsibility to the individuals who employ him, the citizens of Vero Beach and second is his responsibility to the men and women of the Police Department. This is the same sense of duty that drives the Police Officers who are present for today's meeting and all the other Officers on duty. They not only risk their lives and fight for survival every day, but they are here before Council fighting for their economical survival as well. Some of his fellow Officers are concerned that he may be committing career suicide by speaking before the Council today. In the last ten years there have been 31 Officers who have voluntarily resigned from the Vero Beach Police Department (this does not include retirees) to go to work for other agencies. These Officers left and properly reimbursed the City for monies used to train them for law enforcement. He said four of those 31 Officers have voluntarily resigned in the last nine months. He said that due to recent developments regarding pay, health benefits, and retirement that some of the Officers have to make some of the most difficult decisions of their lives and the lives of their families. Those decisions are whether to stay employed as an Officer for the City of Vero Beach or being an Officer elsewhere. Some of the Officers are even considering other career opportunities outside of law enforcement all together. At this time he asked all the Police Officers to stand. He went over the different degrees that various Police Officers hold in the Department. He then showed a stack of commendations that some of the Officers have received. In his opinion the Officers working for the City of Vero Beach Police Department are highly trained. They answered calls after the hurricanes while their family members were left alone without power. He mentioned that Mr. Daige, Mr. White and Mr. Heady have all reached out to the Police Department so they know firsthand the level of service that this Department provides to the City of Vero Beach. He only mentions these three men by name because of the fact that the same level of service that they provide to their City government is the same level of service that they provide to the residents of the City. There are not many Police Departments in the State of Florida, or the Country, where you can call the Police Chief with questions and have them answered by a member of the Police Department. Corporal Huddy then asked the families of the Police Officers, as well as the retired Police Officers to stand. He said that they have been told by some of the City Administrators that it is not personal, it is just business. He asked Council to take a look around and asked if it gets any more personal than this. The children whose parents are in law enforcement learn at a very young age the dangers that their mothers and fathers face every day. The Officers of the Vero Beach Police Department kiss their spouses and children goodbye before every shift knowing that they may not come home. These families loan their love ones to the community so that people may work and live without fear. He asked the City Council, City Manager and citizens of the City of Vero Beach to take a good look at these officers and their families and asked if they were prepared to tell them that the sacrifices that they are making every day are not worth enough for them to keep the wages, health insurance and retirement benefits that they currently have.

Mayor Sawnick told the Police Officers in attendance that the City Council appreciates everything that they do for this community.

Mr. Heady commented that clearly there has been something that has triggered such an emotional and passionate plea to the Council. He asked them to give to him with specificity exactly what it is that triggered this and what it is that he can do to cure it. He asked that it be given to him before the budget hearings. He will do what he feels is correct for the citizens, taxpayers and for the Police Department.

Corporal Rivers assured Mr. Heady that he would receive that information.

Mr. Jack Chestnut, Retired Sergeant from the Vero Beach Police Department and a School Crossing Guard for the last three years asked to speak. He understood that they were eliminating School Crossing Guards. He was told to turn in his uniform the last day of school because they would not have a job next year. He felt that School Crossing Guards were necessary for the safety of their children.

Mr. Joseph Guffanti commented that it was refreshing to note that the Council is not discriminating against the Police Department and is treating them the same way that they treat the rest of the City employees. He did not agree with the Mayor asking a Police Officer for their address when they stepped up to the podium. He brought up the red light cameras and the cost of them. He said that each camera costs $4,750 a piece which equals to $180,000 going to the firm hired to monitor the cameras which is out of Scottsdale, Arizona. He noted that this contract dates back to last year and there is a place for hidden fees that no one in the City of Vero Beach will know that the money went out of the community and into the hands of this firm located in Scottsdale, Arizona. He wanted to know how these cameras are going to handle right turns on red and when a car needs to stop in order not to receive a ticket. He felt that the contract was invalid and a new contract needed to be drawn up according to State law. He said one of the worst things is the privacy issue. This company will have the name and address of people who own cars in the State of Florida. They can do anything that they want with this information. Anyone that supports this does not really care about the City of Vero Beach.

Ms. Linda Hillman alluded to the fact that the Indian River County Clerk of the Circuit Court has a lot of public information. She said that if you vote someone in that has other issues, which is backed by County money, then the City is going to be in more trouble than they already are. She thinks what they have in the City of Vero Beach now is wonderful. The Council today are not the same Council that voted in the original electrical contract. The citizens of this community had better look at their taxes before they decide to sell the Power Plant. She said that there are four seats up for election in November and unfortunately there are not five seats up for reelection. If the people would have checked everyone's background there would be five seats up right now because she is sure that what is in the background of one City Councilmember and how much he has lied, cheated and stolen from the citizens of this City, people would be sorry that they elected him.

Mr. Rusty Bragg stated the sale of the utilities is going to be a disaster. His electric bill is the lowest that it has been in a long time. He felt that if the Power Plant is sold that his rent will go up because taxes will have to be increased. He was opposed to selling the Power Plant. He noted that there is a 14.2% unemployment rate in this County.

Ms. Barbara Lambing reported that last year she worked on a project that took her five years to develop, which was alternate forms for energy. She noted that they have a gas problem and probably will run out of gas within the next two or three years. They need to find different ways to conserve what they have and produce new ways to produce energy. She gave Council a copy of her report and hoped that it pleased them.

Mr. J. Rock Tonkel stated that in advance of the meeting scheduled for this afternoon (Special Call meeting where FP&L will be giving a presentation) he wanted to make a few comments. In an editorial written by former Mayor Warren Winchester, it states that he has come to the conclusion that the utilities should be sold. He hoped that Council would listen to what he has to say. He recalled an article where former Councilmember Lynne Larkin talked about the necessity for facts. He said that her editorial did not contain facts, but just her opinion. He still could not understand why the County was not being asked to be involved in this process. They represent a lot of ratepayers who are funding the City operations. He feels some relief coming with the sale of utilities to be purchased by FP&L. He said that anyone who looks at the facts will find that taxes are not going to quadruple for City residents. As far as FP&L is concerned, their conduct to date has been outstanding. They have placed a great emphasis on a need to work closely with the City Council and will continue to conduct themselves with a great deal of integrity. He has talked before about the fact that Grand Harbor, at least for the last ten or fifteen years, has been a model that should be studied and looked at. There are 300 residents who receive their power from FP&L. The other 1,000 residents receive their power from the City of Vero Beach. They have not had any problems with FP&L and they are not criticizing the City. He just thinks that the criticism of FP&L does not factually stand up. He hopes that the whole Council will open their minds and conduct negotiations with FP&L in good faith.

Mr. Heady mentioned to Mr. Tonkel that there are 300 residents living in his subdivision who have FP&L and 1,000 residents who have Vero Beach electric. He asked if it would be possible for him to get to him similarly sized electric bills in terms of usage (one from FP&L and one from the City of Vero Beach). He then asked if the electric utilities for Grand Harbor was all underground. He was told that the utilities are put underground for any new subdivisions in Indian River County.

Mr. Philip Katrovitz went over some unsafe things that occur with having red light cameras. He read a prepared speech (please see attached).

Mr. Glen Heran asked if at the budget hearings that start on tomorrow will there be public comments allowed. He was told yes. Mr. Heran then said that he would reserve his comments until tomorrow. He felt that if Council would allow him and Dr. Faherty to

make a presentation to them they could prove that no matter what the citizens, taxpayers, and ratepayers will be better off. He would appreciate the opportunity to come and speak. He wondered if it would be possible to make a motion to have this done at their next meeting.

Mayor Sawnick explained that they are dealing with FP&L and once they (FP&L) give them some numbers, they will be using those figures. He felt that they were on the right path.

Mr. White expressed to Mr. Heran that he has heard their presentation. They also had their accountant do a study and they received a letter back from their accountant, which he read. The letter indicates that taxes will go up if FP&L takes over their system. However, he will listen to the facts from FP&L.

Mr. Heran felt that they were moving in the right direction by letting FP&L continue to move forward.

Mr. Heady commented that the path they are on does not include the Heran/Faherty presentation. The item has been put on the agenda numerous times and continues to be removed. It is interesting that the Mayor talks about the right path, but we don't want to listen to all the information. It seems to him that if they are going to do anything as decision makers the thing that they should do is listen to all input. If there is a nut case out there that puts a nutty presentation together he thinks they (Council) should be intelligent enough to understand that the individual is a nut case and it is a nutty presentation. If on the other hand someone presents to them the facts that are well thought out, that are clear, identifiable and verifiable then they need to look at them and use it as a measure as to what their decisions are going to be. So far what they have refused to do is allow opposing points of view to be put before this Council and the community. Mr. White just read a letter from their accountant, which is good, but before he makes a decision he wants to hear from everyone. He doesn't understand why this Council refuses to do that and it is certainly "suspect."

Council took a five-minute break at 10:50 a.m.

D. Adoption of Consent Agenda

Mr. Daige pulled items 2D-4), 2D-5) and 2D-7) off of the consent agenda.

Mr. Heady verified with the Clerk that the changes he requested were made to the minutes of June 1, 2010 and June 15, 2010. She said that they were. Mr. Heady did not pull those items off of the consent agenda.

Mr. Sawnick made a motion to approve the consent agenda as amended. Mr. Daige seconded the motion.

1. Regular City Council Minutes – June 1, 2010

2. Regular City Council Minutes – June 15, 2010
3. Special Call City Council Minutes – June 24, 2010

These items were approved under the consent agenda.

4. Monthly Capital Projects Status Reports

Mr. Daige referred to the Monthly Capital Project Status Report and asked that in the future the pages be numbered. He had a question on the Obstruction Removal. He noticed when these reports come to them they have received previous approvals. He said instead of using the words "Obstruction Removal" could they just use the word "Update." He is not in favor of removing any trees or cutting any trees down because he has not seen any reports yet. Mr. Vitunac said that there was no problem with that change.

Mr. Heady referred to the $7,000,000.00 projects that involve Water and Sewer. He pointed out that they currently have the full service area that they are providing services to and 40% of those customers are likely to leave and no longer will be receiving service from Vero Beach. He knows that this $7,000,000.00 is based on all of those customers and when those customers leave the City customers will be left paying the bill. His last question had to do with the force main. He asked if the reuse water revenues support these kind of expenditures or do these expenditures just roll over.

Mr. Rob Bolton, Water & Sewer Director, reported that the reuse rate has been raised over the last couple of years. He said that once the contracts expire with the two golf courses and John's Island Water Management then the reuse rates will support all the costs of improvements, operations and debt service for the reuse system. It has been supplemented over the years. Mr. Heady said then the answer is that now it does not support itself, but it will sometime in the future.

Mr. Abell asked Mr. Bolton to explain to their new member that the items he questioned were decided at least one year ago and were necessary when DEP told them that that they were not allowed to have effluent water going out during wet discharge days.

Mr. Bolton explained that the consent orders go all the way back to 2005 and these projects were all approved about a year ago to satisfy DEP's concerns of contaminants entering into the Lagoon.

Mr. Heady stated that the new member that Mr. Abell is talking about is him and he understands the history of these things. At a recent meeting they decided to forego the increases in water and sewer rates recommended by a consultant that they spent a ton of money for. His concern is that sometime in the future that the County and Indian River Shores customers are going to leave and keeping the rates down is a popular thing to do, but when those customers leave the City residents are going to end up with these projects (millions of dollars worth of projects) and the long term debt is going to be on the backs of just the City ratepayers.

Mayor Sawnick made a motion to accept the Monthly Capital Projects Status Report. Mr. White seconded the motion.

Mr. Daige asked the City Manager to address some of the points that Mr. Heady was just speaking about. He said especially on the rate decreases that they just implemented.

Mr. Gabbard stated that unless there is something that he is not familiar with, they have received no notification from anyone exiting the agreements that they have with the areas that Mr. Heady described. He knows that there has been an analysis done by the County and based on that analysis there may be some decisions made. But the contracts extend to 2017. There is no definitive answer that these entities are exiting their agreements.

The motion passed unanimously.

5. Replacement of Television Equipment

Mr. Daige pulled this item off of the consent agenda and asked if the live video streaming of the Council meetings has been included in the replacement project.

Mrs. Tammy Vock, City Clerk, answered yes.

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

Mr. White asked where the funding will come from. Mrs. Vock said that it will come out of the one cent sales tax.

Mr. Heady asked if they could display a time banner at the end of their tapings.

Mr. Shane Dewitt, Television Consultant, said that they would be able to do that.

Mr. Heady asked about the existing equipment.

Mrs. Vock said that they will be asking other Departments if they have a use for the old security cameras.

The motion passed 5-0.

6. Commercial Lease between the City of Vero Beach and Ferrellgas, LP

This item was approved under the consent agenda.

7. Commercial/Office Lease agreement between the City of Vero Beach and Legacy Flight Training, LLC

Mr. Daige referred to page 5 and page 10 of the lease agreement. He said on page 7 it talks about alterations and it talks about how the tenant may be allowed to make

alternations, changes, additions or improvements to the interior of the lease premises. He said that these lease premises are located at their Airport terminal. What he would like to do with the lease agreement is include information where permits are needed for alternations as well, as depicted on page 10.

Mr. Eric Menger, Airport Director, said that this will be done.

Mr. Daige made a motion to approve 2D-7) with these changes as he just mentioned. Mayor Sawnick seconded the motion and it passed unanimously.

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.

This item was removed from the agenda at the request of the applicant.

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.

This item was removed from the agenda at the request of the applicant.

C) 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 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, reported that this Ordinance will enable the City Council to authorize ad valorem tax exemptions for improvements to historic properties. The ad valorem tax exemption (City property taxes only) would be for 100 percent of the assessed value of all improvements to eligible historic properties for a period of ten years. The Historic Preservation Commission and the Planning and Zoning Board unanimously recommended approval of the Ordinance by the City Council. 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 only properties designated as a historic site (placed on the Vero Beach Register of Historic Places) would be eligible for the tax exemption. He then went over the process for seeking a tax exemption. He said that an application must be filed. Subsequent to the approval of the development permit and issuance of a "certificate of appropriateness" the applicant may then file a "pre-construction application," 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 and advertised. At this hearing, the City Council may grant or deny the application. He was asked at their last meeting to look into having a threshold for the improvements to the property. He looked at St. Augustine who have a threshold of $20,000 placed on their properties. He felt that the way to go was just to impose a $50.00 application fee which would cover the administrative costs. He passed out a copy of the amendment, which would cover the preconstruction application process.

Mr. Daige attended the Planning and Zoning Board meeting when this item was discussed. He wondered if there would be some adverse effect on some of the neighborhoods if the City is not a certified government.

Mr. McGarry explained that the Planning and Zoning Board would like the City to have a certified local government designation and they are working on that.

Mr. Daige asked Mr. McGarry to keep the City Manager posted on this and he (Mr. Daige) will keep Council posted. He would like them to move forward on this as soon as possible.

Mr. Heady asked how many properties will this have an impact on.

Mr. McGarry explained that at the present time there are only three properties.

Mr. Heady commented on how much work they are doing for only three properties. He suggested enacting an Ordinance that would have impact on any properties that want to come in and do restoration projects. It seems to him that it would be much more beneficial to include everyone.

Mr. McGarry explained that they are authorized by State law on what properties can and cannot be included.

Mayor Sawnick opened the public hearing at 11:25 a.m.

Mrs. Vicki Gould, President of the Osceola Neighborhood Association, stated that she was in favor of this Ordinance and hoped that Council would support it.

Mayor Sawnick closed the public hearing at 11:26 a.m., with no one else wishing to be heard.

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

4. RESOLUTIONS FOR ADOPTION WITHOUT PUBLIC HEARING

None

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 58 "Personnel and Retirement," Article II, Division 4 of the Code of Ordinances of the City of Vero Beach to provide for Compliance with State and Federal Laws and Regulations and Section 401(a) of the Internal Revenue Code; providing for repeal of all Ordinances in conflict herewith; providing for severability; providing for codification and providing an effective date.

Mayor Sawnick read the Ordinance by title only.

Sergeant David Pusher, Chairman of the Police Pension Board, told Council that this was just a housekeeping measure. He explained that the Internal Revenue Service (IRS) has changed some language in Florida Statute 185 on the way that they receive money and this Ordinance was necessary in order for the Board to implement these changes in their plan.

Mr. White made a motion to approve the Ordinance on first reading and set the public hearing for August 17, 2010. Mayor Sawnick seconded the motion.

Mr. Heady asked if there were any cost analysis for this.

Sergeant Pusher explained that there would not be any additional costs, but their actuary would need to present those figures.

Mr. Heady noted that there were no signatures from staff on the last page of the Ordinance.

Mr. Vitunac explained that he could not sign off on this as being legally sufficient. There would need to be the Pension Board's Attorney or Actuary present to answer any technical questions. He said that it was not possible as the City Attorney to analyze if it is correct or not.

Sergeant Puscher would make sure that the Board's Attorney was present for the meeting when this Ordinance will be heard.

The Clerk polled the Council on the motion and it passed 4-1 with Mr. Daige voting yes, Mr. Heady no because he wants some assurance that the Ordinance meets all technical requirements, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

B) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach, Part III Land Development Regulations, Title VII Land Development, by adding Chapter 78 to be entitled "Dog-Friendly Dining", establishing the City of Vero Beach "Dog-Friendly" Dining Program: providing a local procedure and regulations pursuant to Florida Statutes Section 509.233 to permit Exemption from certain provisions of the United States Food and Drug Administration Food Code as adopted by the Florida Division of Hotels and Restaurants in order to allow patrons' dogs within certain designated outdoor portions of Public Food Service Establishments; providing for enforcement; providing for conflict and severability; providing for codification; providing for an effective date.

Mayor Sawnick read the Ordinance by title only.

Mr. Wayne Coment, Assistant City Attorney, explained that this Ordinance would give Mr. McGarry the power to enforce regulations for the City regarding dog-friendly dining. If a restaurant business does not want to participate they do not have to. This is strictly on a volunteer basis.

Mr. White commented that he would like Shelly Ferger, from Dogs for Life, to come and talk to the Council about dogs being allowed in retail stores. He has noticed that a lot of people are taking their dogs to the grocery store, etc., and the laws are very questionable and they should educate themselves on how this works. He said animals going into stores may be a bigger problem in the future. He agreed with allowing dogs at Greenhouse Café (restaurant requesting this Ordinance). He referred to page 4 of 15 where it discussed outdoor areas and stated that a portion means an area not enclosed in a building which is intended or used as an accessory area to a public food service establishment which provides food and/or drink to patrons for consumption in such area. He wondered if there were going to be any problems with the way that this paragraph is written.

Mr. Coment explained that this is mandated by the State (reason that it is included in the Ordinance). He said that if a restaurant wants to participate then they have to meet this requirement. He said that he could look at maybe tweaking the definition somewhat. But the regulations are pretty much set out by the Statute. He will meet with Mr. McGarry to look at it to see if there are any changes that the Greenhouse Café would have to meet in order for this to work.

Mayor Sawnick made a motion to approve the Ordinance on first reading and set the public hearing for August 17, 2010. Mr. White seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes and Mayor Sawnick yes.

C) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach, Chapter 54 Parks and Recreation, Section 54-2 definitions, by adding definitions for "Bloodbaiting" and "Chumming" and amending certain other definitions for clarification and consistency; amending Section 54-49 Water Activity and Surfacing, by adding Subsection 54-49(e) making unlawful Bloodbaiting and Chumming from any Park or Beach within the City and in the Waters of the Atlantic Ocean within one-half mile of the mean high-water line within the City limits and amending certain other provisions for Clarification and Consistency; providing for conflict and severability; providing for codification; providing for an effective date.

Mayor Sawnick read the Ordinance by title only.

Mr. Coment explained that this is another Ordinance that Council requested. He said rather than trying to draft something that conflicts with State law, because the State has preempted salt water fishing and they cannot regulate that without a special bill or having Fish and Wildlife adopt a rule for their area. They handled this by addressing it through the bloodbaiting chumming. They very broadly defined this type of conduct and this would apply throughout the City on their beaches and out into the water a half a mile. They went the furthest distance that they found that other cities used. If Council wanted to decrease the distance then they could certainly do that.

Mayor Sawnick felt that both sides agree that this should not be happening on their beaches.

Mr. Coment expressed that anyone wanting to fish with a regular hook and bait still will be able to do that. They did tweak some of the other water activities for Parks. One important thing is they expanded the definition of "beach" to make it match more closely with what they have with the Turtle Ordinance.

Mr. White referred back to what Mr. Coment just said about the State law and salt water fishing. He asked if the City of Vero Beach could outlaw or forbid shark fishing within the City limits.

Mr. Coment explained that they can only enforce it within land that is owned by the City. They can regulate in that area the bloodbaiting and chumming, but they cannot regulate the salt water fishing because it is preempted to the State.

Mr. White mentioned that within the City of Vero Beach their beaches are very populated. He felt that the City needed to be a little more restrictive because of their concerns for the public.

Mr. White then asked where are the people in the shark fishing tournament that starts in another week going to fish from.

Mr. Rob Slezak, Recreation Director, explained that there are rules that do not allow this type of fishing within the guarded areas and public beaches. The tournament would have to be held outside the public bathing areas.

Mr. Coment added that the tournament will be held either on private property or on State owned property.

Mr. Heady noted that Mr. Slezak just stated that there is no fishing of any description allowed in protective beaches. He thought that what they could do under current law is direct Mr. Falls to put up signs at every City beach that say "No Shark Fishing." If there is a sign staring someone in the face that says "No Shark Fishing" they will go somewhere else. This could be done by a simple direction from this Council.

Mr. Coment said that could be done. He said that the way this Ordinance is written it says that basically on any marked designated beach everything is illegal unless there is a sign that states it is allowed.

Mr. Heady suggested just making his recommendation about putting up the signs and they could be up by Friday.

Mr. Daige felt that the City Attorney's office did a very good job preparing this Ordinance. He felt that they needed to move forward on the Ordinance and hold the public hearing at their next meeting. Also, when they make the motion they should include in the motion that the beaches be marked with these signs as suggested by Mr. Heady.

Mayor Sawnick made a motion to approve the Ordinance on first reading and set the public hearing for August 17, 2010. Mr. White seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

Mr. White made a motion that they authorize Mr. Falls to make some signs for their public Parks/beaches saying "No Shark Fishing." Mayor Sawnick seconded the motion.

Mr. Abell brought up the fact that there are already signs that tell you what you cannot do at the beach.

Mr. Daige suggested just leaving this up to the City Attorney and City Manager. If they are allowed to include the word "shark" on the sign that would be great. If they are not allowed by law then that is understood, but he just wanted to get this done.

Mr. Coment stated that Chief Dappen has just pointed out that when someone is out on the beach fishing, his officers will not have any idea what they are fishing for.

Mr. Heady reiterated that there is no fishing allowed on the beaches now. This just sends a message for shark fishermen to go somewhere else.

The motion passed unanimously.

D) An Ordinance of the City of Vero Beach, Florida, amending the Code of the City of Vero Beach, Chapter 74 Traffic and Vehicles, Article V Intersection Safety, in order to comply with the "Mark Wandall Traffic Safety Act," Laws of Florida, Chapter 2010-80; providing for implementation of the "Mark Wandall Traffic Safety Program" and the use of Traffic Infraction Detectors in the City; authorizing Traffic Infraction Enforcement Officers to issue notices and citations pursuant to the program; providing for conflict and severability; providing for codification; and providing for an effective date.

Mayor Sawnick read the Ordinance by title only.

Mr. Coment reported that this Ordinance is prompted by the newly enacted State Legislation where they have preempted the City's current Ordinance and provide regulations and procedures for implementation and operation of a red light camera enforcement program. Most of the City's existing Ordinance is deleted and replaced with what is mainly authorizing language to implement the program provided under the State Legislation. Many of the provisions of the State adopted program are similar to that which was previously adopted by the Council, with the main difference now being appeal of violations will go to the County Court rather than to the City's Code Enforcement Board. The new Legislation also provides for a two step process where a "notice of violation" is first sent to a violator and then only if the penalty is not paid or an exception shown, a "citation" is issued and sent to the violator. The State Legislation also requires warning signs and a public awareness campaign. As far as the contract goes, they are reviewing it and hope to have it back to Council on the same day as the public hearing is heard on this Ordinance.

Mayor Sawnick explained that they are just clarifying the Ordinance that they passed months ago to coincide with the State law.

Mr. White asked if they will have to renegotiate the contract.

Mr. Coment stated that they are in the process of doing that right now.

Mr. White wondered if there will be enough money left over for the City once the State and ATS are paid their fair share.

Mr. Coment explained that right now as it stands, the City would retain $75.00 from every $158.00 ticket. The City has to pay for the services to ATS to install the cameras, issue the notices, etc.

Mr. White then asked with all these changes from the State, are they still obligated to go forward with this.

Mr. Coment felt that since ATS has not spent any money they probably would let the City out of the contract.

Mr. Daige wanted to make it clear that after hearing what Mr. Coment just said that they are not obligated to go with this contract.

Mr. Coment explained that the laws have changed such that they have to change the terms of the contract and there was a provision in the contract saying that they could terminate the contract if the laws changed.

Mr. Daige stated that he was not in favor of moving this forward and he was not in favor of the red light cameras. He feels that the cameras will cause problems down the road. He wanted to take a look at a new contract first before they move anything forward. He has heard from the public that they are not pleased that Council is going to move forward with the cameras. He wanted to know if they could get rid of the whole contract or are they still on the "hook" somehow.

Mr. Vitunac suggested moving this Ordinance to a public hearing. He said all this Ordinance is doing is giving them authority to operate under the State law. This would give them the basis to go ahead and negotiate the contract, which they will bring to Council. If Council does not vote for the contract then the program will be killed. He felt that they could get out of the present contract and not do the red light camera program if that's what they want to do. What this Ordinance does is keeps the process moving forward so they have a choice later when they bring the contract back for Council to consider.

Mr. Heady said they have a choice right now and the choice right now is not to do this. They have an out where it is not going to cost the City anything if they just do not move this forward at all and do not authorize the City Attorney to negotiate a new contract. The terms of the contract as it exists right now does not meet State requirements. If they move in favor of this, what they are going to do is add to the burden of the Police Officers. They heard some of the Police Officers plead this morning that they are looking to cut their pay, cut their pension and their benefits and this would add to the burden of

Police Officers because every single one of these photographs taken is going to have to be reviewed by a Police Officer. He said lets not add to their burden and not add to the taxpayer's burden. He agreed with Mr. Daige that this should not be moved forward and they should just let it die.

Mr. Daige commented that within the City of Vero Beach there are a lot of elderly drivers who try to drive as safe as they can. There are enough economic concerns being placed on their citizens and he did not want to place any more burdens on them. He felt right now they could put a stop to this and revisit it at another time. He has heard all about safety and does not need to hear about it anymore. He said that this is not a good move for this community.

Mayor Sawnick explained that by passing this Ordinance it just clarifies the law and does not bind them. He would like to see them pass this Ordinance.

Mr. Heady agreed with Mr. Daige's comments. He said that they have had this conversation before and were told by staff that they would not move forward on this until they came back to Council. However, staff has proceeded with this Ordinance and he felt that they were given fairly clear direction that they were not to do anything until they came back to Council first. It is upsetting that when you give direction to staff that they apparently pay no attention. He made a motion not to approve this Ordinance. Mr. Daige seconded the motion.

Mr. Don Dappen, Police Chief, wanted to let Council aware that…

Mr. Daige called Point of Order. He thought that legally when they were under a motion that it closes out any discussion.

Mr. Vitunac said that is the case for the public, but not for staff.

Chief Dappen continued by saying that the State has passed a law making it legal to do this. He wanted to set their minds at ease if they thought that this was going to be a burden on the taxpayers. He explained that the contract that ATS has proposed has a forgiveness clause in it. That means that if the City for some reason does not make enough money and there is not enough money to pay ATS's bill, the City will not have to dig into their own coffers to pay ATS. He said that for the most part there is no cost to the City of Vero Beach. He said one of his Lieutenants will be reviewing the cameras on a daily basis. Also, no citation is a citation, and no infraction is an infraction, unless the Lieutenant deems it to be.

Mr. Heady stated that if one of his Lieutenants was going to be involved then that would mean that the Police Chief is going to be involved because he oversees his Lieutenant. He said that if it is a code violation then that means that a Code Enforcement officer would also have to be involved. Also, when talking about the forgiveness clause, staff's time is not going to be deducted first to see whether or not there is enough money to pay ATS. In this economic climate they should not add to the burden of the taxpayers. If it is

an issue in regards to safety and there are people that consistently run traffic lights this will do nothing to stop them from continuing on that path as long as they want to pay the fine. However, if there were Officers patrolling these intersections they could issue someone a traffic infraction rather than a Code violation. Chief Dappen informed Mr. Heady that this was a traffic infraction. However, someone's license cannot be impacted by this as it could be if there was a Police Officer involved.

Chief Dappen did not know what his Officers were going to say when they got up before Council to speak to them this morning, but he said they made their argument clear to Council about the dangers of their job. There is a problem in this community with people running red lights and this is the best he can come up with to combat this problem.

Mr. Heady recalled that he read an article in the Press Journal where the City of Vero Beach had stepped up its night time enforcement of seat belt violators. He had a hard time believing that they had enough Police Officers citing people who were not wearing a seat belt, but they don't have enough Officers to stop someone from running through a traffic light.

Chief Dappen knew that Mr. Heady would not want to visit an accident where someone has not been wearing their seat belt and has been thrown through the windshield. He told Mr. Heady that he failed to see the humor in this and finds it offensive. He said that it is a very important law to enforce that everyone should be wearing their seatbelt. The reasons his Officers were stepping this up is because twice a year the State of Florida has seatbelt waves to increase the number of people wearing their seatbelts. It has been very successful and has resulted in fewer deaths in the State of Florida. He said that it is extremely important that his Officers enforce that law. That is what they are paid to do. He did not want to put a strain on anyone's budget or scare anyone. However, sometimes it takes this kind of action to get people to pay more attention to what they are doing. When they see that big sign that states this intersection is protected by cameras, they might think twice before running a red light.

Mr. Heady stated that he did not think anyone on this Council has indicated that any part of this was humorous, so he did not know who Chief Dappen was referring to. As far as him being offensive, Chief Dappen was not the only one that finds him offensive. However, there are probably a lot of taxpayers who find the burden on them pretty offensive. He said if they have problems at red lights then there are some ways to solve the problems. With the existing equipment they can change the red lights so that all four directions are red for a period of a second or two. Sending a quarter of a million dollars out of their community to a firm in Arizona is not one of the things that he thinks that they should be entertaining.

Mr. White commented that he has always been a supporter of red lights. His question was could the State put the cameras up and do their own traffic enforcement.

Chief Dappen answered yes and explained that if they did that then they would have to pay the City a fee. He anticipates that will happen in the future.

Mr. Daige asked in the event that this goes through, what is the minimum time frame that can be inserted into the contract.

Mr. Coment explained that they would be proposing an amendment to the contract that it be for five years and one of those five years has already passed.

Mr. Daige asked if they could amend the contract to have it approved on a year to year basis.

Mr. Coment did not know.

Mr. Daige would like to see them have a year to year contract so they would not be locked into any fees. This will give the City the option to pull out if the program is not working. He does not like doing business with out of State companies. However, he understands that there are not very many companies that do this kind of work. He said in moving forward he would recommend going year to year.

Mr. White understood that they are just moving this Ordinance forward to a public hearing to be consistent with Florida Statutes.

Mr. Daige reiterated that by going year to year they are not locked into any fees. He is concerned with this community and the pressures that they are under economically. His other suggestion is that if they are going to move this forward, then make the yellow lights stay on longer at the intersection.

Mayor Sawnick called for the vote on the motion. The motion failed 3-2 with Mr. White, Mr. Abell and Mayor Sawnick voting no.

Mayor Sawnick made a motion to approve this Ordinance on first reading and set the public hearing for August 17, 2010. Mr. Abell seconded the motion.

Mr. Heady asked that there be an amendment to the Ordinance not to move this forward until a contract is approved.

Mr. Daige wanted to give staff direction to look into a year to year contract so that they are not locked into a dollar figure and if they need to pull out then they can.

Chief Dappen will need to talk to the company to see if they are willing to put that into the contract.

Mr. Vitunac stated that at the public hearing they will bring back this Ordinance as well as the draft contract.

Mr. Daige asked if they could incorporate those suggestions that have been made today.

Mr. Vitunac explained that they could put them in the contract, but the company may not accept it.

Mr. Coment reiterated that the contract that they have now is for over the life of the term, which means there are four years left. If they do not bring in enough revenue to cover all their expenses then at the end of that term nothing would be coming out of the City coffers. They have a contract but it is subject to termination.

Mr. Daige suggested scrapping the contract that they have now and moving forward with a new contract.

The Clerk polled the Council 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.

Mr. Daige made a motion to scrap the original contract and come up with a new one. Mr. White seconded the motion and it passed 4-1 with Mr. Abell voting no.

Mr. Abell read the last sentence of the memo prepared by Mr. Coment that said "Please let us know of any questions you may have on this subject or if there are any other materials you require or would like to have for consideration." He said that if there is a Councilmember short in doing this then they are being delinquent in their duties.

Mr. Daige commented that sometimes discussion comes up and needs to be put out so the public can hear what is going on.

Mr. Heady said that the Vice Mayor has made some comments about some people not acting in a responsible way with respect to Councilmembers not doing their homework and not asking these questions first. He thinks that really what it amounts to is that there is a difference of opinion on how they should do public business. He said that Mr. Abell believes that all of these things should be done, taken care of and answered before the public meeting is ever held. He thinks that public business needs to be done in the public eye and these questions need to be asked and answered at a public meeting.

Mr. Abell told Mr. Heady that he did not say anything like that. However, what he is saying is you need to come better prepared for answers that he wants to put out instead of being educated here.

Mr. Heady asked Mr. Abell what questions did Mr. Daige ask that led him to believe that he wasn't educated on this subject.

Mayor Sawnick stated that at this time they will be taking a five-minute break.

Mr. Heady told Mayor Sawnick that when he allows one member to have a discussion, he thinks it is important…. At this time Council, took a short break.

E) A Resolution of the City of Vero Beach, Florida, approving the Transmittal to the State of Florida Department of Community Affairs of a proposed City of Vero Beach Comprehensive Plan Amendment to amend the Text of the Land Use Element; Traffic Circulation Element and Capital Improvements Element; providing for an effective date.

Mayor Sawnick read this Resolution and the following Ordinance together (5-F) by title only.

Mayor Sawnick made a motion to approve the Resolution on first reading and set the public hearing for August 17, 2010. Mr. Daige seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

F) An Ordinance of the City of Vero Beach, Florida, amending the Text of the Land Use Element, Traffic Circulation Element, and Capital Improvements Element of the City of Vero Beach Comprehensive Plan by revising or creating policies to encourage the location of multi-modal transportation facilities including an Amtrak Passenger Rail Station in Downtown Vero Beach; revising the level of service standard for A1A North of State Route 60 (Beachland Boulevard) and clarifying language describing roadway level of service standards; providing for an effective date.

Mr. McGarry explained that when they do comprehensive plan amendments they also have to do a transmittal procedure. There are two areas in the Code they are looking to amend. The first is the Amtrak station and the second has to do with the level of service on A-1-A north of Beachland Boulevard.

Mr. Heady had some concerns that they were combining two different things into one vote.

Mr. Vitunac explained that they were not adopting these items, they are transmitting them to the State.

Mr. McGarry explained that if it is Council's wish they can separate the two. He only did them this way as a matter of convenience to save some time.

Mr. Heady preferred that very different issues, such as these, come before the Council for an individual vote.

Mr. White referred to page six of the Ordinance where it states "Therefore a revision to the existing LOS standard requires the use of the maximum service volume for LOS "D" plus a percentage of this maximum service volume. For example, the LOS standard could be set at "D" plus 20% (924 + 185 + 1,109 vehicles per peak hour direction) or "D" plus 30% (924+277+1201 vehicles per peak hour direction)." He asked where did they receive this information.

Mr. McGarry explained that the County keeps an update on this. He said that there is no level of service "F."

Mr. Daige asked if there were any plans in the future to widen 20th Avenue. Mr. McGarry did not think so.

Mr. Heady asked if there were any costs to the taxpayers for moving this forward.

Mr. McGarry said no costs other than administrative costs.

Mayor Sawnick made a motion to approve this Ordinance on first reading and set the public hearing for August 17, 2010. Mr. Abell seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Heady yes, Mr. White yes, Mr. Abell yes, and Mayor Sawnick yes.

6. CITY CLERK'S MATTERS

None

7. CITY MANAGER'S MATTERS

A) Award of Bid No. 240-10/JV – Crestlawn Cemetery Columbarium

Mr. Monte Falls, Public Work's Director, reported that this contract is for providing and installing eight columbaria on the parcel of land located in the northwest corner of Crestlawn Cemetery. This project will also include installing irrigation and landscaping in this area and the work will be performed by City crews. They have been working on moving forward with this project for the last couple of years.

Mr. Abell made a motion to approve the Award of Bid No. 240-10/JV, for a Crestlawn Cemetery Columbarium, to Brian Couture's Cemetery Lettering in the amount of $178,000.00. Mr. Daige seconded the motion.

Mr. Heady noted that there was a $60,000 difference in the bids. He asked why the low bidder did not meet the criteria.

Mr. Falls explained that the low bidder did not meet the specifications and, therefore, is considered to be non-responsive.

Mr. Heady asked if the money comes from the cemetery fund. Mr. Falls answered yes.

The motion passed unanimously.

B) Indian River Drive East Sidewalk Construction

Mr. Falls reported that this sidewalk project was requested by the local residents in 2007 and a petition was presented in December 2008. The petition indicated that a majority of the residents were in favor of the project. Subsequent to the receipt of the petition they began design of the proposed sidewalk improvements. At Fiddlewood Road and Greytwig Road, there are existing stormwater outfall ditches, which were in conflict with the proposed sidewalk location. As part of their ongoing outfall retrofit program they prepared plans for the construction of nutrient separator baffle boxes to provide stormwater treatment for the outfall discharge into the Indian River Lagoon and to allow the closure of the outfall ditches to eliminate the conflict with the sidewalk. Based on the petition and the need for safer pedestrian access in this area he would recommend the sidewalk project and stormwater improvements move forward for construction.

Mayor Sawnick made a motion to approve the sidewalk construction and the associated stormwater improvements for Indian River Drive East. Mr. Abell seconded the motion.

Mayor Sawnick commented that this area is right by a school so it is important that this work be completed.

Mr. Daige wondered, because this was near the waterway, if there was some grant money available. Mr. Falls told him that there is not any grant money available for this project.

Mr. White commented that the one cent sales tax for capital improvements can only be used for capital improvements.

Mr. Heady noted that the signatures on the petition date back two and a half years. He asked if there was any knowledge of how many people still live at these locations. Mr. Falls did not have that information.

The motion passed unanimously.

C) Community Development Block Grant (CDBG) – Jacoby and Piece of Pie Park Playgrounds

Mr. Falls recommended that Council move forward with this contract for playground equipment at Jacoby and Piece of Pie Park and the Change Order No. 1 for Park lighting.

Mr. Daige made a motion that Council approve the contract with Lanier Plans, Inc., dba Korkat, Inc., for playground equipment at Jacoby and Piece of Pie Park and Change Order No. 1 for Park lighting. Mr. Abell seconded the motion.

Mr. Daige thanked the City Manager, Mr. Falls, and their grant writing firm for being able to obtain this grant. He said that it helps having a company who can come in to handle getting these grants.

Mr. Heady asked if the grant writing company is paid out of the proceeds received from the grant. Mr. Falls answered yes.

The motion passed unanimously.

D) Unit 3 Forced Outage

Mr. Jim Stevens, Power Resources Director, reported that in May the Florida Municipal Power Pool (FMPP) scheduled Unit 3 to be on line at 1:00 p.m. During start up of Unit 3 operators noticed a high vibration on bearing T2, the unit tripped off line due to this high vibration. Operations attempted to put Unit 3 back on line but could not due to high turbine vibration issues. Unit 3 was placed in a forced outage and is unavailable for use in the FMPP. He notified the FMPP and Orlando Utilities Commission (OUC) of this forced outage and called General Electric Services (GE) to assist in trouble shooting the vibration problem. Several recommendations were made by GE with discussions focusing on steam conditions. Staff supports that the steam conditions to Unit 3 have not changed. The first possible mechanical item identified was a possible bearing failure issue, the second item was a turbine/generator shift that created misalignment, the third was a mechanical failure of the turbine blades and the fourth was a possible generator stator or rotor winding failure. In order to return Unit 3 to service GE field representatives and Power Plant staff removed two turbine bearings, and sent them to the GE shop for analysis and repair and installed the bearings back onto Unit 3 turbine. When the bearing work was complete Unit 3 was tested with the same high vibration noted. The next phase to return Unit 3 to operational status is to have GE perform a load alignment of Unit 3.

Mr. White asked do they know what is causing the vibration. Mr. Stevens answered no. Mr. White knew that they were losing money by having Unit 3 shut down.

Mayor Sawnick made a motion that Council authorize payment to GE for the cost to repair the turbine bearings for Unit 3. Mr. Abell seconded the motion and it passed unanimously.

8. CITY ATTORNEY'S MATTERS

None

9. CITY COUNCIL MATTERS

A. Old Business

1. **A different consideration for a date for presentation by Dr. Faherty and Glenn Heran – Requested by Councilmember Heady**
2. **Still waiting for written answers from City Manager – Requested by Councilmember Heady**
3. **Missing report from City Manager requested by Councilmember Daige – Requested by Councilmember Heady**
4. **November Elections – Requested by Councilmember Heady**

5. Debate on Sale of Electric – Requested by Councilmember Heady
6. 8/12/08 to be played and discussion to follow – Requested by Councilmember Heady
7. Update on a Federal Lawsuit – Requested by Councilmember Heady
8. Honest Services Fraud – Requested by Councilmember Heady
9. Golf Course – Requested by Councilmember Heady

A motion was made earlier in the meeting to pull these items off of the agenda. The motion passed 4-1 with Mr. Heady voting no.

B. New Business

1. Water and Sewer Issues – Requested by Councilmember Heady
2. City Parking – Requested by Councilmember Heady

A motion was made earlier in the meeting to pull these items off of the agenda. The motion passed 4-1 with Mr. Heady voting no.

3. Tourist Tax in relation to Beach Renourishment – Requested by Councilmember Daige

Mr. Vitunac referred to his memo, which outlines the tourist tax (please see attached memo).

Mr. White commented that he has been a member of Beach and Shore's Committee since 1990 and would be happy to answer any questions. He said that right now they are done with Sector 3 and will start looking at Sector 5, which is an engineered beach and could be Federally funded.

Mr. Daige added that the City has nothing to do with spending tax dollars for beach renourishment.

Mr. Gabbard announced that the electric portion of the budget will be heard at 1:30 p.m. tomorrow afternoon (different from the original time schedule).

Mr. White asked that on the next agenda that Council considers "G.W. Stikelether Jr. Drive" being added to 22nd Street between 14th and 15th Avenues.

10. INDIVIDUAL COUNCILMEMBERS' MATTERS

Individual Council reports were not heard at today's meeting.

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. FP&L 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**

11. ADJOURNMENT

Mayor Sawnick made a motion to adjourn today's meeting at 1:06 p.m. Mr. White seconded the motion and it passed unanimously.

/tv

COUNCIL AGENDA REPORT
MEETING OF JULY 20, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: July 1, 2010

SUBJECT: AWARD OF BID NO. 240-10/JV – CRESTLAWN CEMETERY COLUMBARIUM

Attached is a memorandum from Nanette Haynes, dated June 23, 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. 240-10/JV, for a Crestlawn Cemetery Columbarium, to Brian Couture's Cemetery Lettering, in the amount of $178,000.00. Funding will be from Account No. 603.3307.539.609002.

James M. Gabbard

:jav
Attachments

xc: Nanette Haynes
Monte Falls
Stephen Maillet

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DEPARTMENTAL CORRESPONDENCE

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

VIA: Monte K. Falls, PE, Director
DEPT: Public Works MKFalls 6/25

FROM: Nanette Haynes, Grounds Maintenance Manager NHaynes
DEPT: Public Works

DATE: June 23, 2010

RE: Crestlawn Cemetery Columbarium
Recommendation of Award
City Of Vero Beach Project No. 2009-09
Bid No. 240-10/JV

Recommendation:

- Place this item on the agenda for the July 20, 2010 meeting of the City Council;
- Award the contract to Brian Couture's Cemetery Lettering of Groveland, Florida in the amount of $178,000.00.

Funding:

Funding for this project will be from account number 603.3307.539.609002.

Background:

This contract is for providing and installing eight (8) columbaria on the parcel of land located in the northwest corner of Crestlawn Cemetery (see attached map). This project also includes installing irrigation and landscaping in this area, and that work will be performed by City crews.

On June 10, 2010 bids were received from two contractors. One of the bids did not meet the City of Vero Beach specifications and, therefore, is considered to be non-responsive. The remaining bid was received from Brian Couture's Cemetery Lettering in the amount of $178,000.00. A copy of the bid tabulation and bid summary are attached.

In the 2008/2009 budget $260,000 was approved for this project with the following breakdown:

$180,000	for furnishing and installing eight columbaria (this contract)
$35,000	for concrete slab foundation (City crews)
$10,000	for landscaping (City crews)
$10,000	for irrigation (City crews)
$20,000	for architectural, engineering and survey (City crews and consulting structural engineer)

Mr. Couture has installed several columbaria throughout the state and has done engraving work at Crestlawn Cemetery for local funeral homes.

Attachments

Cc: Steve Maillet, Finance Director
John O'Brien, Purchasing Manager

NH:MKF/ntn

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DEPARTMENTAL CORRESPONDENCE

TO: Nanette Haynes, Grounds Maintenance Manager

FROM: Jay Van Arsdall, Senior Buyer

DATE: June 11, 2010

SUBJECT: Bid No. 240-10/JV Crestlawn Cemetery Columbarium

In order to secure firm pricing for the Public Works Department, the Division of Purchasing advertised and solicited bids on May 27, 2010 for Bid No. 240-10/JV Crestlawn Cemetery Columbarium. Four hundred and ten (410) vendors were notified of this bid, twelve (12) vendors actually downloaded the bid, and one (1) responsive bid was received.

On Thursday, June 10, 2010, at 3:00 p.m., the Division of Purchasing opened bids on the above subject. Please find a bid tabulation of the bids enclosed for your review and recommendation. Please provide the City Manager with a memorandum stating your recommendation and requesting the item be placed on the City Council Agenda. Provide Purchasing with a copy so that we may process the proper paperwork to finalize this project.

Should you have any questions regarding this matter, please do not hesitate to contact me at extension 5473.

Cc: File

JUN 14 2010

RECEIVED
JUN 16 2010

Bid Tabulation - Bid No. 240-10-JV
City of Vero Beach - Crestlawn Cemetery Columbaruim

Vendor	Variances	Identical - Tie Bid	Total Bid	Questionnaire	Bid Bond	Local Preference
Brian Couture's Cemetery Lettering Groveland, FL	N/A	YES	$178,000.00	YES	YES	N/A
Premier Columbaria Tacoma, WA	YES*	YES	$111,931.00*	YES	YES	N/A

* - This bid does not meet the City of Vero Beach specifications, and therefore is considered to be non-responsive.

REVISIONS	DATE
1	
2	
3	
4	
5	

DRAWN: STM
DESIGN: STM
CHECK: RBM
DATE: 06-21-2005
SCALE: AS SHOWN

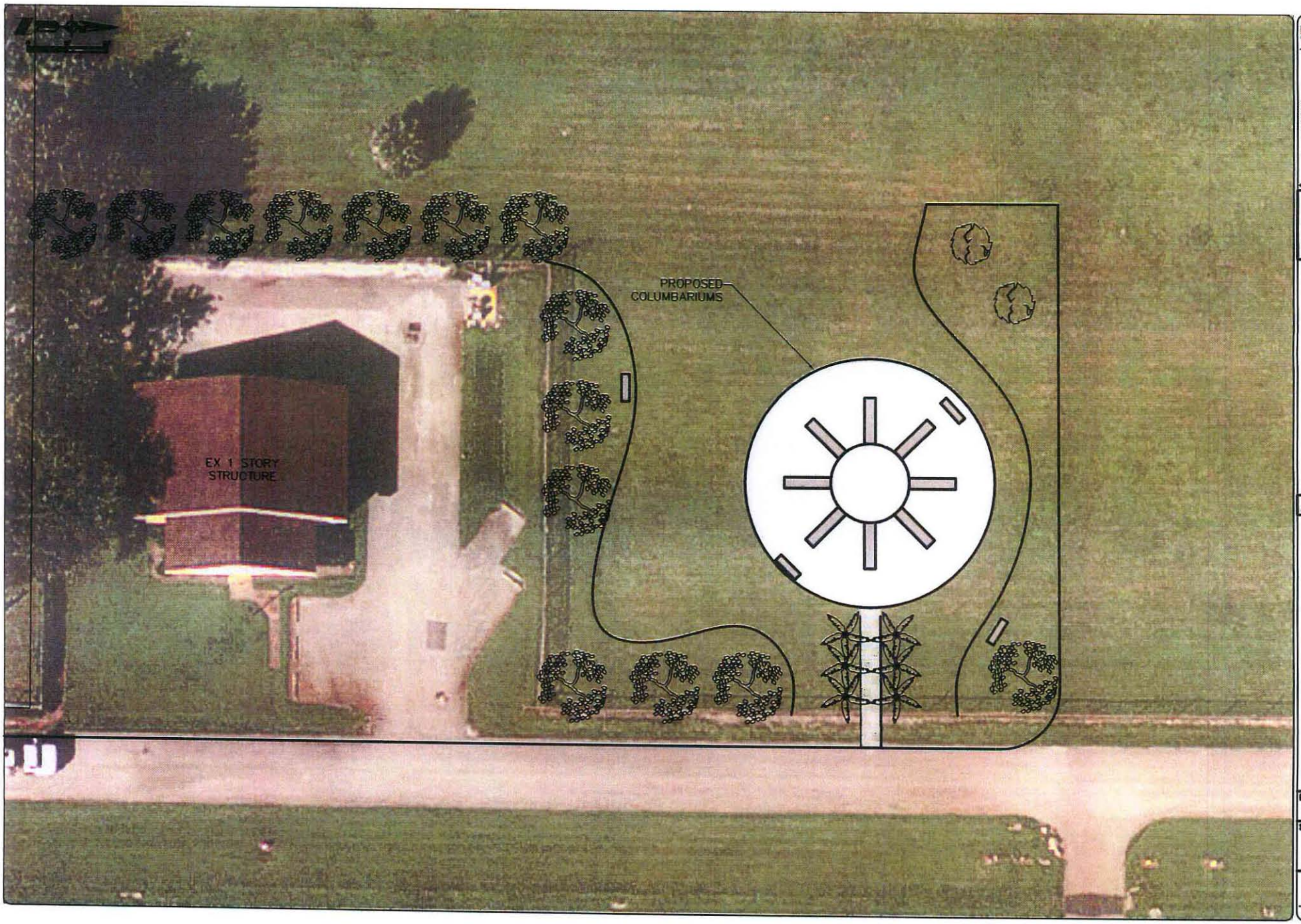
CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
1053 20th Place • PO Box 1388 Office (772) 978-4670
Vero Beach, FL 32961-1388 Fax (772) 978-4679

CRESTLAWN CEMETERY

EXHIBIT

PROJECT No.
2007-14

SHEET
1
of 2



REVISIONS		DATE
1		
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DRAWN: SFM
DESIGN: SFM
CHECKED: RBV
DATE: 06-21-2010
SCALE: AS SHOWN

CITY OF VERO BEACH
DEPARTMENT OF PUBLIC WORKS
1053 20th Place • PO Box 1389 Office (772) 978-4870
Vero Beach, FL 32961-1389 Fax (772) 978-4879

CRESTLAWN CEMETERY

EXHIBIT

PROJECT No.
2007-14

SHEET
2
OF 2

COUNCIL AGENDA REPORT
MEETING OF JULY 20, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: July 9, 2010

SUBJECT: INDIAN RIVER DRIVE EAST SIDEWALK CONSTRUCTION

Attached is a memorandum from Bill Messersmith, dated July 8, 2010, providing background information and a recommendation for the above-referenced subject.

It is the recommendation of the City Manager's Office that the Council approve the sidewalk construction (estimated at $102,000) and the associated stormwater improvements (estimated at $75,000) for Indian River Drive East. Funding will be from Account No. 304.9900.541.608005 and Account No. 304.9900.541.608003, respectively. Work is to be performed by City personnel.

James M. Gabbard

:jav
Attachment

xc: Monte Falls
Bill Messersmith
Stephen Maillet

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DEPARTMENTAL CORRESPONDENCE

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

VIA: Monte K. Falls, PE, Director
DEPT: Public Works MKFALLS 7/8

FROM: William B. Messersmith, PE, Assistant City Engineer WBM 7/8/10
DEPT: Public Works

DATE: July 8, 2010

RE: Indian River Drive East Sidewalk Construction
COVB Project No. 2009-02

Recommendation:

- Place this item on the City Council's Agenda for July 20, 2010;
- Request Approval from City Council to proceed with Construction of the improvements.

Funding:

The sidewalk portion of this project will be funded from account number 304.9900.541.608005. Estimated sidewalk construction cost is $102,000. The account balance as of May 1, 2010 is $388,916.09. The associated stormwater improvements required for this project will be funded from account number 304.9900.541.608003. Estimated construction cost for the stormwater improvements is $75,000. Fund account balance as of May 1, 2010 is $300,000.

Background:

This sidewalk project was requested by the local residents in 2007, and a petition was presented in December 2008 (see attached). The petition indicated that a majority of the residents were in favor of the project. A map depicting the results of that petition is also attached.

Subsequent to the receipt of the petition we began design of the proposed sidewalk improvements. At Fiddlewood Road and Greytwig Road, there are existing stormwater

outfall ditches which were in conflict with the proposed sidewalk location. As part of our ongoing outfall retrofit program we prepared plans for the construction of nutrient separator baffle boxes to provide stormwater treatment for the outfall discharge into the Indian River Lagoon and to allow the closure of the outfall ditches to eliminate the conflict with the sidewalk.

Based on the petition and the need for safer pedestrian access in this area we recommend the sidewalk project and stormwater improvements move forward for construction. Work on this project will be done with City forces.

Attachments

WBM:MKF/ntn

V:\LAND_PROJECTS\2009\2009-02 IR Drive Sidewalk\Docs\Agenda_Recommend Const Proceed_JGabbard_Jul 08 2010.docx

PETITION TO CONSTRUCT SIDEWALK

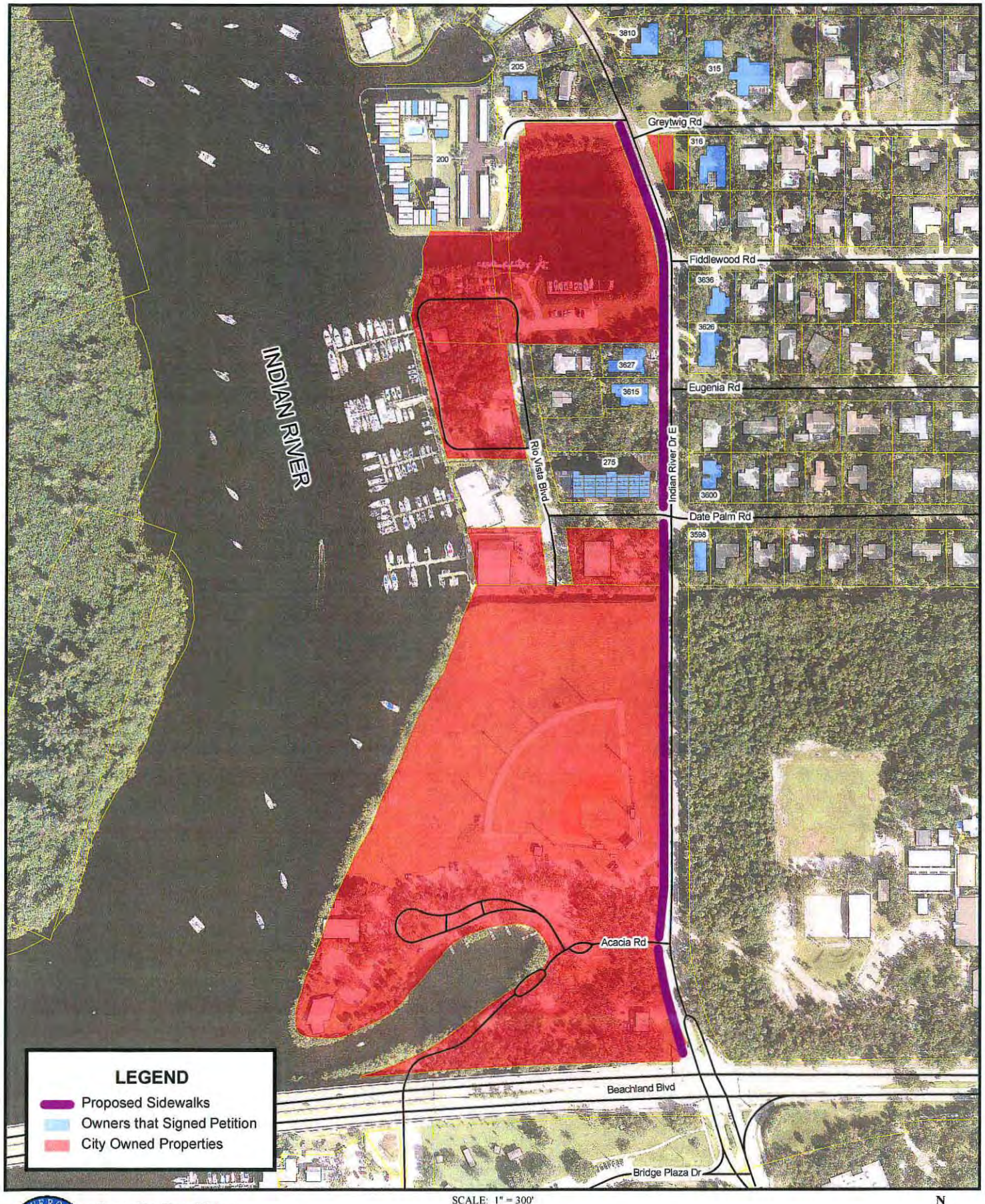
Street(s): **Indian River Drive**
From Beachland Boulevard Northward

SIGNATURE	ADDRESS	DATE
Marion Lyons	205 Greytwig Rd	2-24-08
[illegible]	3810 Indian River Drive E	2-24-08
[illegible]	315 Greytwig Rd. Vero Bch	2/27/08
[illegible]	3636 INDIAN RIVER DR. EAST	2
James A. [illegible]	3600 INDIAN DR	
Morgan A. Parker	316 Greytwig Rd	2/24/08
Kevin Brown	316 Greytwig Rd	2/24/08
David H. Vogt - Pres. Riverside Gardens	200 Greytwig Rd., Apt. 211	2/25/08
R. [illegible]	200 Greytwig Rd " 108	
[illegible]	" " "	4/8/08
[illegible]	200 Greytwig Rd #206	4/8/08
[illegible]	200 Greytwig Rd #~~208~~ 308	4/8/08
[illegible] Cragen	" " 203	4-8-08
[illegible] Dufresne	#101-200 Greytwig Rd.	4-8-08
[illegible]	3615 E Ind River Dr	4-13-08
[illegible]	3598 Ind River Dr E	4/13-08
[illegible]	3627 Ind River Dr E	4/13/08
[illegible]	3626 INDIAN RIVER DR E	12/08
[illegible]	275 DATE PALM Rd	12-2-08

show prop.

RECEIVED
DEC 3 1 2008
DEPARTMENT OF PUBLIC WORKS

CITY OF VERO BEACH - INDIAN RIVER DR E (PETITION TO CONSTRUCT SIDEWALK)



SCALE: 1" = 300'

Created by Terry Bishop
City of Vero Beach
Department of Public Works / GIS Division
July 6, 2010

DISCLAIMER

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COUNCIL AGENDA REPORT
MEETING OF JULY 20, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: July 12, 2010

SUBJECT: COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – JACOBY AND PIECE OF PIE PARK PLAYGROUNDS

Attached is a memorandum from Bill Messersmith, dated July 7, 2010, providing background information and a recommendation for the above-referenced subject.

It is the recommendation of the City Manager's Office that Council execute a contract with Lanier Plans, Inc., dba Korkat, Inc., for playground equipment at Jacoby and Piece of Pie Parks, in the amount of $45,969.78, and Change Order No. 1 for park lighting, in the amount of $49,380.00. Funding will be from Account No. 304.9900.541.609024, with reimbursement from the Florida Department of Community Affairs Community Development Block Grant.

James M. Gabbard

:jav
Attachments

xc: Monte Falls
Bill Messersmith
Stephen Maillet

N:\AGENDA\PUBLICWORKS\2010\CDBG-JACOBY AND PIECE OF PIE PARK PLAYGROUNDS.DOC

DEPARTMENTAL CORRESPONDENCE

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

VIA: Rob Slezak, Director
DEPT: Recreation

VIA: Monte K. Falls, PE, Director
DEPT: Public Works MKFalls 7/8

FROM: William B. Messersmith, PE, Assistant City Engineer
DEPT: Public Works

DATE: July 7, 2010

RE: Community Development Block Grant (CDBG)
Jacoby and Piece of Pie Park Playgrounds

Recommendation:

- Place this item on the July 20, 2010 agenda of the City Council;
- Execute the contract with Lanier Plans, Inc. dba Korkat, Inc. in the amount of $45,969.78;
- Execute Change Order No. 1 which adds the CDBG Supplementary Conditions and wage decision required by the grant. Change Order No. 1 also includes the park lighting which was not included in the original bid but is an element of the CDBG. The park lighting produces a net increase in contract price of $49,380.00 for a total amended contract price of $95,349.78.

Funding:

Funding will be from account number 304.9900.541.609024 with reimbursement from the Florida Department of Community Affairs (DCA) Community Development Block Grant.

Background:

On January 12, 2010 seven (7) bids were received to supply and install playground equipment at Jacoby and Piece of Pie Parks, which are elements included in the current CDBG. On March 4, 2010, the contract was awarded by the City Manager to Lanier Plans, Inc., dba Korkat, Inc. in the amount of $45,969.78.
On March 2, 2010 we were notified by the DCA that required documents had not been included in the playground equipment bid package. We also became aware that the lighting elements included in the grant could be installed by Korkat, Inc. Upon meeting with Debbie Boyette of the DCA it was decided that one change order could be executed with Korkat, Inc. at the time of contract execution adding the required CDBG components (no fee) and the park lighting installation ($49,380.00) to the contract. Korkat, Inc. agreed and the contracts and required change order are enclosed for your signature.

Please contact us if you have any questions.

Enclosures: Contract Books (4)
Change Order No. 1 (1)

Cc: John O'Brien, Purchasing Manager
Kerry Thiessen, Korkat, Inc.

WBM:RS/ntn

V:\LAND_PROJECTS\2004\2004-11 18th St Paving & Drng\Park Improvements\Docs\Agenda_Contract & CO Execution_JGabbard_Jul 06 2010.docx

PROJECT NAME: Jacoby Park & Piece of Pie Park Playground Improvements

SHEET 1 of 2

CONTRACT CHANGE ORDER NO. 1

Prepared By:

CITY OF VERO BEACH DEPARTMENT OF PUBLIC WORKS

ACCOUNT NUMBER: 304.9900.541.609024

PROJECT NUMBER: 2004-11 CONTRACT NO.: 450-09/JV

CONTRACT DATE:
NOTICE TO PROCEED

Name and Address of Contractor: Korkat, Inc
221 Cable Industrial Way, Carrollton, GA 30117

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

(1)	(2)					(3)	(4)
BID ITEM	DESCRIPTION	CONTRACT QUANTITY	UNITS	UNITS PRICE	CHANGE ORDER QUANTITY	INCREASE IN CONTRACT PRICE	DECREASE IN CONTRACT PRICE
	Addition of Required CDBG Contract Requirements:						
	1. Add Wage Decision FL259 Approved 9/11/2009 to the original contract as required.			No Cost			
	2. Add CDBG Supplemental Conditions to the original contract as required.			No Cost			
	Addition of Playground Lighting Improvements:						
	Jacoby Park:						
	Light Poles & Fixtures: Ameron Co. Cat. #26ET14(6P31)T; Washington style, Embedded type, modified to 13'0" above grade height, black in color, Amershield anti-graffiti coating with Lumec Co. Fixture Cat. #S56C1-65W49LED4K-GL-LE3-240-SFX-TN3.5-FN10-BSC-BKTX; 65 Watt LED, Black in color, Optional (BSC) Brass banding protected by clear coat.	0	EA	$4,600.00	3	$13,800.00	
	Delivery and assemby of light poles and light pole fixtures: Price includes all required engineering and wind load tests needed for permitting. Includes all electrical service wire ran underground 24" in conduit required by building code; with required meter.	0	EA	$2,950.00	3	$8,850.00	
	Piece of Pie Park						
	Light Poles & Fixtures: Ameron Co. Cat. #26ET14(6P31)T; Washington style, Embedded type, modified to 13'0" above grade height, black in color, Amershield anti-graffiti coating with Lumec Co. Fixture Cat. #S56C1-65W49LED4K-GL-LE3-240-SFX-TN3.5-FN10-BSC-BKTX; 65 Watt LED, Black in color, Optional (BSC) Brass banding protected by clear coat.	0	EA	$4,600.00	3	$13,800.00	
	Delivery and assemby of light poles and light pole fixtures: Price includes all required engineering and wind load tests needed for permitting. Includes all electrical service wire ran underground 24" in conduit required by building code; with required meter.	0	EA	$2,950.00	3	$8,850.00	
	Permitting and Engineering for Lighting	0	LS	$1,580.00	1	$1,580.00	
	Bonding Fee	0	LS	$2,500.00	1	$2,500.00	
	**********CHANGE IN CONTRACT PRICE DUE TO THIS CHANGE ORDER**********						
					Total Decrease		$0.00
					Total Increase	$49,380.00	
					Difference Between Column (3) and Column (4)	$49,380.00	
					Net INCREASE in contract price	$49,380.00	

The sum of $49,380.00 is hereby ADDED to the original contract price of $45,969.78

The total adjusted contract price to date thereby is $95,349.78

The time provided for the completion of the contract is INCREASED 14 calendar days

This document shall become an amendment to the contract and all provisions of the contract shall apply thereto.

Recommended by: Rob Slezak, Recreation Director Date: 6/30/10

Accepted by: Contractor Date: 5-13-10

Approved by: James M. Sabbard, City Manager Date: 7/1/10

PROJECT NAME: Jacoby Park and Piece of Pie Park Playground & Lighting CONTRACT CHANGE ORDER NO. 1 Prepared By: DEPARTMENT OF PUBLIC WORKS ACCOUNT NUMBER: 304.9900.541.609024 PROJECT NUMBER: 2004-11 CONTRACT NO. 450-09/JV	SHEET 2 of 2 CONTRACT DATE: NOTICE TO PROCEED:

1. Necessity for changes:

   A. To add required wage decision and CDBG supplemental conditions as required by CDBG Grant No. 08DB-T3-10-40-02-N13

   B. To add lighting improvements to Jacoby and Piece of Pie Parks which are included in the grant, but were not included in the original request for proposals for the playground equipment.

2. Is proposed change an alternate bid? [ ] Yes [X] No

3. Will proposed change alter the physical size of the project? [X] Yes [ ] No
   If "Yes", explain.
   The lighting work proposed is beyond the physical limits of the playground as bid.

4. Effect of this change on the prime contractors: NONE

5. Has consent of surety been obtained? [ ] Yes
   [X] Not Necessary

6. Will this change affect expiration or extent of insurance coverage? [ ] Yes [X] No

   If "Yes", will the policies be extended? [ ] Yes [ ] No

7. Effect on operation and maintenance costs:
   City of Vero Beach T&D Department will maintain the park lighting once complete and warranty period has ended.

Recommended by: _____ Date: 6/30/10
Rob Slezak, Recreation Director

General Decision Number: FL080259 09/11/2009 FL259

State: Florida

Construction Type: Heavy

County: Indian River County in Florida.

HEAVY CONSTRUCTION PROJECTS (Including Sewer and Water Lines)
(EXCLUDING CAPE CANAVERAL AIR FORCE STATION, PATRICK AIR FORCE
BASE, KENNEDY SPACE FLIGHT CENTER AND MALABAR RADAR SITE)

Modification Number	Publication Date
0	09/11/2009

ENGI0487-016 01/01/2009

	Rates	Fringes
OPERATOR: Oiler	$ 22.24	7.65

IRON0402-004 04/01/2009

	Rates	Fringes
IRONWORKER, REINFORCING AND STRUCTURAL	$ 22.22	7.65

LABO1652-004 05/01/2009

	Rates	Fringes
LABORER: Grade Checker	$ 14.50	4.67

PAIN0452-007 07/01/2008

	Rates	Fringes
PAINTER: Brush, Roller and Spray	$ 16.00	6.15

SUFL2009-156 06/24/2009

	Rates	Fringes
CARPENTER	$ 13.56	1.84
CEMENT MASON/CONCRETE FINISHER	$ 13.18	0.00
ELECTRICIAN	$ 16.71	3.51
LABORER: Common or General	$ 10.31	0.00
LABORER: Landscape	$ 7.25	0.00
LABORER: Pipelayer	$ 12.09	1.85
LABORER: Power Tool Operator (Hand Held Drills/Saws,		

Jackhammer and Power Saws
Only).....$ 10.63 2.20

OPERATOR: Asphalt Paver.....$ 11.88 0.00

OPERATOR: Backhoe Loader
Combo.....$ 16.10 2.44

OPERATOR: Backhoe/Excavator.....$ 13.12 2.58

OPERATOR: Blade/Grader.....$ 16.00 2.84

OPERATOR: Bulldozer.....$ 12.88 0.00

OPERATOR: Crane.....$ 14.88 3.17

OPERATOR: Loader.....$ 12.91 1.76

OPERATOR: Mechanic.....$ 13.83 2.19

OPERATOR: Roller.....$ 10.50 0.00

OPERATOR: Scraper.....$ 11.00 1.74

OPERATOR: Trackhoe.....$ 20.92 5.50

OPERATOR: Tractor.....$ 10.00 0.00

TRUCK DRIVER: Lowboy Truck.....$ 11.00 0.00

TRUCK DRIVER: Off the Road
Truck.....$ 12.21 1.97

TRUCK DRIVER: Dump Truck.....$ 11.07 0.00

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

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Unlisted classifications needed for work not included within
the scope of the
classifications listed may be added after award only as
provided in the labor
standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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In the listing above, the "SU" designation means that rates
listed under the
identifier do not reflect collectively bargained wage and
fringe benefit
rates. Other designations indicate unions whose rates have
been determined
to be prevailing.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested
party may appeal directly to the Administrative Review Board (formerly the
Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

Exhibit A

CDBG SUPPLEMENTAL CONDITIONS
(Construction Contracts)

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In case of disagreement with any other section of this contract, the Supplemental Conditions shall govern unless noted otherwise in that section.

1. Termination (Cause and Convenience)
2. Access to Records
3. Retention of Records
4. Remedies
5. Environmental Compliance (Clean Air Act and Clean Water Act)
6. Energy Efficiency
7. Special Equal Opportunity Provisions
8. Conflict of Interest
9. Utilization of Minority and Women=s Businesses
10. Federal Labor Standards Provisions (Davis-Bacon, Copeland, and Contract Work Hours Act)
11. Guidance to Contractor for Compliance with Labor Standards Provisions

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1. Termination (Cause and/or Convenience)

A. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

1. not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and

2. an opportunity for consultation with the terminating party prior to termination.

B. This contract may be terminated in whole or in part in writing by the local government for its convenience, provided that the other party is afforded the same notice and consultation opportunity specified in l (A) above.

C. If termination for default is effected by the local government, an equitable adjustment in the price for this contract shall be made, but

1. no amount shall be allowed for anticipated profit on unperformed services or other work,

and

2. any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the local government because of the contractor=s default.

If termination for convenience is effected by the local government, the equitable adjustment shall

include a reasonable profit for services or other work performed for which profit has not already been included in an invoice.

For any termination, the equitable adjustment shall provide for payment to the contractor for services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments (e.g., suppliers, subcontractors) which had become firm prior to receipt of the notice of intent to terminate.

D. Upon receipt of a termination action under paragraphs (A) or (B) above, the contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise) and (2) deliver or otherwise make available to the local government all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the contractor in performing this contract, whether completed or in process.

E. Upon termination, the local government may take over the work and may award another party a contract to complete the work described in this contract.

F. If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the local government. In such event, adjustment of the contract price shall be made as provided in paragraph (C) above.

2. Access to Records

The local government, the Florida Department of Community Affairs, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

3. Retention of Records

The contractor shall retain all records relating to this contract for six (6) years after the local government makes final payment and all other pending matters are closed.

4. Remedies

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

5. Environmental Compliance

If this contract exceeds $100,000, the contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection

Agency regulations (40 C.F.R. Part 15). The contractor shall include this clause in any subcontracts over $100,000.

6. Energy Efficiency

The contractor shall comply with any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

7. Special Equal Opportunity Provisions

A. Activities and Contracts Not Subject to Executive Order 11246, as Amended

(Applicable to Federally assisted construction contracts and related subcontracts $10,000 and under.)

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, 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.

2. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer seeking forth the provisions of this nondiscrimination clause. The Contractor shall state that all qualified applicants be considered without regard to race, color, religion, sex or national origin.

3. Contractors shall incorporate foregoing requirements in all subcontracts.

B. Executive Order 11246 (contracts/subcontracts above $10,000)

1. Section 202 Equal Opportunity Clause

During the performance of this contract, the contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, 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 Contractor agrees to post in a conspicuous place, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the Contract Compliance Officer advising the said labor union or worker=s representatives of the Contractor=s commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the Rules, Regulations, and Relevant Orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.

(f) In the event of the Contractor=s noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the Provisions of the sentence immediately preceding Paragraph (a) and the provisions of Paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sections of noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

2. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246). (Applicable to contracts/subcontracts exceeding $10,000.)

(a) The Offerer=s or Bidder=s attention is called to the AEqual Opportunity Clause@ and the AStandard Federal Equal Employment Opportunity Construction Contract Specifications@ set forth herein.

(b) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor=s aggregate workforce in each trade on all construction work in the covered area, are as follows:

Female participation: 6.9% (statewide)

Minority participation 30.4% (Indian River County)

These goals are applicable to all Contractor=s construction work (whether or not it is federally-assisted) performed in the covered area. If the Contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its Federally involved and non-Federally involved construction.

The Contractor=s compliance with Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals established or the geographic area where the contract resulting from his solicitation is to be performed. The hours of minority and female employment or training must be substantially uniform throughout the length of the contract and in each trade the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor=s goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(c) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

(d) As used in this Notice, and in the contract resulting from the solicitation, the Acovered area@ is the county in which the contract work is being undertaken.

3. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

(a) As used in these specifications:

1. ACovered area@ means the geographical area described in the solicitation from which this contract resulted;

2. ADirector@ means Director, Office of Federal Contract Compliance Programs, United

States Department of Labor, or any person to whom the Director delegates authority;

3. AEmployer identification number@ means the Federal Social Security number used on the Employer=s quarterly Federal Tax Return, U. S. Treasury Department Form 941.

4. AMinority@ includes:

(I) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(II) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(III) Asian and Pacific Islander (all persons having origins in any of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Island); and

(IV) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

4. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

5. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors toward a goal in an approved Plan does not execute any covered Contractor=s or Subcontractor=s failure to take good faith efforts to achieve the Plan goals and timetables.

6. The Contractor shall implement the specific affirmative action standards provided in paragraph (9) 1 through 16 of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or Federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract

is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

7. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor=s obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

8. In order for the nonworking training hours of apprentices and trainees to be counted in meeting goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

9. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor=s compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensively as the following:

   a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor=s employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor=s obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.

   b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization=s responses.

   c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

   d. Provide immediate written notification to the Director when the union or unions

with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor=s efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading apprenticeship, trainee and other programs relevant to the Contractor=s employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor=s EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company=s EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor=s EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor=s EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female recruitment and training organizations serving the Contractor=s recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation

employment to minority and female youth both on the site and in other areas of a Contractor=s work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor=s obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors adherence to and performance under the Contractor=s EEO policies and affirmative action obligations.

10. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations ((9) a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (9) 1 through 16 of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor=s minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor=s noncompliance.

11. A single goal for minorities and separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under utilized).

12. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

13. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

14. The Contractor shall carry out sections and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

15. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensively as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its effort to ensure equal employment opportunity. If the Contractor fails to comply with the requirement of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

16. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number where assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

17. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance and upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

C. Certification of Nonsegregated Facilities (over $10,000)

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/She certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is violation of the Equal Opportunity Clause

of this contract. As used in this certification, the term Asegregated facilities@ means any waiting rooms, work eating areas, time clocks, locker rooms, and other storage or dressing areas, transportation and housing facilities provided for employees which are in fact segregated on the basis of race, color, religion, or otherwise. He/She further agrees that (except where he/she has obtained identical certifications from proposed subcontractors prior to the award of subcontractors have submitted identical certifications for specific time periods).

D. Civil Rights Act of 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

E. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the grounds of race, color, national original, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

F. ASection 3" Compliance in the Provision of Training, Employment and Business Opportunities

1. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U. S. C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 134, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or workers= representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract

with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, it successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors or subcontractors, it successors and assigned to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

G. Section 503 Handicapped (Contracts $2,500 or Over)

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

2. The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

3. In the event of the Contractor=s noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor=s obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

5. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or their contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

6. The Contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon

each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

H. Age Discrimination Act of 1975

No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program, or activity receiving Federal Financial assistance.

8. Conflict of Interest of Officers or Employees of the Local Jurisdiction, Members of the Local Governing Body, or other Public Officials

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this contract, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

9. Utilization of Minority and Women Firms (M/WBE)

The contractor shall take all necessary affirmative steps to assure that M/WBE firms are utilized when possible as suppliers and/or subcontractors, as applicable. Prior to contract award, the contractor shall document efforts to utilize M/WBE firms, including identifying what firms were solicited as suppliers and/or subcontractors, as applicable. Information regarding certified M/WBE firms can be obtained from:

* State of Florida Office of Supplier Diversity at 850-487-0915
  (online directory at: http://199.250.30.122/dirhome.htm)
* State of Florida Department of Transportation Equal Opportunity Office at 850-414-4747
  (website: http://www.state.fl.us/equalopportunity office) for road construction projects
* Minority Business Development Center in most major cities
* local government M/WBE programs in many large counties and cities

A firm recognized as an M/WBE by any of the above agencies is acceptable for the CDBG program.

10. Federal Labor Standards Provisions

(Davis-Bacon Act, Copeland Act, and Contract Works Hours & Safety Standards Act)
The Project to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. Minimum Wages.

Exhibit A

1. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer=s payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits; therefore, only when the following criteria have been met:

a. The work to be performed by the classification requested is not performed by a classification in the wage determination; and

b. The classification is utilized in the area by the construction industry; and

c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the

wage

determination.

2. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, employment Standards Administration, U. S. Department of Labor, Washington, D. C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)
3. In the event that the Contractor, the laborers or mechanics to be employed in the Classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designed for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that the additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

4. The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (A)(2) or (3) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

5. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide
fringe benefit or an hourly cash equivalent thereof.

6. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

B. Withholding.

HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor

under this contract or any other federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD, or its designee may, after written notice to the contractor, sponsor, applicant, or owners, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

C. Payrolls and Basic Records.

1. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017).

2. The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owners, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(I). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-

005-00014-1), U. S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).

3. Each payroll submitted shall be accompanied by a AStatement of Compliance@, signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

   a. That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(I) and that such information is correct and complete;

   b. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

   c. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

4. The weekly submission of a properly executed certification set forth on the reverse side of Option Form WH-347 shall satisfy the requirement for submission of the AStatement of Compliance@ required by paragraph C (3) of this section.

5. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

6. The contractor or subcontractor shall make the records required under paragraph C (1) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

D. Apprentices and Trainees.

1. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with

a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program, shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman=s hourly rate) specified in the contractor=s or subcontractor=s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice=s level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with the determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee=s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid

not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program the contract will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

3. Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

E. Compliance with Copeland Act Requirements.

The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

F. Subcontracts.

The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contract shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

G. Contract Termination, Debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and
5 are herein incorporated by referenced in this contract.

I. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U. S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility.

1. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor=s firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant

to 24 CFR Part 24.

2. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

3. The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U. S. C. 1001. Additionally, U. S. Criminal Code, Section 1010, Title 18, U. S. C., AFederal Housing Administration transactions@, provides in part AWhoever, for the purpose of. . .influencing in any way the action of such Administration. . .makes, utters or publishes any statement, knowing the same to be false. . .shall be fined not more than $5,000 or imprisoned not more than two years, or both.@

K. Complaints, Proceedings, or Testimony by Employees.

No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this contract to his employer.

L. Contract Work Hours and Safety Standards Act.

As used in the paragraph, the terms Alaborers@ and Amechanics@ include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

3. Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work

performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act , which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

M. Health and Safety.

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
2. The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54.83 State 96).

3. The contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

11. Guidance to Contractor for Compliance with Labor Standards Provisions

A. Contracts with Two Wage Decisions

If the contract includes two wage decisions, the contractor, and each subcontractor who works on the site, must submit either two separate payrolls (one for each wage decision) or one payroll which identifies each worker twice and the hours worked under each wage decision. One single payroll, reflecting each worker once, may be submitted provided the Contractor uses the higher rate in the wage decisions for each identical job classification. However, where a job classification is not listed in a wage decision and is needed for that portion of the work, the classification **must** be added to the wage decision. A worker may not be paid at the rate for a classification using the hourly rate for that same classification in another wage decision. After the additional classification is approved, the contractor may pay the higher of the two rates and submit one payroll, if desired.

B. Complying with Minimum Hourly Amounts

1. The minimum hourly amount due to a worker in each classification is the total of the amounts in the ARates@ and AFringe Benefits@ (if any) columns of the applicable wage decision.

2. The contractor may satisfy this minimum hourly amount by <u>any combination of cash and bona fide fringe benefits</u>, regardless of the individual amounts reflected in the ARates@ and AFringe Benefits@ columns.

3. A contractor payment for a worker which is required by law is not a fringe benefit in meeting the minimum hourly amount due under the applicable wage decision. For example, contractor payments for FICA or unemployment insurance are not a fringe benefit; however, contractor payments for health insurance or retirement are a fringe benefit. Generally, a fringe benefit is bona fide if (a) it is available to most workers and (b) involves payments to a third party.

4. The hourly value of the fringe benefit is calculated by dividing the contractor=s annual cost (excluding any amount contributed by the worker) for the fringe benefit by 2080. Therefore, for workers with overtime, an additional payment may be required to meet the minimum hourly wages since generally fringe benefits have no value for any time worked over 40 hours weekly. (If a worker is paid more than the minimum rates required by the wage decision, this should not be a problem. As long as the total wages received by a worker for straight time equals the hours worked times the minimum hourly rate in the wage decision, the requirement of the Davis-Bacon and Related Acts has been satisfied.)

C. <u>Overtime.</u>

For any project work over 40 hours weekly, a worker generally must be paid 150% of the actual hourly cash rate received, not the minimum required by the wage decision. (The Davis-Bacon and Related Acts only establishes minimum rates and does not address overtime; the Contract Work Hours Act contains the overtime requirement and uses Abasic rate of pay@ as the base for calculation, not the minimum rates established by the Davis-Bacon and Related Acts.)

D. <u>Deductions.</u>

Workers who have deductions, not required by law, from their pay must authorize these deductions in writing. The authorization must identify the purpose of each deduction and the amount, which may be a specific dollar amount or a percentage. A copy of the authorization must be submitted with the first payroll containing the deduction. If deducted amounts increase, another authorization must be submitted. If deducted amounts decrease, no revision to the original authorization is needed. Court-ordered deductions, such as child support, may be identified by the responsible payroll person in a separate document. This document should identify the worker, the amount deducted and the purpose. A copy of the court order should be submitted.

E. <u>Classifications Not Included in the Wage Decision.</u>

If a classification not in the wage decision is required, please advise the owner=s representative in writing and identify the job classification(s) required. In some instances, the State agency may allow the use of a similar classification in the wage decision.

Otherwise, the contractor and affected workers must agree on a <u>minimum</u> rate, which cannot be lower than the lowest rate for any trade in the wage decision. Laborers (including any subcategory

of the laborer classification) and truck drivers are not considered a trade for this purpose. If the classification involves a power equipment operator, the minimum cannot be lower than the lowest rate for any power equipment operator in the wage decision. The owner will provide forms to document agreement on the minimum rate by the affected workers and contractor.

The U.S. Department of Labor (USDOL) must approve the proposed classification and rate. The contractor may pay the proposed rate until the USDOL makes a determination. Should the USDOL require a higher rate, the contractor must make wage restitution to the affected worker(s) for all hours worked under the proposed rate.

F. Supervisory Personnel.

Foremen and other supervisory personnel who spend at least 80% of their time supervising workers are not covered by the Davis-Bacon and Related Acts. Therefore, a wage decision will not include such supervisory classifications and their wages are not subject to any minimums under the Davis-Bacon and Related Act or overtime payments under the Contract Work Hours and Safety Standards Act. However, foremen and other supervisory personnel who spend less than 80% of their time engaged in supervisory activities are considered workers/mechanics for the time spent engaged in manual labor and must be paid at least the minimum in the wage decision for the appropriate classification(s) based on the work performed.

G. Sole Proprietorships / Independent Contractors / Leased Workers.

The nature of the relationship between a prime contractor and a worker does not affect the requirement to comply with the labor standards provisions of this contract. The applicability of the labor standards provisions is based on the nature of the work performed.

If the work performed is primarily manual in nature, the worker is subject to the labor standards provisions in this contract. For example, if John Smith is the owner of ABC Plumbing and performs all plumbing work himself, then Mr. Smith is subject to the labor standards provisions, including minimum wages and overtime. His status as Aowner@ is irrelevant for labor standards purposes.

If a worker meets the IRS standards for being an independent contractor, and is employed as such, this means that the worker must submit a separate payroll as a subcontractor rather than be included on some other payroll. The worker is still subject to the labor standards provisions in this contract, including minimum wages and overtime.

If a contractor or subcontractor leases its workers, they are subject to the labor standards provisions in this contract, including minimum wages and overtime. The leasing firm must submit payrolls and these payrolls must reflect information required to determine compliance with the labor standards provisions of this contract, including a classification for each worker based on the nature of the work performed, number of regular hours worked, and number of overtime hours worked.

H. Apprentices / Helpers.

A worker may be classified as an apprentice **only if participating in a federal or state program**. of participation must be submitted. Generally, the apprentice program specifies that the apprentice will be compensated at a percentage of journeyman rate. For Davis-Bacon Act purposes, the hourly

rate cannot be lower than the percentage of the hourly rate for the classification in the applicable wage decision.

If the worker does not participate in a federal or state apprentice program, then the worker must be classified according to duties performed. This procedure may require classification in the Atrade@ depending on tools used, or as a laborer if specialized tools of the trade are not used. The contractor may want to consult with the Wage and Hour Division of the U.S. Department of Labor located in most large cities regarding the appropriate classification.

Presently, no worker may be classified as a Ahelper@. As with apprentices not participating in a formal apprentice program, the worker must be classified according to duties performed and tools used.

COUNCIL AGENDA REPORT
MEETING OF JULY 20, 2010

TO: The Honorable Mayor and Members of the City Council

FROM: James M. Gabbard, City Manager

DATE: July 8, 2010

SUBJECT: UNIT 3 FORCED OUTAGE

Attached is a memorandum from Jim Stevens, dated July 8, 2010, regarding the above-referenced subject.

It is the recommendation of the City Manager's Office that Council authorize payment to GE for the cost to repair the turbine bearings for Unit 3, in the amount of $92,252.76. Funding will be from Account No. 405.5000.512.346009. It is also recommended that Council approve GE to perform a load alignment, in the amount of $48,142.60, with funding from Account No. 405.5000.531.346020.

James M. Gabbard

James M. Gabbard

:jav
Attachments

xc: Jim Stevens
John Lee
Stephen J. Maillet

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MEMO
VERO BEACH MUNICIPAL POWER PLANT

DATE: July 8, 2010

TO: James Gabbard
City Manager

THROUGH: John Lee
Acting Utilities Director JTL 7/8/2010

FROM: Jim Stevens
Director of Power Resources

SUBJECT: *Unit 3 Forced Outage*

On May 27th 2010 the Florida Municipal Power Pool (FMPP) scheduled Unit 3 to be on line at 1:00 PM. During start up of Unit 3 operators noticed a high vibration on bearing T2, the unit tripped off line due to this high vibration. Operations attempted to put Unit 3 back on line but could not due to high turbine vibration issues. Unit 3 was placed in a forced outage and is unavailable for use in the FMPP.

Power Plant Staff notified the FMPP and Orlando Utilities Commission of this forced outage and called General Electric Services group to assist in troubleshooting the vibration problem. Several recommendations were made by GE. Items of concern that were addressed by GE and staff were identified and the process of investigating the unit failure was initiated. Discussions with GE initially focused on steam conditions. Staff strongly supports that the steam conditions to Unit 3 have not changed and that the Unit 3 warm up period had not changed for this start up. The first possible mechanical item identified was a possible bearing failure issue, the second item was a turbine / generator shift that created misalignment, the third was a mechanical failure of the turbine blades, and the fourth was a possible generator stator or rotor winding failure.

In order to return Unit 3 to service GE field representatives and power plant staff removed two turbine bearings, sent them off to GE shop for analysis and repair, and installed the bearings back onto Unit 3 turbine.

When the bearing work was complete Unit 3 was tested with the same high vibration was noted. The cost of repair of the turbine bearings is $92,252.76 and will be funded from Power Resources Prime Mover Maintenance Account # 405.5000.531.346009.

The next phase to return Unit 3 to operational status is to have GE perform a load alignment of Unit 3. The estimate from GE to perform that alignment is $48,142.60 and will be funded from Power Resources Generator and Electrical Maintenance Account # 405.5000.531.346020.

Staff recommends this item be brought back to the City Council on July 20th in order to proceed with this work.

Please advise if there are any questions concerning this matter.

Unit 3 Turbine Bearing Vibration Trouble

On May 27th 2010 operations experienced high vibration on bearing T2, the unit tripped off line. Operations attempted to put Unit 3 back on line but could not due to Turbine Vibration issues.

General Electric services were called in to assist in troubleshooting the problem. Several recommendations were made by GE. Items of concern were addressed by GE and staff and a path forward was determined. Possible faults were identified the first being a possible bearing failure issue, the second being a turbine / generator shift that created misalignment, third being poor steam conditions, fourth a generator winding failure. The vibration trip issue started with T2 bearing so that is where we started our investigation. T2 and T3 bearings were removed and were inspected by GE field service mechanics. GE removed the bearings during the week of June 2nd. As a result of that inspection GE recommended that the bearing be sent to the Jacksonville repair shop.

The bearings were sent to Jacksonville; GE completed the bearing work and shipped the bearings back on June 21.

GE returned to reassemble the unit on June 21st, GE also performed an alignment check of the steam turbine and generator, the alignment check showed the unit being out of specification but through discussions with GE the unit showed the same magnitude of misalignment in 2000 after a generator field reassembly and that the unit has operated under these conditions for 10 years.

It was decided to attempt to continue forward with an attempt to start-up the unit.

On June 29th With GE Vibration technician on site and ready to collect data we attempted to start the unit, the unit still experienced high vibration.

GE's recommendation is to correct the alignment issues and attempt to run the unit.

To date the cost of the repair to Unit 3 is $92,252.76.

We agree with GE's recommendations to perform a load alignment of Unit 3.

GE's proposal to perform the necessary alignment is $48,142.60.

JOB SUMMARY

This report covers the removal and inspection of the #2 and #3 Journal Bearings for City of Vero Beach Utilities, Unit #3, TB 178799. During previous operation the Lube Oil Cooler temperature controlling valve malfunctioned. This resulted in the turbine lube oil to overheat to approx 200 degrees F. The unit was taken off line and the valve repaired by plant personnel. Following the repair the unit had two successful starts, was brought on line and operated with no indications. During a third startup the unit reached 3600 RPM, was synched on line and ran with no indications at 4 MW. During the MW ramp up from 4 MW, the #2 brg vibration increased and resulted in a unit trip. The unit was restarted with the results being the same. GE was contacted to remove and inspect the #2 and #3 bearings for possible babbitt wiping. The #2 and #3 journal bearings were removed and inspected. No major indications were found that could lead to excessive vibration. Dimensional checks were taken and compared to design specifications. The #2 bearing was found within design. The #3 bearing was found with a 3 mil taper. Both bearings had minor indications of babbitt flaking. The bearings were sent to the GE Atlanta Service for inspection and any required repair.
The bearing standards were covered and the outage demobilized until the bearings are returned to site.

FE Rates	ST RATE	OT RATE	DT RATE	Per Diem
Winard Parsons	270	405	540	400
David Clark	270	405	540	400
Ronald Hornbrook	270	405	540	400
Millwright Key Foreman	71.38	89.98	126.53	100
Milwright Key Man	65.92	90.88	115.84	100
Millwright Journeyman	61.54	84.66	107.77	100

	ST Hours	OT Hours	DT Hours	Per Diem Days
Winard Parsons	32	10	0	4
David Clark	40	13	8	6
Ronald Hornbrook	16	0	0	2
Millwright Key Foreman	60	20	0	8
Milwright Key Man	60	20	0	8
Millwright Journeyman	156	52	0	21
FE Total	88	23	8	12

					Total
Field Engineering	$23,760.00	$9,315.00	$4,320.00	$4,800.00	$42,195.00
Millwright Key Foreman	$4,282.80	$1,799.60	$0.00	$800.00	$6,882.40
Milwright Key Man	$3,955.20	$1,817.60	$0.00	$800.00	$6,572.80
Millwright Journeyman	$9,600.24	$4,402.32	$0.00	$2,100.00	$16,102.56
Tooling	12 days	$1000/day			$12,000.00
Bearing Repairs (Estimate Only)					$8,500.00
				TOTAL	$92,252.76

GE Energy Services

CUSTOMER INFORMATION:

Attention	Ralph Moore
Company	City of Vero Beach Power Plant
Address	100 17th Street
	Vero Beach, FL 32960
Site Name	City of Vero Beach Power Plant
Phone	772-978-5050
Email	Rmoore@cvob.org

QUOTATION NO.	357S2324
DATE	07/06/2010

NOTICE: This quotation is void unless accepted within 30 days from date hereof and is subject to change upon notice. However, if GEII elects to perform the services covered by the quotation, in response to an order placed 30 or more days after the date of the quotation, the terms of the quotation will apply.

SUBMIT PURCHASE ORDER TO:

GEII Contact	Steve Braamse
Address	GE Energy Services
	4300 West Cypress;
	Suite 700
	Tampa, FL 33607
Phone	813-286-4829
Fax	813-286-4807
EMail	Steven.Braamse@ge.com

General Electric International, Inc (GEII) is pleased to offer this proposal related to inspection and repair services. This quote consists of ESTIMATED pricing subject to GEII's Standard Terms and Conditions ES104.

Workscope:

Provide field engineering service, tooling, and labor to perform load alignment on COVB Unit #3 GE SN 178799. Provide GE-Bently vibration specialist to monitor startup and analyze vibration data following alignment.

Pricing:

This service is offered on a time and material basis using the published rates detailed below. The mechanical work is expected to take four or five, ten-hour shifts. The startup support is expected to be one ten-hour day at site. The total budgetary estimate for this service is $48,142.60.

Terms and Conditions:

GEII STANDARD TERMS AND CONDITIONS ES104 REV 3

Payment Terms: Payment is due upon receipt of invoice

Legal and equitable title to the Services shall pass to **The City of Vero Beach** as the Work is performed.

Legal and equitable title to Renewal Parts shall pass when the parts are shipped.

While reviewing our quotation, please consider the value that GEII provides. Each GE Field Engineer receives continuous technical training in the latest state-of-the-art procedures, methods and tools for turbine and generator equipment maintenance. The Field Engineers also participate in annual health, safety and environmental training.

If you have any questions, please call:

GENERAL ELECTRIC International Inc.

By:	Steve Braamse	CUSTOMER:	City of Vero Beach Power Plant
Title:	Service Manager	By:	
Phone:	813-286-4829 Fax: 813-286-4807	Title:	

GEES Form QQ - Standard Service 2008. All information contained in this proposal is proprietary and confidential.

Rate Schedule

DESCRIPTION	STRAIGHT TIME $/HR	OVERTIME $/HR.	DOUBLETIME $/HR.	Per Diem $
Millwright Key Foreman	71.38	98.98	126.53	100.00
Millwright Keyman	65.92	90.88	115.84	100.00
Millwright Journeyman	61.54	84.66	107.77	100.00
Field Engineering Service	270.00	405.00	540.00	400.00

*The field engineering rates are shown here for convenience. Please see the rate sheet attached for additional detail

Straight time hourly rates will apply for work performed during the first eight hours of an individual's working day on Monday through Friday, except observed holidays.

Weekday overtime and Saturday hourly rates will apply for work performed in excess of eight hours of combined work on Monday through Friday, except observed holidays, and for work performed during the first twelve hours on a Saturday, which is not an observed holiday.

Double time hourly rates will apply for work performed on Sundays and holidays.

Travel for Superintendent is defined as follows:

- All Superintendents are issued company cars and no mileage charges apply. In the event that a Superintendent needs to use a personal vehicle, a charge of $0.66 per/mile for travel in/out plus any other business related miles would apply.
- Travel: Actual travel time in and out billed at the straight time rate

Tool rental will be billed at **$1,000/per day of on site work plus two days to account for shipping to/from site.**

SUBJECT TO CHANGE

AGENDA

CITY MANAGER'S OFFICE
JULY 20, 2010

Consent Agenda

2D)1. Regular City Council Minutes – June 15, 2010
2D2. Special Call City Council Minutes – June 24, 2010
2D)3. Monthly Capital Projects Status Reports
2D)4. Commercial Lease between the City of Vero Beach and Ferrellgas, LP.
2D)5. Commercial/Office Lease agreement between the City of Vero Beach and Legacy Flight Training, LLC.

City Manager's Matters

7A) Award of Bid No. 240-10/JV – Crestlawn Cemetery Columbarium
7B) Indian River Drive East Sidewalk Construction
7C) Community Development Block Grant (CDBG) - Jacoby and Piece of Pie Park Playgrounds
7D) Unit 3 Forced Outage