

**CITY OF BROOKSVILLE
REGULAR CITY COUNCIL MEETING
COUNCIL CHAMBERS
201 HOWELL AVENUE**

AGENDA

June 6, 2011

7:00 P.M.

A. CALL TO ORDER

B. INVOCATION AND PLEDGE OF ALLEGIANCE

C. CERTIFICATES, PROCLAMATIONS AND PRESENTATIONS

1. Code Enforcement Officers' Appreciation Week Proclamation

Consideration of Proclamation in honor of Code Enforcement Officers' Appreciation Week June 6 – 10, 2011.

Presentation: Mayor
Attachments: Proclamation

2. Bethlehem Progressive Baptist Church Proclamation

Consideration of Proclamation in honor of the 150th Anniversary of the establishment of the Bethlehem Progressive Baptist Church.

Presentation: Mayor
Attachments: Proclamation

3. 2011 Aquafina Pitch Hit & Run Competition

Presentation of awards to program participants.

Presentation: Director of Parks, Facilities & Recreation
Attachments: Memo from Director of Parks, Facilities & Recreation dated 05/17/11

4. Hernando High School Proclamation

Consideration of Proclamation in honor of the Hernando High Leopards' advancement to the Florida High School Athletic Association's Semi-finals.

Presentation: Mayor
Attachments: Proclamation

5. Brooksville Cycling Classic

Presentation of appreciation and review of the 2010 event and announcement of the event dates for 2011.

Presentation: Laura Dewitt

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D. CITIZEN INPUT

E. CONSENT AGENDA

1. **Minutes**
April 4, 2011 Regular Meeting
2. **Department of Corrections - Work Crew Contract #WS557 Extension**
Consideration of Inmate Work Squad Contract #WS557 for an amount not-to-exceed \$58,004.
3. **Award of bid for the Soft Drink and Score Board Bid No. PR2011-07**
Consideration of bid award to Pepsi for the not-to-exceed amount of \$32,250 and authorize the Mayor to sign the contract.
4. **Bid Award for South Brooksville Construction – Phase I (Easy & St. Frances Streets)**
Consideration of bid award for the South Brooksville Construction Project – Phase I, Water, Sanitary Sewer, Storm Sewer, and Road Construction to Goodwin Brothers Construction, Inc., in an amount not-to-exceed \$819,110.
5. **Revised Florida Junior Golf Council Agreement**
Consideration of approval of a revised Grant from the Florida Junior Golf Council for the amount of \$11,000.00. Approval of Agreement correcting the amount of funds received to implement The First Tee National School Program.
6. **Terry Settlement Agreement**
Consideration of approval of negotiated General Release and Settlement Agreement with approval of a Budget Amendment and the Mayor to sign.

CONSENT AGENDA APPROVAL (√)

Recommendation:	Approval of Consent Agenda
Action:	Motion to Approve
Attachments:	1) Minutes; 2) Memo from Director of Parks, Facilities & Recreation dated 06/06/11, Letter from Florida Department of Corrections dated 05/10/11, Contract Expiration Notification, Draft Contract; 3) Memo from Director of Parks, Facilities & Recreation dated 05/16/11, Agreement, Bid Opening Minutes, Bid Certification Form, Budget Amendment Form; 4) Memo from Director of Public Works dated 05/24/11; 5) Memo from Director of Parks, Facilities & Recreation dated 05/18/11, Revised Agreement, First Tee Fund #129, FJGC Grant Application, Copy of FJGC Grant Funding Check; 6) Memo from City Attorney dated 05/19/11, Agreement, Budget Amendment Form

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F. REGULAR AGENDA

1. **Ordinance No. 819 - Sign Regulations Chapter 125 of the Code of Ordinances**
Staff report and consideration of options relating to the Code of Ordinances Chapter 125 regarding signs.

Presentation: City Planner & Director of Community Development
Recommendation: Approval of **first reading** of Ordinance No. 819 upon first reading and schedule of second reading for 06/20/11
Attachments: Memo from City Planner dated 06/06/11, Draft Ordinance, City of Largo Economic Stimulus Program, Hernando County Sign Regulations, Brooksville Code of Ordinances Chapter 125, Signs

2. **Resolution No. 2011-02 Sun Trust Bank**
Consideration for ratification of resolution reflecting changes relative to the Sun Trust Financing Agreement.

Presentation: City Attorney
Recommendation: Approval of Resolution upon roll call vote
Attachments: Memo from City Attorney dated 05/24/11; Resolution

3. **Public Risk Management Renewal for 2011-12 and Forward**
Consideration to acceptance of renewal premiums for property, liability and workers' compensation insurance coverages and decision of exercising/not exercising Notice of Intent to Withdraw from participation in the PRM Pool effective October 1, 2011.

Presentation: Director of Finance
Recommendation: Approval of Renewal premiums/rates
Attachments: Memo from Director of Finance dated 05/27/11

4. **Travelers Casualty and Surety Company and Chubb Group Insurance Companies Mutual Settlement Agreement and Release**
Consideration of the negotiated Mutual Settlement Agreement and Release which has been executed by Duke, Travelers and Chubb.

Presentation: City Attorney
Recommendation: Approval of Mutual Settlement Agreement and Release
Attachments: Memo from City Attorney dated 05/27/11, Agreement

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- G. CITIZEN INPUT
- H. ITEMS BY COUNCIL
- I. ADJOURNMENT

CORRESPONDENCE TO NOTE

Meeting agendas and supporting documentation are available from the City Clerk's office, and on line at www.cityofbrooksville.us. Persons with disabilities needing assistance to participate in any proceedings should contact the City Clerk's office 48 hours in advance of the meeting at 352/540-3853.

Any person desiring to appeal any decision with respect to any matter considered at this meeting, may need a record of the proceedings including the testimony and evidence upon which the appeal is to be based, and therefore must make arrangements for a court reporter to ensure that a verbatim record of the proceedings is made.

City of Brooksville
Proclamation

WHEREAS, Code Enforcement Officers provide for the safety, health and welfare of the citizens in this community through the enforcement of building, zoning, housing, animal control, fire safety, environmental and other codes and ordinances; and

WHEREAS, Code Enforcement Officers are often not credited for the jobs that they do in saving lives and improving neighborhoods; and

WHEREAS, every day, assisted by support and program staff, they attempt to provide quality customer service to the public for the betterment of the community; and

WHEREAS, too many times their efforts go unnoticed, even after code compliance has been accomplished, due to their efforts and expertise; and

WHEREAS, Code Enforcement Officers are dedicated, well trained, and highly responsible individuals who take their jobs seriously and are proud of their department and the local government within which they serve; and

WHEREAS, the Florida Association of Code Enforcement (F.A.C.E.) has declared the first week of June be set aside by local government to honor and recognize their Code Enforcement Officers;

NOW, THEREFORE, ON BEHALF OF THE CITY COUNCIL FOR THE CITY OF BROOKSVILLE, FLORIDA, I, FRANKIE BURNETT, MAYOR, do hereby proclaim the week of June 6 through June 10, 2011,

Code Enforcement Officers' Appreciation Week

in the City of Brooksville, in accordance with the statewide observance of the same and encourage citizens of Brooksville to join this Council in expressing appreciation for the dedication and outstanding service provided by the individual who serves as our Code Enforcement Officer.

IN WITNESS WHEREOF, we have hereunto set our hand and caused to be affixed the seal of the City of Brooksville this 6th day of June, 2011.

CITY OF BROOKSVILLE

Frankie Burnett, Mayor

Joseph E. Johnson, III, Vice Mayor

Joe Bernardini, Council Member

Lara Bradburn, Council Member

Emory Pierce, Council Member

ATTEST: _____
Janice L. Peters, CMC, City Clerk

City of Brooksville

Proclamation

WHEREAS, the week of June 12, 2011, marks the One Hundred Fiftieth Anniversary of the **Bethlehem Progressive Baptist Church** where, through hard trials and great tribulations, early visionaries of the church, through faith and trust in the Lord, persevered and a firm foundation was laid; and,

WHEREAS, in 1858, the African American membership of Union Baptist Church made application to the church requesting a service separate from the Caucasian members, many of which were their masters; and,

WHEREAS, the original church building, located on South Lemon Street served as the first school building in Brooksville, Florida and was purchased on August 22, 1911, from the School Board of Hernando County; and,

WHEREAS, records show that the Reverend Arthur Sinclair, the City of Brooksville's 6th recipient of their "Great Brooksvillian" Award, was also Bethlehem's first pastor; and,

WHEREAS, other pastors who have contributed to the heritage of Bethlehem Progressive Baptist Church include their current Pastor, the Reverend C.A. Hubbert, Reverends A. Bradley, H.G. Lyons, R. J. Boone, L.E. McGhee, A. Timmons, L. A. Williams, and H.W. Williams, as well as Reverend C.H. Bolden, who was instrumental in the building of the current church located at 661 S. Brooksville Avenue; and,

NOW, THEREFORE, ON BEHALF OF THE CITY COUNCIL FOR THE CITY OF BROOKSVILLE, FLORIDA, I, FRANKIE BURNETT, MAYOR, do hereby recognize and proclaim the occasion of the

"150th Anniversary"

of the establishment of the Bethlehem Progressive Baptist Church and encourage it's members to continue in their efforts to spread the word of God in this great community it has been a part of for 150 Years.

IN WITNESS WHEREOF, we have hereunto set our hand and caused to be affixed the seal of the City of Brooksville this 6th day of June, 2011.

CITY OF BROOKSVILLE

Frankie Burnett, Mayor

Joseph E. Johnson, III, Vice Mayor

Joe Bernardini, Council Member

Lara Bradburn, Council Member

Emory Pierce, Council Member

ATTEST: _____
Janice L. Peters, CMC, City Clerk



**AGENDA ITEM
MEMORANDUM**

TO: HONORABLE MAYOR AND CITY COUNCILMEN
VIA: T. JENNENE NORMAN-VACHA, CITY MANAGER *T. Jennene Norman-Vacha*
FROM: MIKE WALKER, PARKS, FACILITIES & RECREATION DIRECTOR *Mike Walker*
SUBJECT: 2011 Aquafina Pitch Hit and Run Competition
DATE: May 17, 2011

GENERAL SUMMARY/BACKGROUND: On May 14, 2011 the Brooksville Recreation Department hosted the 2011 Aquafina Pitch Hit and Run competition at Tom Varn Park, which is the official skills completion of Major League Baseball for boys and girls the ages of 7-14. Below are the winners from the event:

2011 Pit Hit & Run Champions

Age 7/8

- All-Around Champion Reece Poole
- Pitch Champion Reece Poole
- Hit Champion..... Reece Poole
- Run Champion..... Landon Carter

Age 9/10

- All-Around Champion Kenna Rose McQuown
- Pitch Champion Kenna Rose McQuown
- Hit Champion..... Kenna Rose McQuown
- Run Champion..... Kenna Rose McQuown

Age 11/12

- All-Around Champion Trevor Adler
- Pitch Champion Trevor Adler
- Hit Champion..... Trevor Adler
- Run Champion..... Tyler Adler

City of Brooksville

Proclamation

WHEREAS, the City of Brooksville would like to take this opportunity to recognize the hard work and determination of the youth of this community; and,

WHEREAS, the Hernando High School Baseball team, for the first time since 1967, when the team was coached by the late Tom Varn, advanced to the 2011 Florida High School Athletic Association's Class 4-A State Semi-finals; and,

WHEREAS, the **Hernando Leopards**, who had a record of 26-6, were the 4A-8 Champions and the 4A-Region II Champions, on Monday, May 23, 2011 faced off against the Tampa Jesuit Tigers, who had a record of 27-7 and were the 4A-9 runners-up and the 4A-Region III Champions, at Digital Domain Park in Port St. Lucie, FL; and,

WHEREAS, no other Hernando County program except the Purple and Gold has reached the Final Four and the Leopards have accomplished this prestigious feat four times in the 122-year history of the school.

NOW, THEREFORE, ON BEHALF OF THE CITY COUNCIL FOR THE CITY OF BROOKSVILLE, FLORIDA, I, FRANKIE BURNETT, MAYOR, do hereby recognize the accomplishments of the following Hernando High School Leopard Coaches and Players:

- | | | | |
|-----------------|---|--|--|
| COACHES: | TIM SIMS
BUDDY KEEGAN
MATT BLANTON | BERT SNOW
SETH NOE
MONTE KETCHUM | LEE SULLIVAN
K.T. MAGILLIGAN |
| PLAYERS: | CHRISTIAN ARROYO
DILLON BEDWELL
BRANDON GEMETTI
MALCOLM HUDSON
TYLER KEEGAN
TREY RATLIFF
BROOKS TIMMONS | TYLER BAMMERT
BRANDON BELL
CODY GILLIS
KYLE JENSEN
BRETT MAGGARD
J.T. SIMPSON
IAN TOWNSEND | MATTHEW BRADY
LOUIS COLOIACOMO
MIKE GOODWIN
JAKE JOHNSON
TAYLOR OWENSBY
CODY SINGER |

FURTHER, we extend our congratulations and express our deep pride to our hometown team.

IN WITNESS WHEREOF, We have hereunto set our hand and caused the seal of the City of Brooksville to be affixed this 6th day of June, 2011.

CITY OF BROOKSVILLE

Frankie Burnett, Mayor

Joseph E. Johnson, III, Vice Mayor

Joe Bernardini, Council Member

Lara Bradburn, Council Member

Emory Pierce, Council Member

ATTEST: _____
Janice L. Peters, CMC, City Clerk

**CITY OF BROOKSVILLE
REGULAR CITY COUNCIL MEETING
COUNCIL CHAMBERS
201 HOWELL AVENUE
MINUTES**

April 4, 2011

7:00 P.M.

Brooksville City Council met in regular session with Mayor Frankie Burnett, Vice Mayor Joseph E. Johnston, III, Council Members, Lara Bradburn and Emory Pierce present. Also present were Thomas S. Hogan, Jr., City Attorney; T. Jennene Norman-Vacha, City Manager; Janice L. Peters, City Clerk; Steve Baumgartner, Finance Director; Mike Walker, Parks and Recreation Director; Bill Geiger, Community Development Director; Richard Radacky, Director of Public Works; George Turner, Police Chief and Tim Mossgrrove, Fire Chief. Members of the Hernando Today and Hernando Times were also present. Council Member Bernardini was not present.

The meeting was called to order by Mayor Burnett, followed by an invocation and Pledge of Allegiance.

PRESENTATION AND REQUEST FOR WAIVERS

Friends of the Children - BBQ Competition - Tom Varn Park Fee

Consideration of waiving fees in the amount of \$275 for the Fourth Annual Brooksville Blazin' Butts-n-Brisket BBQ Competition to be held on May 28, 2011.

Motion:

Motion was made by Council Member Pierce and seconded by Council Member Bradburn for approval of the waiver. Motion carried 3-1 with Council Member Johnston voting in opposition.

Council Member Johnston reviewed the event. Director Walker confirmed there will also be a softball tournament.

CERTIFICATES, PROCLAMATIONS AND PRESENTATIONS

Quick-Start Tennis Program Awards

Presentation of awards to program participants.

Director of Parks, Facilities & Recreation Mike Walker reviewed the program. He and Council presented awards to program participants Jackson Bland, Dylan Brewer, Leah Herren, Lydia Herren, Kolby Lonigro, Troy Lonigro, Austin Pinder and Peyton Taylor.

Proclamation – Water Conservation Month

Consideration of proclamation designating April as “Water Conservation Month.”

Mayor Burnett read the proclamation in its entirety and presented it to Southwest Florida Water Management District Community Affairs Manager Cara Martin. Ms. Martin left pamphlets on the proper way to fertilize. There was brief discussion of rain barrels and the upcoming workshop.

Proclamation – Donate Life Month

Consideration of proclamation designating April as “Donate Life Month.”

Mayor Burnett read the proclamation in its entirety, which will be mailed to the Lifelink Foundation.

REGULAR COUNCIL MEETING MINUTES – APRIL 4, 2011

Proclamation – Child Abuse Prevention Month

Consideration of proclamation designating April as “Child Abuse Prevention Month.”

Mayor Burnett read the proclamation in its entirety and presented it to Noreen St. Jean of Devereux Kids.

President of the Hernando County Fair Association Sandra Nicholson presented flyers and reminders to be available to visitors of the City. Mayor Burnett encouraged all to attend and also to volunteer. The dates of the fair are April 8-16, 2011. Mayor Burnett reviewed the costs for admission and parking, as well as events.

CITIZEN INPUT

Mayor Burnett asked for public input.

Paul Douglas, representing the NAACP, indicated they have volunteered for the fair. He indicated that a couple weeks ago he was at a function to celebrate the women of Brooksville and had the pleasure of hearing Council Member Bradburn speak. He invited Council, especially Council Member Bradburn, to address the NAACP.

He will be working with Director of Parks, Facilities & Recreation Mike Walker for grants to benefit the City. He advised the NAACP and the City will be working together throughout the summer.

CONSENT AGENDA

Council Member Bernardini asked to remove Items 2 and 3 for discussion.

Minutes

September 8, 2010 1st Budget Hearing

Award of Proposal for CDBG Grant Administration – CD2011-02

Consideration of award of bid to Andy Easton & Associates and authorize the Mayor to sign the contract.

Award of bid for Quarry Retention Expansion Project Bid No. PR2011-04

Consideration of bid award to Daly & Zilch for the not-to-exceed amount of \$18,533 and authorize the Mayor to sign the contract.

Police Department Budget Amendment

Consideration of a budget amendment for allocation of \$5,000 from the Hernando County Community Anti-Drug Coalition Corp to be allocated to Police Department overtime to support the Alcohol Compliance Checks and furtherance of the education opportunities provided by the Anti-Drug Coalition.

City Manager Contract Changes

Approval of changes to contract as previously directed by City Council.

Motion:

Motion was made by Council Member Bradburn and seconded by Vice Mayor Johnston for approval of Items 1, 4 and 5 of the Consent Agenda. Motion carried 4-0.

REGULAR COUNCIL MEETING MINUTES – APRIL 4, 2011

Award of Proposal for CDBG Grant Administration – CD2011-02

Consideration of award of bid to Andy Easton & Associates and authorize the Mayor to sign the contract.

Council Member Bradburn reviewed that the item is a grant program for about \$750,000 to address restoration for drainage, flood, pavement and repair/replacement of sidewalks and other improvements for the South Brooksville area. This is a continuation of projects being worked on for some time.

She indicated there were four applicants and, because of the project's importance, that affects what could be the prototype project for other areas of the community, requested the applicants come before Council for a ranking process presentation. Along with that to look at the items outlined for oversight. The group has discussed extensively using this as a prototype for other areas of the community. She indicated the Sewer Rehab project, using an outside oversight engineer, was very successful, with 60% more work accomplished for less by having someone there all the time. She felt many items could be done in-house thereby saving money for a more efficient and productive program.

The jobs outlined in section 7, many can be done in-house, thereby cutting costs, with the engineer overseeing only those things which must be administered according to the CDBG project separately.

Mayor Burnett asked for clarification. Council Member Bradburn indicated there were four applicants, one of which was set aside because of qualifications, with the other three having significant experience, including the number two ranked Summit Professional Services.

Mayor Burnett asked Council opinion.

Council Member Johnston advised looking at the way the CDBG grant is administered is one thing but when it come to ranking the firms, that is why there is staff. Staff is the professionals and are here to categorize and evaluate these things, based on their expertise. Council may have a vested interest in it but Council is not the professionals that can make that sort of determination. He indicated Council can give direction as to whether they want to have it administered in this manner but as far as selection goes he is comfortable with the procedure as it stands.

Council Member Bradburn indicated she has written CDBG grants and knows what is entailed. She advised she has not only written them for the City of Brooksville but worked with the top ranked firm and felt there to be other issues that need to be looked at.

Council Member Pierce was satisfied with the ranking and recommendation of staff and he is ready to approve the recommendation. He didn't feel rehashing would make a difference.

Council Member Bradburn felt that Easton did not efficiently oversee or implement a previous TOPS Grant. The second project they were involved in was a CDBG Grant projects and she is still trying to find those millions of dollars. She pointed out there is another qualified applicant who has extensive experience that was not included in the packet. She has not done a thorough background check but she is not comfortable with the top-ranked firms.

Motion:

Motion was made by Council Member Bradburn to reject the rankings and for approval of bringing this item and applicants before Council.

Mayor Burnett asked for clarification from legal. City Attorney Rey indicated when a project is bid and staff presents the items that were responsive and makes a recommendation then it is Council opportunity to decide the best bid, not necessarily the lowest bid, for the project. If the bids do not

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meet criteria then the project can be re-bid but terms must be modified should the procedure change. She pointed out staff is following the bid procedure policy currently in place but could be changed.

Council Member Bradburn indicated this is similar to a Request for Qualifications which entails professional services, reiterating this is a \$750,000 project.

Mayor Burnett was in favor of proceeding with the project and agreed this is an opportunity to do this right, but also agreed with legal that there are procedures currently in place that need to be followed. He asked the City Manager what she would recommend.

City Manager Norman-Vacha indicated the grant is for \$750,000 including improvements and infrastructure, pointing out the recommendation is for award of grant administration with an estimated cost of \$45,000. She explained that all applicants were reviewed and ranked by a panel of staff members and she supports the ranking. The negotiated contract will be brought back before Council and the in-house provisions mentioned by Council Member Bradburn could be looked at and discussed further. She supports staff recommendation of the selection of Andy Easton & Associates.

Motion died for lack of a second.

Motion:

Motion was made by Council Member Pierce and seconded by Vice Mayor Johnston for approval of staff recommendation for the selection of Andy Easton and Associates. Motion carried 3-1 with Council Member Bradburn voting in opposition.

Council Member Bradburn indicated staff rankings were not consistent, pointing out that Mr. Radacky ranked Andy Easton & Associates significantly low and Steve Baumgartner ranked them significantly high.

She reviewed as follows:

First Section

- Grant Initiation Activities CDBG Grant Agreement Civil Rights Program has been done;
- The signature authorization form has been done;
- Project milestones needs to be in consultation with the engineer;
- Procurement documentation exists in the City Charter Section 5.04 and Florida Statute 287;
- Environmental Review Record preparation is done by the engineer.

Second Section

- Monitoring the reports and attending monitoring site visits is done in-house;
- Project administration activities;
- Review procurement policy, etc., are done in-house. She pointed out each of these items are about \$1,500 to \$2,500 each and not necessary to pay a firm to administer.
- Monitoring project milestones and budget is one item;
- Develop grant amendments to revise project scope, that can be done in-house;
- Conduct pre-construction confidence, that is done in-house;
- Ensure compliance with NBA procurement projects is done in-house;
- Conduct Davis-Bacon labor interviews and review approved contractor changes, that is already done in-house;

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- Review the City's financial management system; prepare budget summaries, analysis and reports; review approved and process contractor pay requests all are done in-house.

Program Closeout and Activities

- Review completed project,
- Develop and submit project closeout report

She felt all could be contracted for under \$10,000 and will give the City Manager her findings.

Award of bid for Quarry Retention Expansion Project Bid No. PR2011-04

Consideration of bid award to Daly & Zilch for the not-to-exceed amount of \$18,533 and authorize the Mayor to sign the contract.

Council Member Bradburn asked if the cart path can be done in-house. Director Radacky indicated he would like to award the entire project to one contractor.

Council Member Pierce added that if you could guarantee the weather would be dry it would be different. He asked if the sidewalk could be rerouted to higher ground. Director Walker indicated it could not due to the placement of the green.

Council Member Bradburn asked what trees were being removed. Director Walker indicated pines, smaller oaks, and elm trees. Director Radacky indicated they tried to save as many trees as possible.

Council Member Bradburn asked for the timetable on the walking trail. Director Walker indicated within two (2) weeks to be completed within thirty (30) days. She reminded Council she presented a letter, on behalf of the City, to the Metropolitan Planning Organization guaranteeing \$30,000 cost for the trail if it runs over on costs. City Manager Norman-Vacha advised the resurfacing project has changed since FDOT has agreed to matching funds and the City may not have to fund it at all as indicated in the budget amendment. She pointed out there is money in another fund that can be utilized for this project.

Motion:

Motion was made by Council Member Bradburn and seconded by Vice Mayor Johnston for approval. Motion carried 4-0.

Mayor Burnett referred to Consent Item 5 City Manager Contract Changes and recommended a bi-annual review. Council Member Bradburn agreed with every two (2) years but Council Member Pierce and Vice Mayor Johnston stated they want it to stay annually. Mayor Burnett indicated since Council was split they will discuss it again when Council Member Bernardini is back.

REGULAR AGENDA

Flagstone Pavers Tax Exempt Status Update

Update on employment status requirements of Flagstone Pavers' Tax Exempt Status.

Director of Community Development Bill Geiger reviewed the item as well as their findings in researching other County and City processes. He indicated not many other cities offer the ad valorem tax exemption benefit but do offer tax incentives and benefits based on job production and wage. The counties and cities that do offer are documented in the report. He stated in summary of past research some communities do monitor based on jobs created, some are based on salary levels at a percentage higher than average wage offered in the county, some are a combination and some do not monitor at all. He spoke with Russ Young, President of Flagstone Pavers, and he indicated if they had not done improvements to their production facility and offices then they would probably have far fewer employees today than what they have; they have diversified and are able to do things

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they were not able to do before as far as services and products that they manufacture. He announced Flagstone's Jeff Bond and Russ Young were present to answer any questions.

Council Member Pierce advised two (2) things are going on regarding ad valorem; the current issue involving Flagstone Pavers and on the future agenda a policy that has to comply with a referendum approved at the last election which requires a ten-employee threshold. City Attorney Rey clarified the referendum itself did not have a job requirement; job number refers to stipulations in the code.

Council Member Pierce recommended for Flagstone Pavers; 75% abatement for the first five (5) years and 50% abatement for the second five (5) years, not subject to number of employees. Vice Mayor Johnston stated Council is under the strictures of Resolution 2003-02, which does require a certain number of employees and would have to be modified. City Attorney Rey stated the resolution does contemplate Council's discretion in applying those guidelines; and any direction given to staff this evening would require Ordinance adoption process of two (2) readings. She indicated staff is looking for direction from City Council on whether or not to amend the ordinance. Director Geiger further clarified that it states "City Council may at its sole discretion deviate from these guidelines from time to time in consideration of unique circumstances related to any individual abatement request" and was intended to allow Council the utmost flexibility.

Council Member Johnston indicated the established guidelines had been met, but on the other hand the economic status has degraded, through no fault of Flagstone's. Rather than establish for the next ten (10) years he preferred an exception for two (2) to three (3) years to see if the economy improves.

Council Member Bradburn stated there are not a lot of companies that have taken advantage of this program because few have invested this much. This is a unique situation that deserves consideration. Staff and legal must consider the danger of setting a precedent but this is the type of company we want in our City. Flagstone employees are treated fairly, they buy and deal locally and since 2006 have invested millions of dollars in improvements. She strongly advised a covenant must be monitored forever. She disagreed with the wording that suggests the City has lost revenue since this company has exceeded expectations and is convinced this is not setting a precedent.

Mayor Burnett agreed with Council Member Bradburn and stated at times there are set policies and ordinances that need to be modified according to the circumstances at hand and local companies should be given consideration and will encourage other businesses to locate within the community. He also agreed with Vice Mayor Johnston to reconsider in two (2) to three (3) years time within legal ramifications.

Council Member Bernardini reviewed the positives of having Flagstone Pavers in the City.

Russell Young and Jeff Bond of Flagstone Pavers reviewed the specifics of their expansions and employees. Mr. Young stated they are a local company celebrating their tenth (10th) year in business in Hernando County. They are a primary business that buys and sells locally with 85% of their employees living locally. They have grown their market share in a poor economy and are still expanding another three (3) acres. They are a committed company with quality products. He confirmed that they have satisfied employees. They have never had a lay off and reduction in workforce is due to resignations or termination for just cause. He indicated sales are up compared to last year and expansion is their intent. He also indicated if they had not added a second plant they would be down at least twelve (12) employees.

Council Member Bradburn, for the record, supported revisiting in one (1) year based on the fact that they have expanded their plant, maintained above the minimum level of employees and the history of the Comp Plan issue, but to keep it standard for now.

REGULAR COUNCIL MEETING MINUTES – APRIL 4, 2011

Council Member Pierce stated in order to give them 75% abatement they must maintain forty-five (45) employees.

Council Member Bradburn indicated she has always been in favor of a two (2) year review because it takes time to get a business up and going and achieve their goals.

Council Member Johnston clarified that the ordinance and resolution in place is job related not plant expansion related. He recommended reducing to 75% with a review after one (1) year and an increase back to 100% if trending shows an increase in employees.

Motion:

Motion was made by Council Member Bradburn and seconded by Council Member Johnston for a reduction to 80% abatement with a review in one year and if trending shows an increase in employment consideration of an increase in the tax abatement at that time.

Motion carried 4-0.

Director Geiger indicated the ordinance will reflect Council direction.

Mayor Burnett pointed out this procedure does not set a precedent.

CITIZEN INPUT

Mayor Burnett asked for public input; there was none.

ITEMS BY COUNCIL

Jennifer C. Rey, City Attorney

Request for Executive Sessions

City Attorney Rey requested two (2) Executive Sessions for April 18, 2011 and May 2, 2011, both at 6:00 p.m. prior to the Regular Meetings. Council concurred.

T. Jennene Norman-Vacha, City Manager

Rain Barrel Workshop

City Manager Norman-Vacha stated in conjunction with water conservation efforts for April and Earth Day there will be a public workshop on April 18th at 11:00 a.m.

Reminder for Workshops & Regular Meeting

She indicated the next Council Workshop will be on April 11th at 6:00 p.m. to discuss Land Development Code and on April 12th at 6:00 p.m. to discuss the Quarry and Financials and open items from last financial workshop including fuel, retirement, pension plans, etc.

She indicated the next Regular City Council Meeting will be on April 18th at 7:00 p.m. with the Executive Session at 6:00 p.m.

Lara Bradburn, Council Member

Hernando County Fair

Council Member Bradburn stated the fair will take place April 8th through April 16th.

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Joe Johnston, Vice Mayor

Recycling Program Statistics

Vice Mayor Johnston asked for monthly weight tonnage of waste collected via the City's Recycling Program. City Manager Norman-Vacha stated staff will provide that information to Council and she indicated efforts are being made to increase participation.

MLK Boulevard Countdown Walk Signal

He thanked staff for the countdown signals on MLK Boulevard and also requested them on Main Street.

Frankie Burnett, Mayor

Ambassador Program

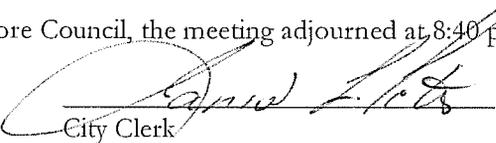
He requested Council consider setting aside money for the program. Council Member Bradburn encouraged Dr. Wilfong and Ms. Heard meet with the City Manager to work up a recommendation. City Manager Norman-Vacha estimated the item would be on the May 2nd Agenda. Council Member Pierce requested a guideline of expenses.

Staff Commendation

He thanked staff for doing a wonderful job.

ADJOURNMENT

There being no further business to bring before Council, the meeting adjourned at 8:40 p.m.


City Clerk

Attest: _____
Mayor



**CONSENT AGENDA ITEM
MEMORANDUM**

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS
VIA: T. JENNENE NORMAN-VACHA, CITY MANAGER *(Signature)*
FROM: MIKE WALKER, PARKS, FACILITIES & RECREATION DIRECTOR *(Signature)*
SUBJECT: INMATE WORK SQUAD CONTRACT WS 557 EXTENSION
DATE: JUNE 6, 2011

GENERAL SUMMARY/BACKGROUND: Attached is the annual renewal inmate work squad contract WS557 "Addendum A", from the Florida Department of Corrections. This agreement is for one of three (3) budgeted work squads the city utilizes to maintain Park/Facilities and the street right-of- ways. The contract will provide the city with one (1) correctional officer and up to five (5) inmates.

The only change in the agreement from prior years is an increase of \$37.00, for a total contract cost of \$58,004. This program is a very important part of the Park and Facilities workforce and the city's.

sew **BUDGET IMPACT:** The agreement is for a total of \$58,004 and has been requested in the proposed Park and Facilities 11/12 Budget, in line item 001-020-572-53400, Other Contractual Services. Contract provisions require 60 days notice for termination should funding not be available.

gl **LEGAL REVIEW:** The City Council has Home Rule Authority (Art. VIII, 2(b), Fla. Const. /Section 166.011, F.S.) to consider and take action on matters of fiscal benefit.

STAFF RECOMMENDATION: Staff recommends that Council approve the proposed inmate work squad contract with the Florida Department of Corrections, Contract #WS557, not to exceed \$58,004.

ATTACHMENTS: Work Squad Contract Extension #WS 557



FLORIDA
DEPARTMENT of
CORRECTIONS

05-13-11 P03:13 IN

Governor
RICK SCOTT

Secretary
EDWIN G. BUSS

An Equal Opportunity Employer

501 South Calhoun Street • Tallahassee, FL 32399-2500

<http://www.dc.state.fl.us>

May 10, 2011

T. Jennene Norman-Vacha
City Manager
City of Brooksville
201 Howell Avenue
Brooksville, Florida 34601-2041

RE: WS557 – City of Brooksville

Dear Ms. Norman-Vacha:

Contract WS557 between the Department of Corrections and the City of Brooksville will expire on November 3, 2011. Accordingly, I am attaching a draft Contract and a revised Addendum A for your review as well as a Contract Expiration Notice (CEN) relative to the replacement of this contract.

Please review the draft Contract and Addendum A, and print and complete the CEN and return it to my attention no later than Friday, June 3, 2011.

If you have any questions, please feel free to contact me at (850) 717-3966.

Sincerely,

A handwritten signature in cursive script, appearing to read "Emily M. Phelps".

Emily M. Phelps
Correctional Services Consultant

/emp
Attachments

**DEPARTMENT OF CORRECTIONS
BUREAU OF PROCUREMENT & SUPPLY
CONTRACT EXPIRATION NOTIFICATION**

DATE: May 10, 2011
TO: T. Jennene Norman-Vacha, City Manager
FROM: Emily Phelps, Correctional Services Consultant
RE: Contract WS557: Hernando CI – City of Brooksville
Work Squad of 1 Correctional Officer and 5 Inmates
Expires: November 3, 2011

NOTE: The above-referenced contract will expire on the above listed date.

Please indicate your preference:

- Do not renew. **Note:** Contract will expire on date specified.
 Process new contract.

CONTRACTOR PERFORMANCE

Based on monitoring performed during the contract period, please answer the questions below:

1. Did the Work Squad provide services (according to the entire scope of service) outlined in the above-referenced contract:
- a. were necessary reports provided in the required timeframe? Yes No N/A
 - b. were invoices submitted in the required timeframe? Yes No N/A
 - c. were services delivered in accordance with the terms & conditions? Yes No

2. Please explain any “negative” responses and attach documentation, if applicable. \

3. Rate the overall performance of service as outlined in the Scope of Service under the contract identified above:

_____ Excellent _____ Good _____ Satisfactory _____ Unacceptable
90% or better compliance 89%-75% compliance 74%-60% compliance 59% or below

If Unacceptable is checked, you are requested to provide an explanation.

SIGNED: _____ (Date) _____
Agency Representative

If you have any questions, please contact Emily Phelps at (850) 717-3966.

PLEASE RETURN THIS FORM AS SOON AS POSSIBLE TO:

***Emily Phelps, Bureau of Institutional Support
501 South Calhoun Street
Tallahassee, Florida 32399-2500***

CONTRACT BETWEEN
THE FLORIDA DEPARTMENT OF CORRECTIONS
AND
CITY OF BROOKSVILLE

This Contract is between the Florida Department of Corrections ("Department") and City of Brooksville ("Agency") which are the parties hereto.

WITNESSETH

WHEREAS, Section 944.10(7) and Section 946.40, Florida Statutes and Rules 33-601.201 and 33-601.202, Florida Administrative Code, provide for the use of inmate labor in work programs;

WHEREAS, inmate labor will be used for the purposes of providing services and performing work under the supervision of the Department's staff;

WHEREAS, City of Brooksville is a qualified and willing participant with the Department to contract for an inmate work squad(s); and

WHEREAS, the parties hereto find it to be in their best interests to enter into this Contract, and in recognition of the mutual benefits and considerations set forth, the parties hereto covenant and agree as follows:

I. CONTRACT TERM/RENEWAL

A. Contract Term

This Contract shall begin on November 5, 2011 or the last date of signature by all parties, whichever is later.

This Contract shall end at midnight one (1) year(s) from the last date of signature by all parties or November 4, 2012, whichever is later. In the event this Contract is signed by the parties on different dates, the latter date shall control.

B. Contract Renewal

This Contract may be renewed, at the option of the Agency, for one (1) additional one (1) year period after the initial Contract period upon the same terms and conditions contained herein. The Contract renewal is at the Agency's initiative with the concurrence of the Department. The Agency, if it desires to renew this Contract, shall exercise its option no later than sixty (60) days prior to the Contract expiration.

II. SCOPE OF CONTRACT

A. Administrative Functions

1. Each party shall cooperate with the other in any litigation or claims against the other party as a result of unlawful acts committed by an inmate(s) performing services under this Contract between the parties.
2. Each party will retain responsibility for its personnel, and its fiscal and general administrative services to support this Contract.
3. Through their designated representatives, the parties shall collaborate on the development of policies and operational procedures for the effective management and operation of this Contract.

B. Description of Services

1. Responsibilities of the Department

- a. Pursuant to Chapter 33-601.202(2)(a), F.A.C., supervision of the work squad(s) will be provided by the Department. The Department shall provide one (1) Correctional Work Squad Officer position(s) to supervise an inmate work squad(s). This Contract provides for one (1) Work Squad(s) of up to five (5) inmates.
- b. The Department shall ensure the availability of the work squad(s) except: when weather conditions are such that to check the squad(s) out would breach good security practices; when the absence of the Correctional Work Squad Officer is necessary for reasons of required participation in training or approved use of leave; when the Officer's presence is required at the institution to assist with an emergency situation; when the officer is ill; or when the Correctional Work Squad Officer position is vacant. In the event a position becomes vacant, the Department shall make every effort to fill the position(s) within five (5) working days.
- c. For security and other reasons, the Department shall keep physical custody of the vehicles, trailers, and all tools, equipment, supplies, materials and personal work items (gloves, boots, hard hats, etc.) furnished by the Agency. (The Department shall maintain an inventory of all property, expendable and non-expendable, provided by the Agency, which is in the care, custody, and control of the Department.) A hand receipt shall be signed by the Department's Work Squad Supervisor upon the issuance and return of non-expendable items.
- d. In the event of damage to property as a result of an accident charged to a Department employee or blatant acts of vandalism by inmates, or loss of tools and equipment, the Agency may request that the Department replace or repair to previous condition the damaged or lost property.
- e. The Department shall be reimbursed by the Agency for the Department's costs associated with this Contract in accordance with Addendum A.

Once the Agency reimburses the Department for the costs reflected on Addendum A, Section IV., these items will be placed on the Department's property records, as appropriate, and upon the end or termination of this Contract such items will be transferred to the Agency.

- f. The Department shall, to the maximum extent possible, maintain stability in the inmate work force assigned to the work squad on a day-to-day basis in order to maximize the effectiveness of the work squad.
- g. The Department shall provide food and drinks for inmates' lunches.
- h. The Department shall be responsible for the apprehension of an escapee and handling of problem inmates. The Department shall provide transportation from the work site to the correctional facility for inmates who refuse to work, become unable to work, or cause a disruption in the work schedule.
- i. The Department shall be responsible for administering all disciplinary action taken against an inmate for infractions committed while performing work under this Contract.
- j. The Department shall provide for medical treatment of ill or injured inmates and transportation of such inmates.
- k. The Department shall provide inmates with all personal items of clothing appropriate for the season of the year.
- l. The Department shall be responsible for driving the Correctional Work Squad Officer and the inmates to and from the work site.
- m. Both parties agree that the Department is making no representations as to the level of skills of the work squad.

2. Responsibilities of the Agency

- a. The Agency shall periodically provide the Department's Contract Manager with a schedule of work to be accomplished under the terms of this Contract. Deviation from the established schedule shall be reported to, and coordinated with, the Department.
- b. If required, the Agency shall obtain licenses or permits for the work to be performed. The Agency shall provide supervision and guidance for projects that require a permit or which require technical assistance to complete the project.
- c. The Agency shall ensure that all projects utilizing inmates are authorized projects of the municipality, city, county, governmental Agency, or non-profit organization and that private contractors employed by the Agency do not use inmates as any part of their labor force.

- d. The Agency shall retain ownership of any vehicles or equipment provided by the Agency for the work squad. The Agency shall maintain its own inventory of transportation, tools and equipment belonging to the Agency.
- e. The Agency shall provide vehicles for transportation of the work squads.

3. Communications Equipment

It is the intent of this Contract that the Work Squad have and maintain communication with the institution at all times. A method of communication (radios, cellular phone, etc.), shall be provided at no cost to the Department. The Agency shall provide a primary method of communication that shall be approved by the Contract Manager in writing prior to assignment of the work squad. Depending upon the method of communication provided, the Contract Manager may require a secondary or back-up method of communication.

All radio communication equipment owned or purchased by the Agency that is programmed to the Department's radio frequency and used by the work squad(s), whether purchased by the Department or the Agency, shall be IMMEDIATELY deprogrammed by the Department at no cost to the Agency upon the end or termination of this Contract. Under no circumstances shall the Agency accept the return of radio communications equipment provided to the Department under this Contract until such time as the radio communications equipment has been deprogrammed by the Department.

At the end or termination of this Contract, the Department's Contract Manager will contact the Department's Utility Systems/Communications Engineer in the Bureau of Field Support Services, Central Office, to effect the deprogramming of radio communications equipment provided by the Agency.

a. Vehicle Mounted Radios:

Vehicles provided by the Agency that are or that will be equipped with a mobile/vehicle mounted radio programmed to the Department's radio frequency(ies) will be retained by the Department to ensure security of the communication equipment except for short durations dictated by the need for vehicle and/or communications equipment maintenance and/or repair. The use of these vehicle(s) during the period covered by this Contract shall not be for any purpose other than as indicated in this Contract.

b. Hand Held Radios:

Hand held radios provided by the Agency that are or that will be programmed to the Department's radio frequency(ies) will be retained by the Department to ensure security of the communication equipment except for short durations dictated by the need for maintenance and/or repair. The use of any hand held radio(s) provided by the Agency that is programmed to a Department radio frequency utilized by the Agency during the period covered by this Contract shall not be for any purpose other than as indicated in this Contract.

c. Cellular Phones:

Cellular phones may be utilized by the work squad officer as either a primary or secondary means of communication as approved by the Contract Manager. The Contract Manager shall designate whether the usage of a cellular phone is required on Addendum A. The cellular phone will be retained by the Department and upon the end or termination of this Contract, returned to the Agency. The use of the cellular phone is not authorized for any purposes other than as indicated in this Contract.

4. Other Equipment

The Contract Manager shall determine if an enclosed trailer is required for the work squad to transport tools and equipment utilized in the performance of this Contract and shall notify the Agency when a trailer is necessary. The Contract Manager shall designate whether the usage of an enclosed trailer is required on Addendum A.

If a trailer for the work squad is provided by the Agency at no cost to the Department, and the Department maintains the trailer when the squad is not working, the Agency shall provide an enclosed trailer that can be secured when not in use. All tools and equipment utilized by the work squad shall be secured in the trailer. Upon the end or termination of this Contract, the trailer will be returned to the Agency.

III. COMPENSATION

A. Payment to the Department

1. **Total Operating Capital To Be Advanced By Agency**, as delineated in Section V., of Addendum A, shall be due and payable upon execution of the Contract. The Department will not proceed with the purchase until payment, in full, has been received and processed by the Department's Bureau of Finance and Accounting. Delays in receipt of these funds may result in start-up postponement or interruption of the services provided by the Work Squad.
2. **Total Costs To Be Billed To Agency By Contract**, as delineated in Section VI., of Addendum A, will be made quarterly, in advance, with the first payment equaling one-fourth of the total amount, due within two (2) weeks after the effective date of the Contract. The second quarterly payment is due no later than the 20th day of the last month of the first Contract quarter. Payment for subsequent consecutive quarters shall be received no later than the 20th day of the last month of the preceding Contract quarter.
3. In the event the Correctional Work Squad Officer position becomes vacant and remains vacant for a period of more than five (5) working days, the next or subsequent billing will be adjusted by the Department for services not provided.
4. The Agency shall insure any vehicles owned by the Agency used under this Contract.
5. The rate of compensation shall remain in effect through the term of the Contract or subsequent to legislative change. In the event there is an increase/decrease in costs identified in Addendum A, this Contract shall be amended to adjust to such new rates.

B. Official Payee

The name and address of the Department's official payee to whom payment shall be made is as follows:

Department of Corrections
Bureau of Finance and Accounting
Attn: Professional Accountant Supervisor
Centerville Station
Call Box 13600
Tallahassee, Florida 32317-3600

C. Submission of Invoice(s)

The name, address and phone number of the Agency's official representative to whom invoices shall be submitted to is as follows:

Mike Walker, Director
Building and Grounds Division
City of Brooksville
201 Howell Avenue
Telephone: (352) 540-3830
Fax: (352) 544-5496
E-mail: mike.walker@cityofbrooksville.us

IV. CONTRACT MANAGEMENT

The Department will be responsible for the project management of this Contract. The Department has assigned the following named individuals, address and phone number as indicated, as Contract Manager and Contract Administrator for the Project.

A. Department's Contract Manager

The Warden of the Correctional Institution represented in this Contract is designated Contract Manager for the Department and is responsible for enforcing performance of the Contract terms and conditions and shall serve as a liaison with the Agency. The position, address and telephone number of the Department's Contract Manager for this Contract is:

Warden
Hernando Correctional Institution
16415 Spring Hill Drive
Brooksville, FL 34604
Telephone: (352) 754-6715

B. Department's Contract Administrator

The Chief, Bureau of Procurement and Supply is designated Contract Administrator for the Department and is responsible for maintaining a Contract file on this Contract service and will serve as a liaison with the Contract Manager for the Department. The name, address and telephone number of the Department's Contract Administrator for this Contract is:

Chief, Bureau of Procurement and Supply
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500
Telephone: (850) 717-3694
Fax: (850) 488-7189

C. Agency's Representative

The name, address and telephone number of the representative of the Agency is:

T. Jennene Norman-Vacha, City Manager (**PLEASE VERIFY AGENCY INFORMATION**)
City of Brooksville
201 Howell Avenue
Brooksville, Florida 34601-2041
Telephone: (352) 540-3810
Fax: (352) 544-5424

D. Changes to Designees

In the event that different representatives are designated by either party after execution of this Contract, notice of the name and address of the new representatives will be rendered in writing to the other party and said notification attached to originals of this Contract.

V. **CONTRACT MODIFICATIONS**

Modifications to provisions of this Contract shall only be valid when they have been rendered in writing and duly signed by both parties. The parties agree to renegotiate this Contract if stated revisions of any applicable laws, regulations or increases/decreases in allocations make changes to this Contract necessary.

VI. **TERMINATION/CANCELLATION**

Termination at Will

This Contract may be terminated by the Agency upon no less than sixty (60) calendar days notice and upon no less than thirty (30) calendar days by the Department, without cause, unless a lesser time is mutually agreed upon by both parties. Notice shall be delivered by certified mail (return receipt requested), by other method of delivery whereby an original signature is obtained, or in-person with proof of delivery. In the event of termination, the Department shall be paid for all costs incurred and hours worked up to the time of termination. The Department shall reimburse the Agency for any advance payments, prorated as of the last day worked.

VII. **CONDITIONS**

A. Records

The Department and the Agency agree to maintain books, records and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices.

The Department and the Agency agree to allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119 of the Florida Statutes, and made or received by the Agency in conjunction with this Contract. It is expressly understood that substantial evidence of either the Department's or the Agency's refusal to comply with this provision shall constitute a breach of Contract.

B. Annual Appropriation

The Department's performance under this Contract is contingent upon an annual appropriation by the legislature. It is also contingent upon receipt of payments as outlined in Addendum A and in Section III, COMPENSATION.

C. Disputes

Any dispute concerning performance of the Contract shall be resolved informally by the Contract Manager. Any dispute that can not be resolved informally shall be reduced to writing and delivered to the Assistant Secretary of Institutions. The Assistant Secretary of Institutions, shall decide the dispute, reduce the decision to writing, and deliver a copy to the Agency with a copy to the Contract Administrator and Contract Manager.

D. Force Majeure

Neither party shall be liable for loss or damage suffered as a result of any delay or failure in performance under this Contract or interruption of performance resulting directly or indirectly from acts of God, civil, or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, water, wind, lightning, strikes, labor disputes, shortages of suitable parts, materials, labor, or transportation to the extent such events are beyond the reasonable control of the party claiming excuse from liability resulting there from.

E. Severability

The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof and this Contract shall be construed in all respects as if such invalid or unenforceable provision was omitted.

F. Verbal Instructions

No negotiations, decisions, or actions shall be initiated or executed by the Agency as a result of any discussions with any Department employee. Only those communications which are in writing from the Department's administrative or project staff identified in Section IV, CONTRACT MANAGEMENT, of this Contract shall be considered as a duly authorized expression on behalf of the Department. Only communications from the Agency that are signed and in writing will be recognized by the Department as duly authorized expressions on behalf of the Agency.

G. No Third Party Beneficiaries

Except as otherwise expressly provided herein, neither this Contract, nor any amendment, addendum or exhibit attached hereto, nor term, provision or clause contained therein, shall be construed as being for the benefit of, or providing a benefit to, any party not a signatory hereto.

Waiver of breach of any provision of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract.

This Contract will be governed by and construed in accordance with the laws of the State of Florida. Any action hereon or in connection herewith shall be brought in Leon County, Florida.

This Contract and Addendum A contain all of the terms and conditions agreed upon by the parties.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed by their undersigned officials as duly authorized.

AGENCY: CITY OF BROOKSVILLE

SIGNED **DRAFT – DO NOT SIGN**
BY: _____
NAME: _____
TITLE: _____
DATE: _____
FEID #: _____

DEPARTMENT OF CORRECTIONS

**Approved as to form and legality,
subject to execution.**

SIGNED
BY: _____
NAME: **Edwin G. Buss**
TITLE: **Secretary
Department of Corrections**
DATE: _____

SIGNED
BY: _____
NAME: **Jennifer A. Parker**
TITLE: **General Counsel
Department of Corrections**
DATE: _____

Addendum A

**Inmate Work Squad Detail of Costs for City of Brooksville
Interagency Contract Number WSXXX Effective November 5, 2011
ENTER MULTIPLIERS IN SHADED BOXES ONLY IF TO BE INVOICED TO AGENCY**

**I. CORRECTIONAL WORK SQUAD OFFICER SALARIES AND POSITION RELATED-EXPENSES
TO BE REIMBURSED BY THE AGENCY:**

Officers Salary	1	# Officer: Multiplier	\$ 54,194.00	**	\$ 54,194.00
Salary Incentive Payment			\$ 1,128.00		\$ 1,128.00
Repair and Maintenance			\$ 121.00		\$ 121.00
State Personnel Assessment			\$ 399.00		\$ 399.00
Training/Criminal Justice Standards			\$ 200.00		\$ 200.00
Uniform Purchase			\$ 400.00		\$ 400.00
Uniform Maintenance			\$ 350.00		\$ 350.00
Training/Criminal Justice Standards *			\$ 1,642.00		
Technology Fee			\$ 462.00		\$ 462.00
TOTAL - To Be Billed By Contract To Agency			\$ 58,896.00		\$ 57,254.00

Per Officer Annual Cost	Total Annual Cost
------------------------------------	------------------------------

*Cost limited to first year of contract as this is not a recurring personnel/position cost.

** Annual cost does not include overtime pay.

IA. **The Overtime Hourly Rate of Compensation for this Contract is \$31.85, if applicable.** (The Overtime Hourly Rate of Compensation shall include the average hourly rate of pay for a Correctional Officer and the average benefit package provided by the department, represented as time and one half for purposes of this Contract.)

II. ADMINISTRATIVE COSTS TO BE REIMBURSED BY THE AGENCY:

Costs include but may not be limited to the following:

Rain coats, staff high visibility safety vest, inmate high visibility safety vest, fire extinguisher, first aid kit, personal protection kit, flex cuffs, warning signs, handcuffs, Igloo coolers, portable toilets, insect repellants, masks, vaccinations, and other administrative expenses.

TOTAL - To Be Billed By Contract To Agency

Number Squads	Total Annual Cost
1	\$ 750.00
	\$ 750.00

III. ADDITIONAL AGENCY EXPENSES:

Tools, equipment, materials and supplies not listed in Section II above are to be provided by the Agency.

CELLULAR PHONE WITH SERVICE REQUIRED: YES NO
ENCLOSED TRAILER REQUIRED: YES NO

Addendum A
Inmate Work Squad Detail of Costs for City of Brooksville
Interagency Contract Number WSXXX Effective November 5, 2011

IV. OPERATING CAPITAL TO BE ADVANCED BY AGENCY:	Per Unit Cost	Number of Units
Hand Held Radio	MACOM \$4833.00	<input type="checkbox"/>
Vehicle Mounted Radio	MACOM \$5119.00	<input checked="" type="checkbox"/>
TOTAL Operating Capital To Be Advanced By Agency		

	Total Cost	Bill To Agency	Provided By Agency	Already Exists
\$ -	-	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
\$ -	-	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
\$ -	-	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- V. TOTAL COSTS TO BE ADVANCED BY AGENCY:**
1. Operating Capital - from Section IV.
 2. **Grand Total - To Be Advanced By Agency At Contract Signing:**

Total Cost
\$0.00
\$0.00

- VI. TOTAL COSTS TO BE BILLED TO AGENCY BY CONTRACT:**
1. Correctional Officer Salaries and Position-Related Expenses - from Section I.
 2. Other Related Expenses and Security Supplies - from Section II.
 3. **Grand Total - To Be Billed To Agency By Contract:**

Total Cost
\$57,254.00
\$750.00
\$58,004.00

VII. TOTAL OF ALL COSTS ASSOCIATED WITH CONTRACT:
(Total of Sections V. and VI.)

\$58,004.00

VIII. OVERTIME COSTS:
 If the contracting Agency requests overtime for the work squad which is approved by the Department, the contracting Agency agrees to pay such costs and will be billed separately by the Department for the cost of overtime.

Addendum A - INSTRUCTIONS
Inmate Work Squad Detail of Costs for City of Brooksville
Interagency Contract Number WSXXX Effective November 5, 2011

- Section I.** Costs in this section are determined each fiscal year by the Budget and Management Evaluation Bureau and are fixed. By entering the number of Officers required for this contract, the spreadsheet will automatically calculate the "Total Annual Cost" column. If this Work Squad is beyond the first year of existence, enter a zero (0) in the "Total Annual Cost" column for "Training/Criminal Justice Standards" **after** you have entered the "# Officers Multiplier".
- Section II.** Safety and environmental health procedures require safety measures such as the use of safety signs, vests, and clothing. The Department's procedure for Outside Work Squads requires that all Work Squad Officers be responsible for ensuring their squad is equipped with a first aid kit and a personal protection equipment (PPE) kit. Section II identifies such required equipment. A new squad must be sufficiently equipped and an on-going squad must be re-supplied when needed. Type in the number of squads used for this contract and the spreadsheet will automatically calculate the fixed annual expense of \$750.00 per squad and place the total in Section VI.
- Section III.** Check "Yes" or "No" to indicate whether a Cellular Phone with Service and/or an Enclosed Trailer is required by the Contract Manager.
- Section IV.** The Department's procedure for Outside Work Squads requires that they have at least one (1) primary means of direct communication with the Institution's Control Room. Communication via radio and/or cellular phone is appropriate. It is preferred that a backup, secondary means of communication also be available. It is the Agency's responsibility to provide them. If the Department purchases a radio(s), the Agency must fund the purchase at the time the Contract is signed. Check the box for the type of radio and fill in the Per Unit Cost for the type of radio, Number of Units, and Total Cost columns. Leave the Total Cost column blank if a radio(s) is not being purchased at this time. Check applicable boxes ("Bill to Agency", "Provided by Agency" and "Already Exists") for each radio.
NOTE: All radio communication equipment owned or purchased by the Agency that is programmed to the Department's radio frequency and used by the work squad(s), whether purchased by the Department or the Agency, shall be IMMEDIATELY deprogrammed by the Department at no cost to the Agency upon the end or termination of this Contract.
- Section V.** The total funds the Agency must provide at the time the contract is signed will be displayed here when the form is properly filled out.
- Section VI.** The total funds the Agency will owe contractually, and pay in equal quarterly payments, will be displayed here.
- Section VII.** The total funds associated with the Contract, to be paid by the Agency as indicated in Sections V. and VI., will be displayed here.
- Section VIII.** Any agreement in this area will be billed separately as charges are incurred.



CONSENT AGENDA ITEM MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCILMEN

VIA: T. JENNENE NORMAN-VACHA, CITY MANAGER

FROM: MIKE WALKER, DIRECTOR OF PARKS, FACILITIES &
RECREATION

SUBJECT: SOFT DRINK AND SCORE BOARD BID NO. PR2011-07

DATE: May 16, 2011

GENERAL SUMMARY/BACKGROUND: The City advertised for sealed bids for Soft Drink and Score Board services. Bids were opened and read aloud in Council Chambers on Friday, April 29, 2011. There was only one (1) bid submitted from the Pepsi Beverages Company.

The proposal is for a five (5) year term that includes; a 25% vending commission paid to the City, a one-time payment of \$5,000, a donation of 50 cases of product per year for special events, the refurbishing of 5 existing scoreboards at the Park and JBCC facilities and the addition of two scoreboards on the adult softball fields located at JBCC, which do not have any at this time.

Staff would request for Council to allocate all the vending commissions obtained during the five (5) year contract to be placed in the McKethan Capital Fund 302 for future capital projects in the Parks and to allocate the one-time \$5,000 donation for a project this FY10/11 to place outfield netting 20 ft. high around the 2 adult fields at JBCC, to prevent softballs that are hit over the fence from landing in the retention ponds located behind the fences. This will reduce the amount of softballs that the Recreation Department will have to purchase, due to balls getting water logged in the ponds.

BUDGET IMPACT/10/11 BUDGET AMENDMENT: The recommendation to allocate the \$5,000 donation from Pepsi for outfield netting is neutral to the City's cash reserves. Private donations were anticipated in the 10/11 Budget with \$15,000 budgeted for private donations in the McKethan Capital Projects Fund. However, the outfield netting was not budgeted and an amendment is requested which is attached. This amendment reflects a \$5,000 increase in McKethan Capital Projects Improvements Other than Buildings (302-020-572-55630) and a decrease in McKethan Unreserved Balances (302-000-271-30060).

LEGAL REVIEW: Pursuant to the City's Charter, Article V, Sec. 5.04. Competitive Bidding, City Council is authorized to approve the award for procurement of personal property or services via the bid process within the statutory categories and limits established pursuant to Florida Statutes Chapter 287.

STAFF RECOMMENDATION: Staff recommends that the City Council consider approval of the bid award for the Soft Drink and Score Board Bid No. PR2011-07 to The Pepsi Beverages Company for a five (5) year term and approve the 10/11 Budget Amendment as documented on the Budget Amendment Form attached.

- ATTACHMENTS:**
1. Agreement
 2. Bid Opening Minutes
 3. Bid Certification Form
 4. Budget Amendment Form

Attachment 1

Agreement

**AGREEMENT FOR CONTRACTOR SERVICES for
SCOREBOARD AND SOFT DRINK CONCESSION
RFP No.: PR2011-07**

This Agreement made as of this 29 day of April by and between the City of Brooksville, Florida - (the "CITY"), and The Pepsi Beverages Company, authorized to do business in the State of Florida (the "CONTRACTOR"), and whose address is 490 Champion Dr. Brooksville, FL 34601, phone: 352-796-5444 fax: 352-796-7845.

In consideration of the mutual promises contained herein, the CITY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

The CONTRACTOR'S responsibility under this Agreement is to furnish, deliver, and construct all materials, labor, and equipment and to perform all operations in accordance with the plans and specifications and as listed in the Bid Form for City of Brooksville.

Services of the CONTRACTOR shall be under the general direction of the CITY MANAGER, who may designate a person to act as the CITY'S representative (hereinafter "REPRESENTATIVE") during the performance of this Agreement.

ARTICLE 2 - SCHEDULE

This contractor shall commence services on May 1st, 2011 and complete all services by July 31st, 2011.

The term of a contract resulting from this solicitation will be for five (5) years from the date of execution. The contract may be extended by mutual agreement for an additional five (5) year period up to a cumulative total of one hundred and twenty (120) months. The City will notify the Vendor in writing, no later than forty-five (45) days prior to expiration of the Contract as to its desire for extension. Any request by the Vendor for consideration of a price adjustment must be made to the City at the time of renewal, and must only be based on increased costs to the Vendor. Verification of these increases shall be furnished to the City upon request. Any upward price adjustment approved by the City shall impose upon the Vendor the requirement to advise and extend to the City price reductions when costs similarly decrease.

The Vendor agrees to provide up to ninety (90) days additional services at current pricing and with the same terms and conditions when services are re-bid, to allow a smooth transition period before a new contract is in place prior to the expiration of the contract.

ARTICLE 3 - PAYMENTS TO CONTRACTOR

- A. The CITY shall pay to the CONTRACTOR for services satisfactorily performed \$ 0, which includes all direct charges, indirect charges and reimbursable expenses, if any. The CONTRACTOR will bill the CITY monthly.
- B. The invoices received from the CONTRACTOR pursuant to this Agreement will be reviewed and approved by the Parks/Facilities and Recreation Department, indicating that services have been rendered in conformity with the Agreement, and then will be sent to the Finance Department for payment. The invoice must specify the work performed.

- C. In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "final invoice" on the CONTRACTOR'S final/last billing to the CITY. This indicates that all services have been performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice shall be waived by the CONTRACTOR.
- D. CONTRACTOR acknowledges that it has reviewed the scope of work and inspected the work site and does not anticipate having any CONTRACTOR requested change orders.

ARTICLE 4 - TERMINATION

This Agreement may be terminated by the CONTRACTOR on 30 days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms hereof through no fault of the CONTRACTOR. It may also be terminated by the CITY, with or without cause, immediately upon written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Agreement, the CONTRACTOR shall be paid for services rendered to the CITY'S satisfaction through the date of termination. After receipt of a termination notice and except as otherwise directed by the CITY the CONTRACTOR shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other material related to the terminated work to the CITY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 5 - PERSONNEL

The CONTRACTOR represents that it has or will secure at its own expense all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.

All of the services required herein under shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under State and local law to perform such services.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 - SUBCONTRACTING

The CITY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement. The CONTRACTOR is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the CITY.

ARTICLE 7 - FEDERAL AND STATE TAX

The CONTRACTOR shall be responsible for payment of its own FICA and Social Security benefits with respect to this Agreement and the personnel it employs.

ARTICLE 8 – INSURANCE & BONDS

- A. The CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance and bonds required under this paragraph and such insurance has been verified by the CITY.
- B. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida.

The CONTRACTOR shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the amount of \$100,000/\$500,000/\$1,000,000 or \$1,000,000 combined single limit for property damage and bodily injury liability covering claims which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles, whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR. CONTRACTOR shall purchase and maintain a policy or policies of commercial general liability insurance satisfactory in all respects to CITY, and casualty and extended coverage insurance. All policies shall be occurrence form policies and shall name CITY as an additional insured, with the premium thereon fully paid by CONTRACTOR on or before their due date. The general liability insurance policy shall afford minimum protection of \$500,000/\$1,000,000 or \$1,000,000 combined single limit coverage for bodily injury.

Required insurance shall be documented in Certificates of Insurance which provide that CITY shall be notified at least 30 days in advance of cancellation, non-renewal or adverse change. New Certificates of Insurance are to be provided to CITY at least 15 days prior to coverage renewals. City of Brooksville, Florida is to be named as an additional insured entity.

If requested by CITY, CONTRACTOR shall furnish complete copies of its insurance policies, forms and endorsements.

For commercial general liability coverage, CONTRACTOR shall, at the option of CITY, provide an indication of the amount of claims, payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by CITY, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of CONTRACTOR'S obligation to fulfill the insurance requirements herein.

CONTRACTOR shall also purchase and maintain workers compensation insurance for all obligations imposed by law, with employer's liability limits of at least \$1,000,000 each employee/\$500,000 policy limit for disease. CONTRACTOR shall also purchase any other coverages required by law.

CONTRACTOR'S maintenance of the insurance policies required hereunder shall not limit or otherwise affect its liability hereunder.

- C. In the event that a performance or payment bond is required due to use of grant funds for the project, by City Council or as otherwise required, the CONTRACTOR shall not commence work under this Agreement until it has obtained the required bonds and provided such bonds to the CITY.

ARTICLE 9 - EXCUSABLE DELAYS

The CONTRACTOR shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the CONTRACTOR'S control and without its fault or negligence. Such causes may include, but are not limited to: acts of God; the City's omissive and commissive failures; natural or public health emergencies; labor disputes; freight embargoes; and severe weather conditions. If failure to perform is caused by the failure of the CONTRACTOR'S subcontractor(s) and is without the fault or negligence of them, the CONTRACTOR shall not be deemed to be in default.

Upon the CONTRACTOR'S request, the CITY shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without its fault or negligence as determined by the CITY, any affected provision of this Agreement shall be revised accordingly; subject to the CITY's rights to change, terminate, or stop any or all of the work at anytime.

ARTICLE 10 - LIQUIDATED DAMAGES

Liquidated damages shall be paid to the CITY at the rate of \$200.00 per day for all work awarded under the contract until the work has been satisfactorily completed as provided by the Contract Documents. Sundays and Legal Holidays shall be excluded in determining days in default.

It is agreed that the amount is the per-diem rate for damage incurred by reason of failure to complete the work. The said amount is hereby agreed upon as the reasonable costs which may be accrued by the CITY after the expiration of the time of completion. It is expressly understood and agreed that this amount is not to be considered in the nature of a penalty, but as liquidated damages which have accrued against the CONTRACTOR. The CITY shall have the right to deduct such damages from any amount due, or that may become due the CONTRACTOR, or the amount of such damages shall be due and collectable from the CONTRACTOR or Surety.

ARTICLE 11 - ARREARS

The CONTRACTOR shall not pledge the CITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

ARTICLE 12 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the CITY for approval and acceptance, and before being eligible for final payment of any amount due, all documents and materials prepared by and for the CITY under this Agreement.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the CITY or at its expense will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the CITY'S prior written consent.

Such information and data shall be and will remain the CITY'S property and may be reproduced and reused at the discretion of the CITY.

All products generated by the CONTRACTOR for the CITY become the property of the CITY. The CITY may require submission of any electronic file version of reports, data, maps or other submission of documentation produced for or as a result of this project in addition to paper documents.

The CITY and the CONTRACTOR shall comply with the provisions of the Florida Public Records Law.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

ARTICLE 13 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the CITY shall be that of an independent contractor and not as employees or agents of the CITY.

The CONTRACTOR does not have the power or authority to bind the CITY in any promise, agreement or representation.

ARTICLE 14 - CONTRACT ASSIGNMENT

The CONTRACTOR shall not sublet, sell, transfer, assign or otherwise dispose of the CONTRACT or any portion thereof, or of his right, title, or interest therein, without written consent of the CITY. The CONTRACTOR shall complete the work contemplated by the terms and conditions of this Agreement in an amount equivalent to at least 50 percent (50%) of the dollar value of work to be performed under this Contract utilizing its own business or corporate entity, so that no single labor, material man, or subcontractor shall be permitted to perform more than 50% of the work contemplated by this Contract.

ARTICLE 15 - AMENDMENT

None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by a written instrument executed by the parties hereto.

ARTICLE 16 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 17 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 18 - SEVERABILITY

If any term or provision on this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 19 - CITY'S REPRESENTATIVE AND AUTHORITY

The person designated by the CITY MANAGER shall serve as the CITY'S REPRESENTATIVE and shall decide questions which may arise as to quality and acceptability of materials furnished and work performed, and shall interpret the intent of the Contract Documents with reasonable promptness.

The REPRESENTATIVE will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

The REPRESENTATIVE may assign Project Inspector(s) who shall serve to assist the REPRESENTATIVE in determining if the work performed and the materials used meet the Contract requirements. The Project Inspector shall be authorized to issue Field Orders. The Project Inspector shall be authorized to stop all or any portion of the work if in his opinion the work is not proceeding according to the requirements of the plans and specifications.

ARTICLE 20 - MODIFICATION

The CITY reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the CITY'S notification of a contemplated change, the CONTRACTOR shall (1) if requested by CITY, provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify the CITY of any estimated change in the completion date, and (3) advise the CITY in writing if the contemplated change shall affect the CONTRACTOR'S ability to meet the completion dates or schedules of this Agreement.

If the CITY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the work affected by a contemplated change, pending the CITY'S decision to proceed with the change.

If the CITY elects to make the change, the CITY shall issue a contract amendment or change order and the CONTRACTOR shall not commence work on any such change until such written amendment or change order has been issued and signed by each of the parties.

ARTICLE 21 - CONTRACT DOCUMENTS

The other documents which comprise the entire Agreement are attached hereto, made a part hereof and consist of the following:

- A. Advertisement for Bids.
- B. Special Instructions and Conditions
- C. General Instructions and Conditions
- D. Minimum Technical Specifications
- E. Bid Forms
Bid Certification Form
Drug-Free Workplace Certification
Public Entity Crimes Statement
- G. Addendums (if any)
- H. Performance & Payments Bonds (if required)
- I. Change Orders (if any)

In the event of a conflict between the terms of the above documents and the terms of this Agreement, the terms of this Agreement shall prevail.

There are no contract documents other than those listed above and there are no promises or understandings other than those stated herein.

ARTICLE 22 - VENUE

All applicable laws, regulations and ordinances of the State of Florida, Hernando County and the City of Brooksville will apply to consideration and award of any bid/proposal and the performance of the bidder/proposal pursuant thereto, and shall be governed by the laws of the State of Florida both as to intention and performance. The venue for any action arising from the award or subsequent performance shall lie exclusively in the Circuit Court of Hernando County, Florida, or the United States District Court for the Middle District of Florida, as applicable.

ARTICLE 23 - NOTICE

All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

City of Brooksville
201 Howell Avenue
Brooksville, Florida 34601
Attention: City Clerk
Phone: (352) 540-3853
Fax: (352) 544-5424
Email: jpeters@cityofbrooksville.us

With a copy to: City Attorney
c/o The Hogan Law Firm
P.O. Box 485
Brooksville, Florida 34605

and if sent to the CONTRACTOR shall be mailed to:

Joe Kinley
11301 N 30th St
Tampa, FL 33612

This Agreement is entered into as of the day and year first written above and is executed in at least two original copies of which one is to be delivered to the CONTRACTOR, and one to the CITY CLERK for filing in the official records.

CITY CLERK

CITY OF BROOKSVILLE, FLORIDA

Attest: _____
Janice L. Peters, CMC
City Clerk

By: _____
Frankie Burnett, Mayor

Contractor Witnesses:
(2 REQUIRED)

Contractor:

Witness Nakia Smith
Name
Nakia Smith
Signature

Pepsi Beverages Company
Business Name
By [Signature]
Signature

Witness Dewayne Rogers
Name
Dewayne Rogers
Signature

Neil Fowler Channel Manager
Print Name and Title

Approved as to Form for the reliance of the
City of Brooksville only:

Thomas S. Hogan, Jr., The Hogan Law Firm, LLC
City Attorney

Attachment 2

Bid Opening Minutes

**BID OPENING MINUTES
SCOREBOARD AND SOFT DRINK CONCESSION
BID NO. PR2011-07**

April 29, 2011

3:00 P.M.

A Bid Opening was held at approximately 3:00 p.m. on Friday, April 29, 2011, in the City Hall Council Chambers for **SCOREBOARD AND SOFT DRINK CONCESSION BID NO. PR2011-07**. Janice Peters, City Clerk, Mike Walker, Director of Parks, Facilities and Recreation, and Kim Harsin, Deputy City Clerk/Recording Secretary were in attendance.

City Clerk Peters advised that an Invitation to Bid was published in the April 1, 2011, edition of the Hernando Today with a closing date and time set for 3:00 p.m. on Friday, April 29, 2011. Addendum Number 1 was issued on April 4, 2011 and Addendum Number 2 was issued on April 14, 2011 and shall be attached to and made a part of the Proposal Documents.

As a result, 1 set of bids was received, properly sealed and notated. The bids were to include one (1) original and three (3) copies with the following items: Bid Certification Form with signature page, Public Entity Crime Statement, Drug Free Workplace Certification, Agreement for Contractor's Service (Signed) and Addendum Numbers 1 and 2.

The following company submitted a bid, which was opened and the result read as follows:

<u>Pepsi Beverages Company, St. Petersburg, FL</u>	90-Days	\$32,250.
All required documentation included; Drug Program Implemented		

It should be noted that the \$32,000 reflects the anticipated value of Pepsi's contract with the City including equipment provided, a \$5000 cash donation and potential profits from sales of Pepsi products.

City Clerk Peters informed bidders that the packets would be further reviewed by staff and their recommendation would be submitted to City Council on June 6, 2011. The bid opening concluded at 3:06 p.m.

Recording Secretary

Attachment 3

Bid Certification Form

Bidder/Company Name: Pepsi Beverages Company

**City of Brooksville BID/CERTIFICATION FORM
SCOREBOARD AND SOFT DRINK CONCESSION
RFP No.: PR2011-07**

BIDDERS CERTIFICATION TO THE CITY OF BROOKSVILLE:

1. The undersigned warrants that: (A) this Bid is submitted in response to, and is in compliance with, all terms and conditions applicable thereto as set forth in the Advertisement, General Instructions and Conditions, Special Instructions and Conditions, Bid/Certification Forms and (if any), the Minimum Technical Specifications, Plans, Addendum, Exhibits, Agreement, Bonds and Insurance requirements, each of which has been carefully examined, (B) Bidder or Bidder's representative has made such investigation as is necessary to determine the character and extent of the work and their capability to perform the work, and (C) agrees that if the Bid is accepted by the City, Bidder will provide the necessary labor, materials, machinery, equipment, tools or apparatus, and perform all the work or services required to complete the assignment and/or contract within the time specified according to the requirements of the City as herein and hereinafter set forth, and (D) he/she is authorized to legally execute binding contracts for and on behalf of the Bidder.

2. Please check one:
 Bidder declares that the only person, persons, company or parties interested in this Bid are named in the Bid.

 Bidder, or one or more of bidder's officers, principals, or any owner of more than 5% in or of bidder, or members of their immediate families: (A) have a financial interest in another company, project, or property that could benefit financially from this proposed project; and/or (B) another individual or business will be compensated by (or on behalf of bidder) if bidder is selected by the City to bid the requested services. (Attach a detailed explanation for either.)

3. Bid Bond - If the Bid is accepted by the City, it will become a binding contract on both parties. If a Bid Bond or Cashiers Check/Certified Check is required, it shall be submitted with the Bid. If the undersigned shall fail to deliver or perform, or if applicable, execute a Contract as stated herein, then the City may, at its option, determine that the undersigned has abandoned the Award/Contract, and thereupon such Bid and/or Award shall be null and void, and any Cashiers Check/Certified Check or Bond accompanying this Bid shall be forfeited to and become the property of the City, and the full amount of said check, or if a Bid Bond, the full amount of such bond, shall be paid to the City as partial liquidated damages; otherwise, any Bond or Cashiers Check/Certified Check accompanying this Bid shall be returned to the undersigned within 30 calendar days from the date of Award, or if provisions for a Notice to Proceed are included, from the date of the Notice to Proceed.

4. Bidder proposes and agrees to provide all materials, services or equipment required for the **SCOREBOARD AND SOFT DRINK CONCESSION BID**, for the Total Bid Sum of Thirty Two Thousand Two Hundred Fifty Dollars (\$32,250). (Must reflect same total as itemized in Proposed Quote.)

Bidder/Company Name: Pepsi

5. Number of days from date if Notice to Proceed that will be required for the final completion of all work as described herein and as shown on the plans.

90 Days
(Maximum 120 Calendar Days)

6. The City reserves the right to accept any or all prices itemized in any combination that best serves the interests of the City. The City further reserves the right to accept or reject any of the components of this Bid, including alternates.

7. BIDDER HEREBY ACKNOWLEDGES RECEIPT OF THE FOLLOWING ADDENDUMS: 

<Remainder of Page Left Intentionally Blank>

Bidder/Company Name: Pepsi Beverages Company

Name of Bidder:

Business structure: Corporation, () Partnership, () Individual,
() Other _____

If a Partnership:

Name(s) of Partner(s): _____

If a Corporation:

Incorporated in State of: New York Date of Incorporation May 17, 2010

Business Address: 490 Champion Dr.

City, State, Zip: Brooksville State FL Zip 34601

Telephone Number: (352) 796-5444 Fax (352) 796-7845

Submitted By: (Print) Neil Fowler Title: Channel Manager

Signature: [Signature]

ATTEST: Secretary

By:

Print Name

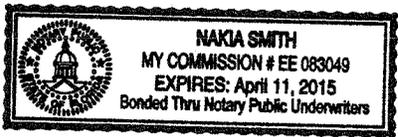
Affix Corporate Seal
(If Corporation)

State of Florida
County of

The foregoing instrument was acknowledged before me this 29th day of April, 2011, by Neil Fowler,
who is personally known to me or who presented _____ as identification,
and who (did) (did not) take an oath.

Nakia Smith
[Signature of Notary Public]

Nakia Smith
[Printed, typed or stamped name of Notary Public]



EE 083049 4/11/2015
[Commission Number of Notary Public]

NOTE: BIDS MAY BE REJECTED IF ALL DOCUMENTS ARE NOT COMPLETE AND EXECUTED, AND THE NUMBER OF COPIES SPECIFIED/REQUESTED OF EACH ARE NOT SUBMITTED WITH THE BID.

Attachment 4

Budget Amendment Form

BUDGET AMENDMENT FORM

Fiscal Year 2011 – 2012

Account Name/Dept.	Account Number	Approved Budget FY2011-12*	Increase	Decrease	Amended Budget FY2011-12
Improvements Other than Buildings/McKethan Capital Projects Fund No. 302	302-020-572-55630	\$40,000	\$5,000		\$45,000
Unreserved Fund Balance	302-000-271-30060	\$27,287		\$5,000	\$22,287
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
TOTAL		\$67,287	\$5,000	\$5,000	\$67,287

*Approved budget as previously amended.

Reason for Amendment: Outfield netting is requested around 2 adult fields at JBCC.

Department Director Signature

Date

Department Director Signature

Date

Stephen J. Baumgartner

Finance Director Signature

5-27-11

Date

City Manager Signature

Date

Approved by City Council, during Regular Session:

Date



**CONSENT AGENDA ITEM
MEMORANDUM**

TO: THE HONORABLE MAYOR AND CITY COUNCILMEN

VIA: T. JENNENE NORMAN-VACHA, CITY MANAGER

FROM: RICHARD W. RADACKY, PUBLIC WORKS DIRECTOR

SUBJECT: South Brooksville Vision Area, Phase I - Solicitation No. 11-0031

DATE: May 24, 2011

GENERAL SUMMARY/BACKGROUND:

The South Brooksville Water and Sewer Project is a joint project between Hernando County and the City of Brooksville. It will be funded by a Community Development Block Grant, in the amount of \$750,000, from the Florida Department of Community Affairs. Currently, there are thirty four (34) residences that will receive infrastructure from this project.

This project consists of the following improvements:

- Water facilities upgrade in replacing undersized water lines and providing adequate water for fire-fighting purposes.
- New 8-inch replacement water mains with service connections and fire hydrants.
- Elimination of septic tanks and drain fields as a means of wastewater disposal.
- Plumbing upgrades in some instances.
- New domestic wastewater collection/transmission system consisting of 8-inch gravity sewer, service connections and manholes.
- New roads consisting of stabilized subgrade, limerock base, asphalt and street signs.
- Improved drainage system with swales and culverts.

In accordance with an Interlocal Agreement between Hernando County and the City of Brooksville, the City will match \$75,000 and Hernando County will provide \$50,000. This is a 60 percent/40 percent allocation as the City will own the water and sewer lines and facilities. South Brooksville is within the City's water and sewer service area.

Hernando County is upgrading the storm sewers and, therefore, will pay \$157,740.68. Storm sewers will be funded 100 percent by Hernando County.

Coastal Engineering Associates, Inc., designed the South Brooksville Project and will provide construction services on behalf of the City, in the amount of \$16,000. (Construction services will be paid by the Grant).

The County advertised for sealed bids for the South Brooksville Vision Area, Phase I. Bids were opened on April 20, 2011. There were four (4) bids submitted as follows:

BIDDER	BID AMOUNT
GOODWIN BROTHERS CONSTRUCTION, INC.	\$819,110.00
CROFT CONTRACTING, INC.	\$832,719.82
KAMMINGA & ROODVOETS, INC.	\$916,507.00
GIBBS & REGISTER, INC.	\$1,228,396.00

Attached is a copy of the bid tabulations.

Hernando County and City of Brooksville staffs have reviewed the bids and determined that Goodwin Brothers Construction, Inc., is the most reasonable and responsive bidder. Goodwin Brothers have successfully completed construction projects for the City within budget and on time; and staff was pleased with the quality of their work. The Hernando County Board of County Commissioners approved bid award to Goodwin Brothers Construction, Inc., at its Commission Meeting of May 24, 2011. Also attached is a letter from Mr. Burt Bennett, Coastal Engineering Associates, Inc., recommending bid award to Goodwin Brothers Construction, Inc.

 **BUDGET IMPACT:**

The City of Brooksville match is \$75,000, less design and permitting costs. Design and permitting costs for water and sewers were \$28,780.25. Therefore, the City anticipated construction cost will be \$46,219.75. There is anticipated to have \$104,924.77 available for house sewer line connection, septic tank and drain field abandonment, and payment of sewer impact fees.

 **LEGAL REVIEW:**

The City Council has Home Rule Authority (Art. VIII, 2(b), Fla. Const./Section 166.011, F.S.) to consider and take action on matters of fiscal benefit and, pursuant to Sec. 1.03 of the City's Charter, the city has all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services. Fla. Stat. §163.01 provides for interlocal government cooperation.

STAFF RECOMMENDATION:

Staff recommends bid approval of the low bidder, Goodwin Brothers Construction, Inc., in the amount of \$819,110.

May 9, 2011

Diana Koontz, P.E.
Staff Engineer
Hernando County Environmental Services
21030 Cortez Blvd.
Brooksville, FL 34601

Re: South Brooksville Vision Area Phase 1 Bids
Solicitation Contract # 110031

Dear Ms. Koontz:

This letter documents our review of the Bids received on April 20, 2011, for the subject project and at your request, provides a recommendation of award.

Attached is a summary tabulation of the bids. Four responsive bids were received by the Hernando County Purchasing and Contracts Department with total bids, including alternate, ranging from \$819,110.00 to \$1,228,396.00. The lowest bidder was Goodwin Brothers Construction, Inc., followed by Croft Contracting, Inc., Kamminga & Roodvoets, Inc. and Gibbs & Register, Inc.

Mathematical addition and extensions were checked and minor errors were noted in Kamminga & Roodvoets, Inc. and Gibbs & Register bids. Neither error was found to impact the bid ranking.

Each of the bidders acknowledged Addendum # 1, submitted contractor affidavits, required bid proposal forms, bid bonds and generally, appear to have included the required bid attachments.

The low bidder, Goodwin Brothers Construction, Inc. is a local contractor who has been in business for approximately 25 years. In that time, they have performed many successful projects for Hernando County. We also have direct knowledge of Goodwin Bros., as they have also completed numerous public and private Coastal "Engineer of Record" projects throughout the years. Their project experience list includes federally funded projects. In our opinion, Goodwin Bros. is highly qualified to perform the proposed work as required in the contract documents.

On the basis of the above, and contingent on Hernando County Purchasing and Contracts Department being satisfied with the sufficiency of the bid submittal documents, we recommend award of the South Brooksville Vision Area Phase I to Goodwin Brothers Construction, Inc.

Sincerely,

COASTAL ENGINEERING ASSOCIATES, INC.



Burt A. Bennett, Director Construction Services/Surveying

CC: Richard Radacky, City of Brooksville

HERNANDO COUNTY
PURCHASING AND CONTRACTS DEPARTMENT
20 NORTH MAIN STREET, ROOM 365, BROOKSVILLE, FL 34601

BID TABULATION
SOLICITATION TITLE: SOUTH BROOKSVILLE VISION AREA PHASE I

SOLICITATION NO. 11-0031

BID OPENING: APRIL 20, 2011 3:00PM

BIDDERS

	GOODWIN BROTHERS PO BOX 1689 BROOKSVILLE FL 34605 DANIEL R. GOODWIN JR	CROFT CONTRACTING INC PO BOX 1594 INVERNESS, FL 34451 CHUCK CROFT	KAMMINGA & ROODVOETS INC. 5219 CONE ROAD TAMPA, FL 33610 MARCUS TIDEY JR
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GENERAL CONDITIONS 1.0			
DESCRIPTION	QTY	UNIT	TOTAL
1.1 Mobilization, Insurance, Indemnity: ≤ 5%	1	LS	\$37,742.00
1.2 Performance & Payment Bond	1	LS	\$11,880.00
1.3 NPDES Maint./Monitor/Compliance	1	LS	\$1,836.00
1.4 Silt Fence Installation & Removal	8500	LF	\$8,500.00
1.5 Survey Layout & As-builts	1	LS	\$14,040.00
1.6 Maintenance of Traffic (MOT)	1	LS	\$26,967.00
1.7 Import Fill for Roadway.. Subgrade and Pipe bedding	5000	CY	\$9.00
TOTAL			\$145,965.00

			\$11,000.00
			\$14,400.00
			\$2,750.00
			\$1,38
			\$9,350.00
			\$11,000.00
			\$68,750.00
			\$128,980.00

ROADWAY 2.0

DESCRIPTION	QTY	UNIT	TOTAL
2.1 Clearing & Grubbing	4	AC	\$5,563.00
2.2 Unclassified Excavation & Grading	1	LS	\$20,869.00
2.3 6" Stabilized Subgrade LBR 40	6,800	SY	\$3.00
2.4 6" Limerock Base (primed)	6,000	SY	\$5.00
2.5 2" Type S Asphalt	6,000	SY	\$9.00
2.6 4" Stabilized Shoulder LBR 40	2,545	SY	\$3.00
2.7 Driveway Apron	50	EA	\$735.00
2.8 Mailbox Remove/Replace	32	EA	\$29.00
2.9 5' Concrete Sidewalk w/Detectible Warning	60	LF	\$37.00
2.10 Sod Right of Way	9,500	SY	\$1.75
2.11 Seed & Mulch Newgate/Easy Utility	2,500	SY	\$0.50
2.12 Stop Sign Assembly	4	EA	\$189.00
2.13 Street Name Sign Assembly	4	EA	\$162.00
2.14 Roadway Termination Assembly	4	EA	\$216.00
2.15 24" Stop Bar	4	EA	\$162.00
2.16 12" Crosswalk Stripe	160	LF	\$2.00
TOTAL			\$216,165.00

			\$6,600.00
			\$27,500.00
			\$32,912.00
			\$45,540.00
			\$49,500.00
			\$9,798.25
			\$27,500.00
			\$3,520.00
			\$3,630.00
			\$23,560.00
			\$2,750.00
			\$880.00
			\$385.00
			\$1,540.00
			\$440.00
			\$440.00
			\$704.00
			\$236,814.25

STORM DRAINAGE 3.0						
DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
3.1 24" RCP	64	LF	\$30.00	\$1,920.00	\$31.90	\$2,041.60
3.2 18" RCP	84	LF	\$21.00	\$1,764.00	\$24.75	\$2,079.00
3.3 15" RCP	1,018	LF	\$20.00	\$20,360.00	\$21.45	\$21,836.10
3.4 24" MES	4	EA	\$906.00	\$3,624.00	\$605.00	\$2,420.00
3.5 18" MES	6	EA	\$768.00	\$4,608.00	\$550.00	\$3,300.00
3.6 15" MES	98	EA	\$658.00	\$64,484.00	\$495.00	\$48,510.00
3.7 Remove/Replace Chairlink Fence	30	LF	\$32.00	\$960.00	\$16.50	\$495.00
SUBTOTAL				\$97,720.00		\$80,681.70
WATER DISTRIBUTION 4.0						
DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
4.1 8" PVC C-900	3,100	LF	\$18.00	\$55,800.00	\$17.88	\$55,428.00
4.2 8" DIP	100	LF	\$39.00	\$3,900.00	\$38.50	\$3,850.00
4.3 6" PVC C-900	22	LF	\$14.00	\$308.00	\$18.15	\$399.30
4.4 6" DIP	60	LF	\$27.00	\$1,620.00	\$27.50	\$1,650.00
4.5 8" Gate Valve	4	EA	\$1,057.00	\$4,228.00	\$1,265.00	\$5,060.00
4.6 Fire Hydrant Assembly	6	EA	\$3,430.00	\$20,580.00	\$3,520.00	\$21,120.00
4.7 Fire Hydrant Rehab	10	EA	\$756.00	\$7,560.00	\$4,345.00	\$43,450.00
4.8 6"x6" Wet Tap & Valve	3	EA	\$1,878.00	\$5,634.00	\$3,025.00	\$9,075.00
4.9 Connect to Existing 6"	1	EA	\$389.00	\$389.00	\$1,100.00	\$1,100.00
4.10 Single Service	25	EA	\$639.00	\$15,975.00	\$440.00	\$11,000.00
4.11 Double Service	4	EA	\$976.00	\$3,904.00	\$495.00	\$1,980.00
4.12 Blow Off & Sample Point	1	EA	\$1,171.00	\$1,171.00	\$990.00	\$990.00
4.13 Flush, Chlorinate, Bac't & Pressure Test	1	LS	\$918.00	\$918.00	\$2,475.00	\$2,475.00
4.14 8" MJ Plug w/Restrains	1	EA	\$168.00	\$168.00	\$220.00	\$220.00
4.15 8" MJ Tee w/ Restrains	1	EA	\$401.00	\$401.00	\$511.50	\$511.50
4.16 8"x6" MJ Tee w/Restrains	2	EA	\$477.00	\$954.00	\$462.00	\$924.00
4.17 8"x6" MJ Reducer w/Restrains	3	EA	\$256.00	\$768.00	\$275.00	\$825.00
4.18 6" MJ 90	1	EA	\$267.00	\$267.00	\$258.50	\$258.50
SUBTOTAL				\$124,545.00		\$160,316.30
SANITARY SEWER 5.0						
DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
5.1 8" PVC SDR 26 Gravity 0'-6"	790	LF	\$17.00	\$13,430.00	\$16.17	\$12,774.30
5.2 8" PVC SDR 26 Gravity 6'-8"	1,232	LF	\$23.00	\$28,336.00	\$18.37	\$22,631.84
5.3 8" PVC SDR 26 Gravity 8'-10"	1,079	LF	\$24.00	\$25,896.00	\$21.67	\$23,381.93
5.4 Std. Manhole 0'-6"	2	EA	\$1,381.00	\$2,762.00	\$1,870.00	\$3,740.00
5.5 Std. Manhole 6'-3"	4	EA	\$1,752.00	\$7,008.00	\$2,310.00	\$9,240.00
5.6 Std. Manhole 8'-10"	5	EA	\$2,120.00	\$10,600.00	\$2,090.00	\$10,450.00
5.7 Single Service	33	EA	\$630.00	\$20,790.00	\$577.50	\$19,057.50
5.8 Special Stone Pipe Bedding	130	LF	\$6.00	\$780.00	\$11.00	\$1,430.00
5.9 Core Wetwell	1	EA	\$1,134.00	\$1,134.00	\$1,100.00	\$1,100.00
5.10 Testing, Air, T.V. Lamp	1	LS	\$2,052.00	\$2,052.00	\$6,600.00	\$6,600.00
SUBTOTAL				\$112,788.00		\$110,405.57

BID TABULATION
SOLICITATION TITLE: SOUTH BROOKSVILLE VISION AREA PHASE I
SOLICITATION NO. 11-0031

BID OPENING: APRIL 20, 2011 3:00PM

BIDDERS

GIBBS & REGISTER, INC.
 232 SOUTH DILLARD STREET
 WINTER GARDEN FL 34787
 THEODORE FERGUSON

GENERAL CONDITIONS 1.0									
DESCRIPTION	QTY	UNIT	UNIT PRICE		TOTAL		UNIT PRICE	TOTAL	TOTAL
			UNIT PRICE	TOTAL	UNIT PRICE	TOTAL			
1.1 Mobilization, Insurance, Indemnity, ≤ 5%	1	LS	\$60,000.00	\$60,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.2 Performance & Payment Bond	1	LS	\$12,000.00	\$12,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.3 NPDES Maint./Monitor/Compliance	1	LS	\$1,000.00	\$1,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.4 Silt Fence Installation & Removal	8500	LF	\$1.00	\$8,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.5 Survey Layout & As-builts	1	LS	\$20,000.00	\$20,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.6 Maintenance of Traffic (MOT)	1	LS	\$25,000.00	\$25,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1.7 Import Fill for Roadway., Subgrade and Pipe bedding	5000	CY	\$15.00	\$75,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL				\$201,500.00					\$0.00

ROADWAY 2.0									
DESCRIPTION	QTY	UNIT	UNIT PRICE		TOTAL		UNIT PRICE	TOTAL	TOTAL
			UNIT PRICE	TOTAL	UNIT PRICE	TOTAL			
2.1 Clearing & Grubbing	4	AC	\$29,000.00	\$116,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.2 Unclassified Excavation & Grading	1	LS	\$30,000.00	\$30,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.3 9" Stabilized Subgrade LBR 40	6,800	SY	\$6.00	\$40,800.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.4 6" Limerock Base (primed)	6,000	SY	\$11.00	\$66,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.5 2" Type S Asphalt	6,000	SY	\$9.00	\$54,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.6 4' Stabilized Shoulder LBR 40	2,545	SY	\$6.00	\$15,270.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.7 Driveway Apron	50	EA	\$1,000.00	\$50,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.8 Mailbox Remove/Replace	32	EA	\$100.00	\$3,200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.9 5' Concrete Sidewalk w/Detectible Warning	60	LF	\$48.00	\$2,880.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.10 Sod Right of Way	9,500	SY	\$2.00	\$19,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.11 Seed & Mulch Newgate/Easy Utility	2,500	SY	\$1.00	\$2,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.12 Stop Sign Assembly	4	EA	\$200.00	\$800.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.13 Street Name Sign Assembly	4	EA	\$150.00	\$600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.14 Roadway Termination Assembly	4	EA	\$150.00	\$600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.15 24" Stop Bar	4	EA	\$110.00	\$440.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2.16 12' Crosswalk Stripe	160	LF	\$5.50	\$880.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL				\$402,970.00					\$0.00

STORM DRAINAGE 3.0						
DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
3.1 24" RCP	84	LF	\$50.00	\$3,200.00	\$0.00	\$0.00
3.2 18" RCP	84	LF	\$45.00	\$3,780.00	\$0.00	\$0.00
3.3 15" RCP	1,018	LF	\$40.00	\$40,720.00	\$0.00	\$0.00
3.4 24" MES	4	EA	\$1,000.00	\$4,000.00	\$0.00	\$0.00
3.5 18" MES	6	EA	\$800.00	\$4,800.00	\$0.00	\$0.00
3.6 15" MES	98	EA	\$600.00	\$58,800.00	\$0.00	\$0.00
3.7 Remove/Replace Chainlink Fence	30	LF	\$25.00	\$750.00	\$0.00	\$0.00
SUBTOTAL				\$116,050.00		\$0.00
WATER DISTRIBUTION 4.0						
DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
4.1 8" PVC C-900	3,100	LF	\$21.50	\$66,650.00	\$0.00	\$0.00
4.2 8" DIP	100	LF	\$60.00	\$6,000.00	\$0.00	\$0.00
4.3 6" PVC C-900	22	LF	\$16.00	\$352.00	\$0.00	\$0.00
4.4 6" DIP	60	LF	\$40.00	\$2,400.00	\$0.00	\$0.00
4.5 8" Gate Valve	4	EA	\$1,500.00	\$6,000.00	\$0.00	\$0.00
4.6 Fire Hydrant Assembly	6	EA	\$3,500.00	\$21,000.00	\$0.00	\$0.00
4.7 Fire Hydrant Rehab	10	EA	\$1,500.00	\$15,000.00	\$0.00	\$0.00
4.8 6"x6" Wet Tap & Valve	3	EA	\$2,800.00	\$8,400.00	\$0.00	\$0.00
4.9 Connect to Existing 6"	1	EA	\$1,000.00	\$1,000.00	\$0.00	\$0.00
4.10 Single Service	25	EA	\$600.00	\$15,000.00	\$0.00	\$0.00
4.11 Double Service	4	EA	\$700.00	\$2,800.00	\$0.00	\$0.00
4.12 Blow Off & Sample Point	1	EA	\$1,000.00	\$1,000.00	\$0.00	\$0.00
4.13 Flush, Chlorinate, Bact & Pressure Test	1	LS	\$8,000.00	\$8,000.00	\$0.00	\$0.00
4.14 8" MJ Plug w/Restrains	1	EA	\$250.00	\$250.00	\$0.00	\$0.00
4.15 8" MJ Tee w/Restrains	1	EA	\$500.00	\$500.00	\$0.00	\$0.00
4.16 8"x6" MJ Tee w/Restrains	2	EA	\$815.00	\$1,630.00	\$0.00	\$0.00
4.17 8"x6" MJ Reducer w/Restrains	3	EA	\$300.00	\$900.00	\$0.00	\$0.00
4.18 6" MJ 90	1	EA	\$275.00	\$275.00	\$0.00	\$0.00
SUBTOTAL				\$157,157.00		\$0.00
SANITARY SEWER 5.0						
DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
5.1 8" PVC SDR 26 Gravity 0'-6"	790	LF	\$20.00	\$15,800.00	\$0.00	\$0.00
5.2 8" PVC SDR 26 Gravity 6'-8"	1,232	LF	\$51.00	\$62,832.00	\$0.00	\$0.00
5.3 8" PVC SDR 26 Gravity 8'-10"	1,079	LF	\$53.00	\$57,187.00	\$0.00	\$0.00
5.4 Std. Manhole 0'-6"	2	EA	\$2,500.00	\$5,000.00	\$0.00	\$0.00
5.5 Std. Manhole 6'-8"	4	EA	\$3,500.00	\$14,000.00	\$0.00	\$0.00
5.6 Std. Manhole 8'-10"	5	EA	\$5,000.00	\$25,000.00	\$0.00	\$0.00
5.7 Single Service	33	EA	\$600.00	\$26,400.00	\$0.00	\$0.00
5.8 Special Stone Pipe Bedding	130	LF	\$10.00	\$1,300.00	\$0.00	\$0.00
5.9 Core Wetwell	1	EA	\$1,500.00	\$1,500.00	\$0.00	\$0.00
5.10 Testing, Air, T.V., Lamp	1	LS	\$0.00	\$0.00	\$0.00	\$0.00
SUBTOTAL				\$209,019.00		\$0.00

CONTINGENCY ITEMS 6.0						
DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
6.1	2	EA	\$1,000.00	\$2,000.00	\$0.00	\$0.00
6.2	2	EA	\$100.00	\$200.00	\$0.00	\$0.00
6.3	20	EA	\$30.00	\$600.00	\$0.00	\$0.00
6.4	1,000	SY	\$2.00	\$2,000.00	\$0.00	\$0.00
6.5	56	LF	\$40.00	\$2,240.00	\$0.00	\$0.00
6.6	4	EA	\$600.00	\$2,400.00	\$0.00	\$0.00
6.7	50	LF	\$40.00	\$2,000.00	\$0.00	\$0.00
6.8	1	EA	\$3,500.00	\$3,500.00	\$0.00	\$0.00
6.9	2	EA	\$600.00	\$1,200.00	\$0.00	\$0.00
6.10	2	EA	\$1,000.00	\$2,000.00	\$0.00	\$0.00
6.11	8	EA	\$350.00	\$2,800.00	\$0.00	\$0.00
6.12	8	EA	\$350.00	\$2,800.00	\$0.00	\$0.00
TOTAL				\$23,740.00		\$0.00
BID ALTERNATE 7.0						
DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
7.1	1,320	LF	\$78.00	\$102,960.00	\$0.00	\$0.00
7.2	5	EA	\$3,000.00	\$15,000.00	\$0.00	\$0.00
7.3	450	CY	N/R	N/R	\$0.00	\$0.00
TOTAL				\$117,960.00		\$0.00
*Includes Import white or yellow bedding sand						
SUMMARY						
GENERAL CONDITIONS.....				\$201,500.00		\$0.00
ROADWAY.....				\$402,970.00		\$0.00
STORM DRAINAGE.....				\$116,050.00		\$0.00
WATER DISTRIBUTION.....				\$157,157.00		\$0.00
SANITARY SEWER.....				\$209,019.00		\$0.00
CONTINGENCY ITEMS.....				\$23,740.00		\$0.00
TOTAL PHASE 1.....				\$1,110,436.00		\$0.00
BID ALTERNATE						
TOTAL PHASE 1 W/BID ALTERNATE				\$117,960.00		\$0.00
TOTAL PHASE 1 W/BID ALTERNATE				\$1,228,396.00		\$0.00

Offers from the Vendors listed herein are the only offers received timely as of the above opening date and time. All other offers submitted in response to this solicitation are hereby rejected. ***NOTE: N/R on Addendum #2 all bidders.***Gibbs & Register adding error on Sec 5



**CONSENT AGENDA ITEM
MEMORANDUM**

TO: HONORABLE MAYOR AND CITY COUNCILMEN
VIA: T. JENNENE NORMAN-VACHA, CITY MANAGER *[Signature]*
FROM: MIKE WALKER, PARKS, FACILITIES & RECREATION DIRECTOR *[Signature]*
SUBJECT: Revised Florida Junior Golf Council Agreement
DATE: May 18, 2011

GENERAL SUMMARY/BACKGROUND: At the April 18, 2011 Brooksville City Council meeting, Council approved the agreement with the Florida Junior Golf Council (FJGC) in the amount of \$13,950 to implement the First Tee National School Program (NSP) in the 5 remaining elementary schools in Hernando County. Staff has recently been made aware that the actual amount of funding from the FJGC is in the amount of \$11,000.00, with the remaining amount of \$2,950.00 being required as a match from the City to total the \$13,950.00. The revised agreement is provided as "Attachment 1", with the only change being the change in the amount, from \$13,950 to \$11,000.

We received funds in the amount of \$3500.00 from the area Wal-Mart stores and Distribution Center in September 2010 to provide the necessary match for the First Tee National School Program and these funds were placed in the First Tee Fund #129.

The expenses have been budgeted and footnoted in FY 10/11 in the First Tee Fund #129, which is provided to you as "Attachment 2".

For your review as "Attachment 3" is the original grant application from October 2010.

Stew

BUDGET IMPACT/10/11 Budget Amendment Reversal: On April 18, 2011 City Council approved a 10/11 Budget Amendment in the amount of \$13,950 to implement the First Tee National School Program. The current 10/11 First Tee Fund No. 129 original authorized budget was adequate and staff is requesting that the 10/11 Budget amendment approved on April 18th be rescinded. In addition, the First Tee Fund has adequate reserves for the match of \$2,950 as discussed above. The reversal of the 10/11 Budget Amendment is below:

BUDGET AMENDMENT FY2010-11

FIRST TEE FUND 129 ACCOUNTS	REVENUE	EXPENSE
Account #129 - 129-000-337-47000 Grants From Other Local Governments <i>(reversing 4 18 11 approved amendment)</i>	-\$13,950	
Account #129-026-572-58100 Grants/Aids to Government Agencies <i>(reversing 4 18 11 approved amendment)</i>		-\$13,950
TOTAL	-\$13,950	-\$13,950

LEGAL REVIEW: The City is vested with Home Rule Authority pursuant to Article VIII, Section 2 of the Constitution of the State of Florida and Chapter 166, Florida Statutes. Pursuant to Section 1.03 of the Charter, the City has all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services to include matters of fiscal impact and acceptance of grant funds.

STAFF RECOMMENDATION: Staff recommends that Council authorize the Mayor to sign the revised grant agreement in the amount of \$11,000 with the Florida Junior Golf Council and approve the reversal of the budget amendment of April 18 as referenced above.

- ATTACHMENTS:**
1. Revised Florida Junior Golf Council Grant Agreement
 2. First Tee Fund #129
 3. Florida Junior Golf Council Grant Application
 4. FJGC Grant Funding Check for \$11,000.00

Attachment 1

FJGC Grant Agreement

Florida Junior Golf Council

Junior Golf Grant Program - Grant Agreement

THIS GRANT AGREEMENT, entered into this _____, _____, by and between the Florida Junior Golf Council (FJGC), hereinafter referred to as the "Grantor" and The City of Brooksville- The First Tee of Brooksville, hereinafter referred to as the "Grantee".

WITNESSETH

WHEREAS, the Grantor is empowered by Florida Statutes, to make grants of funds in accordance with promotion of the Florida Junior Golf Council and,

WHEREAS, the Florida Junior Golf Council has approved an appropriation for such grant.

IT IS, in consideration of the mutual undertakings and agreements hereinafter set forth, agreed between the Grantor and the Grantee as follows:

1.0 PARTIES:

The parties and their respective addresses for the purposes of this Agreement are:

Florida Junior Golf Council
 c/o Florida State Golf Association
 8875 Hidden River Parkway, STE 110
 Tampa, FL 33637
 grants@fjgc.org

The City of Brooksville
c/o The First Tee of Brooksville
201 Howell Ave
Brooksville FL 34601

2.0 NOTICES:

All notices between the parties, provided for herein, shall be conveyed by confirmed fax, confirmed email, confirmed telex or certified mail, return receipt requested, delivered to the address of the parties as set forth in section 1.0 above.

3.0 GRANT DESCRIPTION:

The Grantee will expend grant funds in accordance grant application hereto attached subject to any modifications specified. Funds made available by the Grantor pursuant to this Grant Agreement shall be expended solely for the purpose of the project and the legislatively appropriated purpose.

a) Grantee:	City of Brooksville – The First Tee of Brooksville
b) Name of Program	The First Tee National School Program
c) Total Amount of Grant:	\$13,950.00 \$11,000.00
d) Grant Period:	2011

- e) **Reporting Schedule:** Grantee shall submit final report and request for reimbursement within ninety (90) days of the last day of the program, incurred by Grantee during the Grant Period will be eligible for reimbursement.

4.0 **GRANT REQUIREMENTS:**

(a) **Signage:** Grantee agrees to initiate efforts to market the golf license plate. Grantor agrees to provide logo and advertising materials to assist the Grantee advertise the golf license plate accordingly.

(b) **Audit:** Grantee will complete an accounting of the program's financial activity within ninety (90) days after the program is complete.

(c) **Records:** Grantee shall retain and maintain all records, including records of all payments made by the Grantee in connection with the program and available for financial audit as may be requested by the Grantor. Records shall include books, records, photos, documents and other evidence, including, but not limited to, vouchers, bills, invoices, requests for payment, and other supporting documentation, which, according to generally accepted governmental accounting principles, procedures and practices, sufficiently and properly reflect all program costs expended in the performance of this Grant Agreement. Such records shall be retained for a minimum period of one (1) year after termination of this Agreement.

(d) **Cancellation:** Grantee shall notify the Grantor immediately if the program is canceled or rescheduled and the Grantee shall return any funds dispersed pursuant to this Agreement within seven (7) days of such cancellation or rescheduling.

(e) **Insurance:** Grantee shall provide proof of insurance listing the State of Florida and the Grantor as an additional insured, within thirty (30) days prior to the program with a minimum liability coverage of \$1,000,000 per occurrence.

(f) **Indemnification:** Grantee shall act as an independent contractor and not as an employee of the Grantor in the performance of the tasks and duties, which are the subject of this Grant Agreement. ~~The Grantee shall be liable, and agrees to be liable for, and to the extent allowed by law, shall indemnify, defend, and hold the Grantor harmless from all claims, suits, judgments, or damages arising from the Grantee's performance of the tasks and duties which are the subject of this Grant Agreement.~~

5.0 **TERMINATION:**

(a) **Breach:** The Agreement may be terminated by the Grantor for breach upon failure of the Grantee to perform any requirement or provisions of this Agreement upon no less than twenty-four (24) hours written notice from the time the Grantor becomes aware of the breach. If Grantor determines that a breach of any provision of this agreement has occurred, Grantor has the right to withhold a portion of the grant award as determined by the Board of Directors.

(b) **Refusal to Grant Public Access:** This Agreement may be terminated by the Grantor for refusal by the Grantee to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Grantee in conjunction with this Agreement. (Section 287.058, Florida Statutes)

6.0 **PAYMENTS:**

(a) **Transfer of Funds.** Two payments are hereby agreed to and funds will be transferred and made available by the Grantor to the Grantee per the following payment schedule and requirements:

a. **Payment Schedule:**

1. The Grantor, upon receipt of a fully executed Grant Agreement, will disburse one payment of the full Grant Award to the Grantee.

b. **Requirements:**

1. All disbursements/payments are considered a reimbursement for paid invoices, which are supported by canceled checks dated within the grant period.

2. Only those items identified in the Grantee's approved Grant Application will be reimbursed.

(b) **Availability of Funds:** The Grantor's liability under this Grant Agreement is contingent upon the continued availability of appropriated funds generated by the Florida Golf License Plates. In the event this Grant Agreement extends beyond the Grantor's current fiscal, the Grantor and the Grantee mutually agree that performance and payment during subsequent fiscal periods is contingent upon sufficient funds being generated by said sale of license tags. The Grantor shall be the final determiner of the availability of such funds.

7.0 **LEGAL REQUIREMENTS:**

(a) With respect to its interpretation, construction, effect, performance, enforcement, and all other matters, this Grant Agreement shall be governed by, and be consistent with, the whole law of the state of Florida, both procedural and substantive. Any and all litigation arising under this Grant Agreement shall be brought in the appropriate state of Florida court in Dade County, Florida.

(b) Grantee agrees to comply with any applicable federal, state, and local laws related to the execution of the program.

8.0 **MODIFICATION:** This writing contains the entire Grant Agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth. No Florida Junior Golf Council Grant Agreement agent, employee, or other representative of either party is empowered to alter any of the terms of this Grant Agreement, unless done in writing and signed by an executive officer of the Grantee and designee for the Grantor.

9.0 **ASSIGNMENT:** Grantee is not permitted in any manner to assign its rights or obligation under this Grant Agreement.

10.0 **MISCELLANEOUS:** Limitations on the recovery of damages which are specifically provided by Florida Statute or general law or established by rulings of Florida courts shall apply to this Grant Agreement. Such limitations include, but are not limited to, the following:

(a) As an agency of the government of the State of Florida, the Grantor is liable for damages only to the extent provided by section 768.28, Florida Statutes, and any other applicable Florida Statutes.

(b) The Grantor is not bound by any agreements to indemnify, hold harmless, or for liquidated damages or cancellation charges.

(c) No provision of this Grant Agreement shall be construed as a waiver by the Grantor of any right, defense or claim, which the Grantor may have in any litigation arising under the Grant Agreement. Nor shall any Agreement provision be construed as a waiver by the state of Florida of any right to initiate litigation.

IN WITNESS WHEREOF, the parties have caused their hand to be set by their respective authorized officials hereto.

FLORIDA JUNIOR GOLF COUNCIL

Board Chairman
Florida Junior Golf Council

Date

GRANTEE:

Signature of Authorized Agent

Title

Date

Attachment 2

First Tee Fund #129

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First Tee Fund 129

	Actual 06/07	Actual 07/08	Actual 08/09	Budgeted 09/10	Requested 10/11	
INCOME						
Intergovernmental Revenue	\$0	\$0	\$0	\$0	\$20,000	(1)
Fines & Forfeitures	0	0	0	0	0	
Miscellaneous	0	0	0	28,000	18,000	
Interest Income	0	0	0	0	0	
Special Assessment	0	0	0	0	0	
Transfers In	0	0	0	20,000	0	
Prior Year Carry forward	0	0	0	0	22,087	
Total Income	\$0	\$0	\$0	\$48,000	\$60,087	
EXPENDITURES						
Personnel Services	\$0	\$0	\$0	\$0	\$0	
Operating Expenditures	0	0	0	10,000	36,000	(2)
Capital Outlays	0	0	0	0	0	
Transfers Out	0	0	0	0	0	
Reserves	0	0	0	38,000	24,087	
Total Expenditures	\$0	\$0	\$0	\$48,000	\$60,087	

(1) First Tee National School Program Grant geared towards elementary schools for children to experience golf.
 (2) First Tee Teacher Training (\$1800), curriculum materials (\$720), SNAG (starting new at golf) equipment (\$33,480);
 Grant is serving 12 elementary schools in Hernando County.

Description: To impact the lives of young people by providing learning facilities and educational programs that promote character development and life-enhancing values through the game of golf.
Revenue Source: Annual golf tournament and other fund raising events.
Expenditures: First tee programs for area children.

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Attachment 3

FJGC Grant Application

Florida Junior Golf Council



The First Tee National School Program Grant Application

As you fill out your application, please take special care to follow our guidelines. Be concise.

- This application should only be used if you are applying for funds to implement The First Tee National School Program at schools in your school district
- Please Do NOT expand the size of any response areas.
- You may include a cover letter
- Answer every question, and leave no spaces blank – use N/A if not applicable.
- Applications and attachments MUST be typed and submitted via email to grants@fjgc.org

I. APPLICANT INFORMATION

Date of this Application	October 28, 2010
Applying Organization	City of Brooksville- The First Tee of Brooksville
School District	Hernando County School District
Program Dates	2010-2011
Program Director's Name(s)	Mike Walker
Title(s)	Parks & Recreation Director
Address	306 Darby Lane
City, State & Zip	Brooksville, FL 34601
Email	mwalker@cityofbrooksville.us
Phone	352-540-3830
Website	www.cityofbrooksville.us
Total Grant Requested	\$15,000

1. **Organization Applying** - Please describe your organization; when it was formed, its purpose and financial condition.

Formed in December of 2004, The First Tee of Brooksville is determined to impact the lives of young people by providing learning facilities and educational programs that promote character development and life-enhancing values through the game of golf.

Our First Tee of Brooksville is funded by The City of Brooksville, which is operated through the Parks & Recreation Department, a government agency.

Our intent is for all 12 elementary schools in our district to be reached through TFT NSP, 7 of them being Title I schools have currently been funded for the NSP. We have 5 remaining schools to fund in the amount of \$15,000

2. Number of Schools Participating

How many elementary schools are in your school district?	12
How many of those schools already participate in The First Tee School Program?	7
How many schools do you hope to fund through this grant?	5
What grades will be participating? – site a range of grades please	1-5

II. HOURS OF PARTICIPATION

1. How many total hours of participation will be available to each student?

Number of Weeks in Program		4-8
Meetings per Week	X	4
Hours Each Meeting (Average)	X	.5 (30min)
Total Hours per Student	=	8-16 Hours

2. Of those “Total Hours per Student” calculated above, estimate the amount of time that will be spent in each of the following categories:

Total Hours per Student (from above)	8-16 Hours
Instruction Hours – hours of golf instruction	8-16 Hours
Practice Hours – driving range, short game	0
Playing Golf – Hours playing on a golf course	0
Life Skills - Hours of Life Skills education	8-16 Hours
Other -	
Other -	

3. Total Grant Requested

Grant Amount Requested	\$15,000
------------------------	----------

Total Projected Program Cost		\$15,000
÷	# of Students Participating	3,750
=	Average Cost per Student	\$4.00
÷	Total Hours per Student	16
=	Average Hourly Cost	\$.25

4. **Timeframe** – During what months will the program be utilized and how many days per week will each student participate?

For the months of the 2010-2011 school year.

5. **Student to Instructor Ratio**

Total Instructors to be trained at each school	1
Total students in each class	25
Average number of instructors used in each class	1
Student to Teacher ratio	25 to 1

III. **PARTICIPANTS/ DEMOGRAPHICS**

1. **Total Participants** - How many students are projected to participate in your program?

Total Anticipated	3,750
% Male	48%
% Female	52%
% Minorities	19%
% Special Needs	14%

2. **Household Income** - Estimate the household income of the students involved.

Less than \$25,000	11 %
\$25,000 - \$50,000	21 %
\$50,000 - \$75,000	61 %
\$75,000 and above	7 %

3. **Golf Experience** - Estimate the extent of the golf background of your students.

No Previous Experience	100%
Beginner	0%
Intermediate	0%
Advanced	0%

IV. INSTRUCTORS

1. **Instructor Rates** -Please indicate any rates to be paid (see limitations under "Grant Guidelines")

	Total Number Of Instructors	Average rate/hour Paid by the Program	Normal rate/hour Charged by Instructor
School Employees	5	N/A	N/A
PGA/LPGA Professionals	N/A	N/A	N/A
PGA/LPGA Apprentices	N/A	N/A	N/A
Amateur golfers	N/A	N/A	N/A

V. FUTURE ACCESS TO GOLF

1. **Future Course Access** - Describe to what extent juniors will have access after your program to practice or play on a golf course?

Current fee structure allows children 12 and under (ages NSP is geared toward in the elementary schools) free access to our city executive golf course (The Quarry GC), where TFT of Brooksville is held. The major goal in TFT and NSP partnership is for children to experience a new sport, golf, and give them an opportunity to take the next step if they would like. Every school will be invited to have field trip days or dates on weekends to the Quarry Golf Course to learn how they can get involved with TFT.

2. **Access to other Junior Programs (Critical for School Programs)** – What steps will your program take to coordinate with other junior programs or golf courses in your area to ensure access for your juniors once they become more interested in golf through your program? (Where will they go once they move up from you)? Please list program name(s) and contacts.

Our goal is to have NSP participants become involved with our local chapter as their interest in the game grows, if they would like. Giving opportunity to advance their game and life skills at our local chapter will hopefully raise interest and maybe even produce an affiliate chapter since there is no other local junior golf program around. Having on site support for our NSP program will encourage students to join locally.

Local First Tee Chapter- The First Tee of Brooksville.

- Miles Groff

The Groves Junior Golf Program - Jan Johnson

VI. PROGRAM BUDGET

FUNDS RECEIVED	Total
FJGC – Grant Requested	\$11,000
Other Grants	
Contributions – Individual	
Contributions – Local Businesses- Wal-Mart and Sam's Club	\$4,000
Local Civic Organizations	
PTA	
Other -	\$0
TOTAL FUNDS RECEIVED	\$15,000

FUNDS TO BE EXPENDED	Per School	Total
The First Tee Teacher Training	5 x\$150	\$750
Curriculum Materials	5 x\$60	\$300
SNAG Equipment	5x\$2,700	\$13500
Shipping	5x\$90	\$450
Other -		
TOTAL FUNDS TO BE EXPENDED		\$15000
NET FUNDS (Should be zero?)		0

Local Financial Support - The grant guidelines request that you secure at least 15% (approximately \$500 per school) of the funds for your program from the local community – (examples - PTA, local businesses, civic organizations and area golf clubs).

Budget Notes:

There are a total of 12 elementary schools in Hernando County, of which 7 are currently enrolled in the NSP. We are requesting funding in the amount of \$11,000 to enroll the remaining 5 elementary schools in the school district into the NSP. We have received \$4000 from local Wal-Mart and Sam's Clubs for this purpose, \$15,000 will complete our mission of funding all schools in the district.

VI. PROGRAM OUTCOMES MEASUREMENT

1. **Tracking Your Progress** - What measures will you take to track the progress of your program?

Evaluation of student progress is done in three facets of student learning: psychomotor (skill), cognitive (concept) and affective (core value). To assess student progress, the National School Program curriculum manual contains objectives and benchmarks that align with national physical education standards. Each lesson contains skill, concept and core value objectives that provide a focus as teachers implement lessons in their daily physical education classes. The curriculum also contains assessment charts to provide teachers with detailed lists of basic skills, concepts and core values as students progress through the lessons. Benchmarks describe culminating goals for what students should do, know and demonstrate as a part of their participation in the lessons.

Participating teachers will evaluate students once completing a series of National School Program lessons utilizing the information provided in the curriculum. National School Program staff will collect evaluation information from teachers in order to determine student success in accomplishing lesson objectives. Feedback from teachers will also be collected and evaluated in order to determine and provide additional support needed to enhance student learning and progress.

2. **Future Funding** – Describe any future funding that you will require for the schools that will be using The First Tee National School Program through this grant?

No anticipated future funding, and The First Tee of Brooksville will work very closely with Hernando County School District.

3. **Marketing the License Plate** - What efforts will your organization make to promote the marketing/sales of the Florida Golf License Plate?

The First Tee home office will issue a press release and include information on this partnership on their Website. Print collateral will be displayed and disturbed at schools. Articles and announcements will be published in school newsletters to parents and communities. Opportunities at local golf tournaments to provide more information about the license plate program.

4. **Alternative Funding** - Can you proceed with this program without the support from the Florida Junior Golf Council?

No.

VII. SIGNATURE

Applicant Digital Signature/Disclaimer

We, the undersigned, hereby certify that we have read and understand the Florida Junior Golf Council Grant Guidelines and certify that all information included with our application is true and correct.

Mike Walker City of Brooksville Parks & Recreation Director 10/28/2010

Authorized Applicant (typed name acceptable)	Title	Date
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Grant Checklist - Include the following with your application:

- List of Board Members or governing body of your organization
- Program Schedules; promotional materials, if applicable
- Most recent IRS tax return form 990 or 1120
- If a 990 is not available, provide either proof of 501(c)(3) status or provide a copy of your non-profit registration with the Florida Department of State
- List of schools to be funded and a list of schools in the district already using the First Tee Program (Use schedule to follow or include a similar list)

VII. SCHOOLS TO BE FUNDED

Please list the schools that are included in this grant request

	School Name, City Town or Area
1	Suncoast Elementary School (Spring Hill, FL)
2	Challenger (Spring Hill, FL)
3	Chocachatti Elementary School (Spring Hill, FL)
4	Explorer (Spring Hill, FL)
5	Floyd (Spring Hill, FL)
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Please list all schools in your district already using the First Tee National School Program

	School Name, City Town or Area
1	Brooksville Elementary School (Brooksville, FL)
2	Deltona Elementary School (Spring Hill, FL)
3	Eastside Elementary School (Brooksville, FL)
4	Moton Elementary School (Brooksville, FL)
5	Pinegrove Elementary School (Brooksville, FL)
6	Spring Hill Elementary School (Spring Hill, FL)
7	Westside Elementary School (Spring Hill, FL)
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Attachment

FJGC Grant Funding Check

DADE AMATEUR GOLF ASSOCIATION INC.
FOR THE EXCLUSIVE BENEFIT OF THE
FLORIDA JUNIOR GOLF COUNCIL ACCOUNT

1800 NW 57th AVE
MIAMI, FL 33143-1032

1214

Check # 90

DATE 5/10/83

\$ 11,000

DOLLARS

PAY TO THE ORDER OF
The First Tee of Pinebluff
Florida Amateur Golf Assoc

BYT MILLION

Major United States Bank

FOR FIRST TEE - 1017 N. FINEST, PINE BLUFF, FLORIDA

⑆001214⑆ ⑆067009646⑆ 001164027⑆

[Handwritten Signature]



**CONSENT AGENDA ITEM
MEMORANDUM**

TO: HONORABLE MAYOR AND CITY COUNCIL

VIA: T. JENNENE NORMAN-VACHA
CITY MANAGER

FROM: JENNIFER C. REY, ESQ.
THE HOGAN LAW FIRM, LLC
AS CITY ATTORNEY

SUBJECT: TERRY SETTLEMENT AGREEMENT

DATE: MAY 19, 2011

GENERAL SUMMARY: On February 3, 2011, the City of Brooksville received a demand for reimbursement of attorney's fees from Shawn Terry. Mr. Terry then retained counsel and a subsequent demand for reimbursement of attorney's fees was served on the City on April 4, 2011. The April 4 demand also contained various other demands related to Mr. Terry's former employment with the City. The City submitted Mr. Terry's demand as a claim to the City's insurance carrier. The carrier agreed to pay fifty percent of the amount demanded, if the City paid the remaining fifty percent. Following an executive session held on May 2, 2011, the City Attorney entered into pre-suit settlement discussions in an attempt to resolve, without protracted litigation, all matters relating to Mr. Terry's former employment with the City. Settlement discussions have resulted in Mr. Terry executing the attached General Release and Settlement Agreement in consideration for payment of \$31,581.19 as reimbursement for his attorney's fees. The City's carrier has placed its contribution to the settlement funds (\$15,790.60) in trust in the Hogan Law Firm Trust Account.

SB

BUDGET NOTE AND BUDGET AMENDMENT: The effects of a legal settlement for \$15,790.59 would reflect an increase in General Government Insurance Claims and Deductibles expenses of \$15,790.59 to line item number 001-009-510-54560 and a decrease in General Fund Balance, unreserved, of \$15,790.59 from account number 001-000-271-30060. The 10/11 Budget Amendment form is attached in the amount of the settlement to be paid.

JCR

LEGAL REVIEW: The General Release and Settlement Agreement has been reached between the parties but is conditional on City Council approval at a regular public meeting.

STAFF RECOMMENDATION: Staff recommends that the City Council consider: (1) approval of the negotiated General Release and Settlement Agreement which has been executed by Mr. Terry, (2) authorize the Mayor to sign the General Release and Settlement Agreement, and (3) authorize the 10/11 Budget Amendment reflected in the attached Budget Amendment Form.

ATTACHMENTS: 1. Agreement
2. Budget Amendment Form

Attachment 1

Agreement

GENERAL RELEASE AND SETTLEMENT AGREEMENT

This General Release and Settlement Agreement (the "Agreement") is hereby entered into this ____ day of May, 2011, by and between Shawn Terry ("Terry") and the City of Brooksville, including the Brooksville Police Department and any other departments, divisions affiliates, and related entities (collectively referred to as the "City").

WHEREAS Terry is a former employee of the City and has raised and alleged claims against the City relating to his voluntary resignation from employment and subsequent arrest for perjury and solicitation to commit perjury (the "Claims"); and

WHEREAS, all references to Terry herein shall explicitly include and incorporate by reference Terry, himself, his heirs, executors, administrators, personal representatives, agents, and legal representatives, successors and assigns, and any partnerships, corporations, sole proprietorships or other entities owned or controlled by him; and

WHEREAS, all references to the City herein shall explicitly include and incorporate by reference itself and any entities wholly owned or operated by the City, including, but not limited to its divisions, elected officials, officers, directors, agents, representatives, supervisors, employees, attorneys, heirs, successors, and/or assigns, personal representatives, and agents; and

WHEREAS, the City has denied and continues to deny that it has violated any law whatsoever and has denied and continues to deny that it has any liability to Terry on any of his Claims or demands; and

WHEREAS, Terry and the City wish to fully and finally settle any and all disputes arising out of Terry's employment by the City or the separation of that employment, without any admission of any kind by either party.

NOW THEREFORE, in consideration of the foregoing, and of the promises and mutual covenants contained herein, and other valuable consideration, it is hereby covenanted and agreed as follows:

1. Release of Claims. Terry hereby forever and fully remises, releases, acquits and discharges the City (including its subsidiaries, predecessors, affiliates, related agencies, divisions, elected officials, officers, directors, agents, representatives, supervisors, employees, attorneys, heirs, successors or assigns), of and from any and all actions, causes of action, suits, debts, sums of money, accounts, covenants, contracts, agreements, arrangements, promises, obligations, warranties, trespasses, torts, injuries, losses, damages, claims, demands or other liability or relief of any nature whatsoever, whether known or unknown, foreseen or unforeseen, resulting or to result, whether in law or in equity, or before administrative agencies or departments, that Terry ever had, now has or hereafter can, shall or may have, by reason of or arising out of any matter, cause or event occurring on or prior to the date of this Agreement, including, but not limited to, any and all Claims against the City, and of any nature arising out of or in any way relating to Terry's employment relationship with the City or the separation of that relationship, including, but not limited to, allegations brought pursuant to any applicable

collective bargaining agreement, or allegations of discrimination, harassment, or retaliation under Title VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Act of 1991, the Equal Pay Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Family and Medical Leave Act, the Civil Rights Act of 1866, the Employee Retirement Income Security Act (as amended), the Older Workers' Benefit Protection Act, the Age Discrimination in Employment Act, the Florida Civil Rights Act, the Law Enforcement Officers Bill of Rights (*Fla. Stat. Ch. §112.531*), and any other claim under any federal, state or local statutes, laws, regulations, rules or ordinances, including, but not limited to, any claims for attorney's fees and costs under *Fla. Stat. §111.065*, any claims for unpaid wages or overtime pay under the Fair Labor Standards Act or *Fla. Stat. § 448.101*; any claims under the Health Insurance Portability and Accountability Act of 1996, as amended, and the Consolidated Omnibus Budget Reconciliation Act, any claims for libel, slander, breach of contract, tort, wrongful termination or any other theory under the common law of any state; and any and all claims alleged, pleaded or which could have been alleged or pleaded in or otherwise related to the above-referenced Claims, or any other legal action, lawsuit, administrative charge, or other judicial proceeding commenced or pursued by Terry at any time prior to the date of this Agreement, or which could have been alleged in any other litigation, administrative proceeding or other legal proceeding between Terry and the City. No reference herein to the aforesaid causes of action or any other specific claim or statute is intended to limit the scope of this General Release and Settlement Agreement.

This release does not include any claims that the law does not allow to be waived. Terry waives his rights to file any charge or complaint against the City arising out of his employment with and separation from employment, before any federal, state or local court or any federal, state or local administrative agency, except where such waivers are prohibited by law. This release does not compromise, waive or prejudice any claims for unemployment compensation benefits consistent with Fla. Stat. §443.041(1). The City reserves its right to contest any untruthful claim by Plaintiff for unemployment compensation benefits.

2. General Release. It is expressly understood and agreed by Terry that this is a full and final general release of all matters whatsoever and that this general release is intended to and does embrace not only all known and anticipated damages or injury, but also unknown and unanticipated damages, injury or complications that may later develop or be discovered as a result of conduct having occurred on or before this date, including all effects and consequences thereof.

3. Covenant Not to Sue. Terry declares, represents and understands that this General Release and Settlement Agreement will forever and for all time bar any action or claim whatsoever which arose or which might arise in the future from any acts, omissions, agreements or other occurrences prior to the date hereof, including, but not limited to, the incidents described and referenced herein and in the above-referenced Claims, and that no lawsuit or charge ever will be asserted against the City by Terry for any injury or damage, whether known or unknown, sustained or to be sustained, as a result of the foregoing incidents described herein, that are the subject of the dispute between the parties, or any acts, omissions, agreements or other occurrences prior to the date hereof.

4. Non-Disparagement. Terry agrees that he will not disparage or defame the City, the Brooksville Police Department, or any of its law enforcement officers and he specifically agrees that he will not make any critical, derogatory or negative statements, in writing, verbally, electronically or otherwise to any person or entity about the City, its elected officials, employees the Brooksville Police Department or its law enforcement officers or make statements that place the City, its elected officials, employees, the Brooksville Police Department or its law enforcement officers in a negative light; unless otherwise specifically required to do so in accordance with applicable law. In the event that the City is contacted by any prospective employers of Terry or other third party making an inquiry about Terry, the City agrees that it shall comply with Fla. Stat. §119. Terry agrees to direct all employment inquiries by any prospective employers of Terry or other third party about Terry to the Human Resources Coordinator for the City. Nothing in this Agreement shall prohibit the City, its elected officials, employees, agents and attorneys from full cooperation with the Florida Department of Law Enforcement, or any other entity having jurisdiction over the City.

5. Consideration. The City will make payment of THIRTY-ONE THOUSAND FIVE HUNDRED EIGHTY-ONE DOLLARS AND NINETEEN CENTS (\$31,581.19) (the "Settlement Amount"), as outlined below within thirty (30) calendar days of the date in which the City Council approves this Agreement, assuming it has received a completed IRS Form W-9 from The Disparti Law Group. The City will issue a check made payable to The Disparti Law Group Trust Account with no withholdings, to represent reimbursement of attorney's fees and costs. An IRS Form 1099 will be issued to Terry for this amount.

6. Withdrawal of Charge/Representation of No Legal Action. Terry agrees, that within five (5) calendar days of receipt by the Disparti Law Group Trust Account of the proceeds described in paragraph 6, to dismiss or withdraw any complaints or charges which he may have filed against the City. Terry represents that he has not instituted or commenced any legal action against the City of any kind and in any venue and that no such legal action is currently pending against the City.

7. Denial of Liability. It is expressly understood by the parties that this General Release and Settlement Agreement is a compromise and settlement of disputed claims and that payment by the City of the Settlement Amount is not, nor is it to be construed as, an admission of liability on the part of the City. The City expressly denies liability and intends to avoid further vexatious litigation with respect to Terry's claims.

8. Acknowledgements. Terry agrees that:

- a. His resignation from employment shall not be revocable for any reason.
- b. He waives his rights to file a grievance and/or appeal under the City Personnel Policy Manual and agrees that he has been provided by the City with statutory, City Personnel Policy Manual, and constitutional rights for due process to which he is entitled.
- c. He will not be and cannot be deemed the prevailing party in any past or future claim for fees or costs arising out of this claim or lawsuit, and that he alone

will be solely responsible for all expenses incurred by him or on his behalf in connection with claims asserted against the City in the Claims, including attorneys' fees, disbursements or any other costs;

d. The amount of the Settlement Amount has been agreed upon by Terry and is satisfactory to him;

e. The City shall deliver the Settlement Amount to Terry's attorney, Robert K. Michael, The Disparti Law Group, to hold for the benefit of, and for distribution, to Terry; and

f. Delivery of the Settlement Amount to Terry or his attorney shall constitute full and final settlement payment to Terry, and receipt by Terry shall constitute full and final receipt by all of the above. Following such payment, no further payment or consideration of any kind in connection with the separation and settlement of the above-referenced Claims is contemplated or required herein. It is further understood and agreed that Terry is not, and was not, required to render any services to the City subsequent to execution of this Agreement.

9. It is further understood and agreed that the sum of THIRTY-ONE THOUSAND FIVE HUNDRED EIGHTY-ONE DOLLARS AND NINETEEN CENTS (\$31,581.19) and the other good and valuable consideration provided for herein, are not a mere recital but are the consideration for this Agreement and the full and final release effected thereby. Terry hereby represents and warrants that he has entered into this Settlement Agreement of his own free will and accord and in accordance with his own judgment, and after consultation with his attorney. Terry hereby states that he and his counsel have made a full and independent investigation of all the facts and representations relating to this agreement and release and therefore state that he has not been induced to enter into this Agreement by any statement, fact or representation of any kind or character on the part of the City, or on the part of its agents, attorneys, servants, employees or representatives other than those specifically set out herein. Terry specifically states that he is executing this Agreement knowingly and voluntarily.

10. Waiver of Reinstatement Rights. With the execution of this Agreement, and as a material inducement for the City to enter into this Agreement and pay the Settlement Amount described above, Terry agrees to waive any present or future claim to reinstatement or reemployment to any position with the City or any entities of the City. Through this paragraph, Terry agrees to refrain from seeking or attempting to seek employment and/or reinstatement with the City (as defined above) at any time following the execution of this Agreement, and Terry agrees that the City shall have a legitimate and valid reason not to hire him based on his violation of this paragraph. Terry further agrees that if he seeks employment in violation of this paragraph and is hired by the City, or if Terry should be employed in the future by an entity that becomes one of the City's departments, agencies or entities (as defined above), Terry agrees that the City shall have a legitimate and valid reason to terminate Terry without recourse by Terry.

11. Entire Agreement. Terry agrees that this Agreement constitutes the complete understanding between the parties and other promises, contracts or agreements, either express or implied, are superseded by this Agreement, and no other promise, contract or agreement, either

express or implied, shall be binding unless signed in writing by Terry and the City. Terry further confirms that no promises, inducements or agreements not herein expressed have been made to him; that this Agreement contains the entire agreement among the parties hereto; that the terms of this Agreement are contractual and not merely a recital; and Terry acknowledges that any modification of this Agreement must be made in writing and signed by Terry and the City.

12. Governing Law and Jurisdiction. All questions, issues or disputes arising out of or under this Agreement, shall be governed by the laws of the State of Florida. Venue for any litigation arising from this Agreement shall be solely and exclusively in the state circuit and appellate courts in and for Hernando County, Florida. In the event suit is commenced to enforce this Agreement, costs of said suit including reasonable attorneys fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing party by the other party. The parties waive any and all rights to have this action brought in any place other than that specifically set forth herein. The parties hereby agree that the jurisdiction and venue of all disputes arising out of this Agreement lie in no Court other than those stated above.

13. Counterparts. Terry and the City agree that this Agreement may be executed in counterparts and each executed counterpart shall be as effective as a signed original. Photographic or faxed copies of each signed counterpart may be used in lieu of the originals for any purpose.

14. Successors and Assigns. The parties agree that this Agreement shall be binding upon and inure to the benefit of all parties and their respective representatives, predecessors, heirs, successors and assigns.

15. Enforceability of Agreement. Should any provision of this Agreement be declared or be determined by any arbitrator or court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby, and such illegal, unenforceable, or invalid part, term, or provision shall be deemed not to be part of this Agreement. In the event that either Party commences an action for damages, injunctive relief or to enforce the provisions of this Agreement, the prevailing party in any such action shall be entitled to an award of its reasonable attorney's fees and all costs, including appellate fees and costs, incurred in connection therewith as determined by the court in any such action.

16. Defense of Future Claims. Terry agrees that in the event that any claim, suit or action shall be commenced by Terry against the City arising out of any charge, claim, or cause of action of any nature whatsoever, known or unknown, including, but not limited to, claims, suits, or actions relating to his employment with the City or any prior Agreement with the City, through this date, this General Release and Settlement Agreement shall constitute a complete defense and bar to any such claims, suits, or actions so instituted.

17. Waiver. No claim or right arising out of a breach or default under this Agreement can be discharged by a waiver of that claim or right unless the waiver is in writing signed by the party hereto to be bound by such waiver. A waiver by any party of a breach or default of the

Attachment 2

Budget Amendment Form

BUDGET AMENDMENT FORM

Fiscal Year 2011 – 2012

Account Name/Dept.	Account Number	Approved Budget FY2011-12*	Increase	Decrease	Amended Budget FY2011-12
Insurance Claims & Deductibles/General Government	001-009-510-54560	\$200,000	\$15,790.59		\$215,790.59
Unreserved Fund Balance	001-000-271-30060	\$1,016,878		\$15,790.59	\$1,001,087.41
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
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					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
TOTAL		\$1,216,878	\$15,790.59	\$15,790.59	\$1,216,878

*Approved budget as previously amended.

Reason for Amendment: Settlement of Shawn Terry claim approved by City Council in Executive Session on 4/04/11.

Department Director Signature

Date

Department Director Signature

Date

Stephan Baumgart

Finance Director Signature

5/27/11

Date

City Manager Signature

Date

Approved by City Council, during Regular Session:

Date



AGENDA ITEM MEMORANDUM

TO: Honorable Mayor and City Council

VIA: T. Jennene Norman-Vacha, City Manager *T. Jennene Norman-Vacha*

VIA: Bill Geiger, Community Development Director *BJG*

FROM: Steve Gouldman, AICP, City Planner *SG*

SUBJECT: Temporary Sign Ordinance

DATE: June 6, 2011

BACKGROUND AND DISCUSSION:

At the April 18, 2011 City Council meeting, the Council, in response to a local business owner's request, directed staff to provide to them for review and discussion the City's current regulations regarding banners, flags and pennants. The current regulations, as well as those of Hernando County, were presented to City Council on May 2, 2011. Also presented to City Council were several options for addressing the City's sign provisions. The options included:

- Option 1: Make no changes.
- Option 2: Remove regulations relative to banners, flags, pennants/streamers and spinners.
- Option 3: Increase the number of days from 30 to 60 or 90 that banners, flags, pennants/streamers and spinners are permitted to be displayed.
- Option 4: Allow one permanent banner, 24 square feet in size, on each lot or parcel zoned for non-residential or multi-family residential purposes;

Allow a maximum of 3 permanent flags/pennants/streamers on each lot or parcel zoned for non-residential or multi-family residential purposes. Additionally, allow each lot or parcel zoned for non-residential or multi-family purposes with 300 or more feet of roadway frontage 1 permanent flag/pennant/streamer for every 100 feet of such frontage.

Except as provided above, allow banners, flags, pennants/streamers and spinners on a lot or parcel zoned for non-residential or multi-family purposes a maximum of six times per year for an aggregate time of no more than 60 days per year. Additionally, allow a 30, 60 or 90 day period for the display of banners, flags, pennants/streamers and spinners

Sign Regulations

June 6, 2011

Page 2

advertising the opening of a new business. Require temporary sign permits for such temporary signs.

Option 4 is similar to the sign regulations of Hernando County.

City Council was also informed of the City of Largo's "Economic Stimulus Program," which is an ordinance addressing additional temporary signs for the City's businesses. In brief, the City of Largo's "Economic Stimulus Program" allows businesses to display one banner sign or one "feather" sign a maximum of 45 continuous days once every 3 months. A permit fee of \$50.00 is required and the ordinance was enacted for one year, with a review of the program's effectiveness required prior to termination or extension. The City of Largo's temporary sign ordinance is attached.

As was noted at the May 2, 2011 City Council meeting, Chapter 125, Section 125-5.(4) of the City's sign regulations states that "banners" are permitted on-site when they advertise a specific special event. The banner size (area), when combined with existing permitted attached signs cannot exceed ten percent of the total area of the exterior wall to which it is affixed. There is no time limit for display of such banners.

Chapter 125, Section 125-6. prohibits a variety of sign types, including flags, pennants/streamers and spinners, as well as beacon lights, portable signs, signs incorporating flashing, moving or animation, signs which emit sound, odor or visible matter, and signs incorporating strobe lights. Section 125-6.(3) states that flags, pennants/streamers and spinners are only permitted for the purpose of attracting attention or conveying messages to the public when associated with new business openings. The flags, pennants/streamers and spinners may be displayed for a maximum of 30 days. It should be noted that while the City of Brooksville's sign regulations do not specifically address feather signs, such signs have been regulated in the same manner as flags.

Following discussion of the City's regulations, the proposed options and the City of Largo's temporary sign ordinance, the City Council directed staff to provide regulations for temporary signs similar to those of Largo and Hernando County. As is demonstrated by the attached draft Ordinance, the proposed regulations will allow each business to display one temporary banner sign a maximum of 32 square feet in size or one feather sign a maximum of 12 feet in height and 32 square feet in size. Each business will be allowed to display the sign for a maximum of 45 continuous days once every 3 months. New businesses will be allowed an additional 30 days in the first 3-month period. A permit fee of \$50.00 is proposed. Also proposed is that the Ordinance sunset one year from adoption unless an Ordinance is adopted extending the provisions.

JB

BUDGET/IMPACT:

The proposed \$50.00 fee will provide the funds necessary for implementation, and no additional staff will be required to administer the provisions of the Ordinance. Any additional financial impacts will be the result of enforcement of the regulations.

LEGAL REVIEW:

Florida Statutes § 163.3202(1) requires that each county and each municipality must adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan. Florida Statutes § 163.3202(2) mandates that Local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan.

STAFF RECOMMENDATION:

It is recommended that City Council evaluate the proposed Ordinance providing for the display of temporary signs and adopt the Ordinance as proposed or adopt with modifications. Upon adoption of the Ordinance, a final hearing date must be determined.

ATTACHMENTS:

- A. Draft Ordinance
- B. City of Largo Economic Stimulus Program
- C. Hernando County Chapter 25.5, Signs
- D. Brooksville Code of Ordinances Chapter 125, Signs

ATTACHMENT A

DRAFT ORDINANCE

ORDINANCE NO. 819

AN ORDINANCE OF CITY OF BROOKSVILLE, FLORIDA, PROVIDING TEMPORARY SIGN OPPORTUNITIES FOR COMMERCIAL USES; PROVIDING STANDARDS AND ADMINISTRATIVE PROCEDURES FOR PERMITTING TEMPORARY SIGNS; PROVIDING FOR AN EFFECTIVENESS REVIEW; AND PROVIDING FOR AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the City of Brooksville, Florida is vested with home rule authority pursuant to Article VII, Section 2 of the Constitution of the State of Florida and Chapter 166, Florida Statutes, to enact ordinances; and,

WHEREAS, the City Council recognizes that the ongoing recession and the condition of the economy challenges local businesses to seek new and better ways to advertise and promote their business; and

WHEREAS, the City Council understands that certain businesses would benefit from additional promotional opportunities; and

WHEREAS, the City Council has enacted sign regulations as part of the Code of Ordinances; and

WHEREAS, the Code of Ordinances sign regulations currently allow temporary signs during grand opening and special events of limited duration only; and

WHEREAS, the City Council wishes to continue to protect the safety of motorists, pedestrians, and others from distractions caused by signs; and

WHEREAS, the City Council wishes to continue to preserve the aesthetic beauty of the City of Brooksville; and

WHEREAS, the City Council wishes to assist local businesses by providing temporary sign opportunities for businesses operating in the City of Brooksville;

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL MEMBERS OF THE CITY OF BROOKSVILLE, AS FOLLOWS:

SECTION 1. TEMPORARY SIGNS. In order to provide temporary sign opportunities for Brooksville businesses the following provisions are hereby adopted:

1. The following temporary signs shall be allowed for businesses on parcels zoned as PDP with commercial and/or office uses and in the C1, C2, C3, C4, CIS-1, I-1, I-2 and P-1 zoning districts as well as any new commercial, office and industrial zoning district not in existence as of the effective date of this ordinance:
 - A. One banner sign per business not to exceed 32 square feet securely affixed to a building; or
 - B. One fabric sign per business attached to a vertical pole (“feather sign”) not to exceed 12 feet in height and 32 square feet in total area which shall be located on private

property and set back from right-of-way lines such that it does not obstruct required sight triangles.

2. Temporary signs may be displayed for a maximum of 45 continuous days once every three months beginning on the effective date of this ordinance. An additional 30 continuous days following the first 45-day period shall be allowed for a new business, provided that the new business has not been in operation more than 60 days prior to the request for a temporary sign permit.
3. A temporary sign permit shall be required which shall be effective for the duration of this ordinance.
4. A \$50 annual fee for the temporary sign permit is hereby established.
5. The City Manager is hereby authorized to establish administrative procedures necessary to permit and regulate temporary signs allowed under this ordinance consistent with the intent and purpose of this ordinance.

SECTION 2. EFFECTIVENESS. The City Council hereby directs staff to review the effectiveness of the temporary sign provisions in providing economic stimulus and to report their findings to the City Council 90 days prior to the termination of this ordinance.

SECTION 3. CONFLICTS. The City Council expressly intends that the sign regulation provisions of the City of Brooksville Code of Ordinances shall remain in effect except to the extent allowed by this ordinance, until the termination of this ordinance as set forth in Section 5.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption by the Brooksville City Council.

SECTION 5. TERMINATION DATE. This ordinance shall sunset one year from its effective date and the program shall terminate one year from the effective date of this ordinance unless an ordinance is adopted extending the program.

CITY OF BROOKSVILLE

Attest: _____
Janice L. Peters, CMC, City Clerk

By: _____
Frankie Burnett, Mayor

PASSED on First Reading _____

NOTICE Published on _____

PASSED on Second & Final Reading _____

APPROVED AS TO FORM FOR THE RELIANCE
OF THE CITY OF BROOKSVILLE ONLY:

Thomas S. Hogan, The Hogan Law Firm, LLC
City Attorney

VOTE OF COUNCIL:

Bernardini	_____
Bradburn	_____
Burnett	_____
Johnston	_____
Pierce	_____

ATTACHMENT B

**CITY OF LARGO ECONOMIC
STIMULUS PROGRAM**

ORDINANCE NO. 2010-47

AN ORDINANCE OF THE CITY OF LARGO, FLORIDA ESTABLISHING AN ECONOMIC STIMULUS PROGRAM BY PROVIDING TEMPORARY SIGNAGE OPPORTUNITIES FOR LARGO BUSINESSES; SETTING CONDITIONS FOR THE ALLOWANCE OF TEMPORARY SIGNAGE; AUTHORIZING THE DEVELOPMENT CONTROLS OFFICER TO ESTABLISH ADMINISTRATIVE PROCEDURES; PROVIDING FOR A REVIEW OF THE EFFECTIVENESS OF THE ORDINANCE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR TERMINATION OF THE ECONOMIC STIMULUS PROGRAM.

WHEREAS, the City Commission recognizes that the ongoing recession and the condition of the economy challenges local businesses to seek new and better ways to advertise and promote their business; and

WHEREAS, the City Commission understands that certain businesses would benefit from additional promotional opportunities; and

WHEREAS, the City Commission has enacted sign regulations as part of the Comprehensive Development Code; and

WHEREAS, the Comprehensive Development Code sign regulations currently allow temporary signs during grand opening, going-out-of-business and special events of limited duration only; and

WHEREAS, the City Commission wishes to continue to protect the safety of motorists, pedestrians, and others from distractions caused by signs; and

WHEREAS, the City Commission wishes to continue to preserve the aesthetic beauty of the City of Largo; and

WHEREAS, the City Commission wishes to establish an economic stimulus program to assist local businesses by providing temporary sign opportunities for businesses operating in the City of Largo;

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Largo, Florida that:

Section 1. In order to provide an economic stimulus program by providing temporary sign opportunities for Largo businesses the following provisions are hereby adopted:

- I. The following temporary signs shall be allowed in the CG/ROR, R/OG, CN, R/OL, IL, IG, RM, Future Land Use Designations and in the CRD Future Land Use Designation in the following Character Districts: West Bay Drive - Mixed Use Corridor, Medical Arts, and City Home and Clearwater Largo Road – Mixed Use Corridor and City Home.
 - A. One banner sign not to exceed 32 square feet securely affixed to a building; or
 - B. One fabric sign attached to a vertical pole (“feather sign”) not to exceed 12 feet in height and 32 square feet in total area which shall be located on private property and set back from right-of-way lines such that it does not obstruct required sight triangles.
- II. Temporary signs may be displayed for a maximum of 45 continuous days once every three months beginning on the effective date of this ordinance.
- III. A temporary sign permit shall be required which shall be effective for the duration of this ordinance.
- IV. A \$50 annual fee for the temporary sign permit is hereby established.

Section 2. The Development Controls Officer is hereby authorized to establish administrative procedures necessary to permit and regulate temporary signs allowed under this ordinance consistent with the intent and purpose of the economic stimulus program.

Section 3. The City Commission hereby directs staff to review the effectiveness of the temporary

sign provisions in providing economic stimulus and to report their findings to the City Commission 90 days prior to the termination of this ordinance.

Section 4. The City Commission expressly intends that the sign regulation provisions of the Comprehensive Development Code contained in Ordinance No. 2007-27 shall remain in effect except to the extent revised by this ordinance, until the termination of this ordinance as set forth in Section 6.

Section 5. This ordinance shall take effect immediately upon its final passage and adoption.

Section 6. This ordinance shall sunset one year from its effective date and the economic stimulus program shall terminate one year from the effective date of this ordinance unless an ordinance is adopted extending the program.

APPROVED ON FIRST READING _____

PASSED AND ADOPTED ON

SECOND AND FINAL READING _____

Mayor

ATTEST:

REVIEWED AND APPROVED:

Diane Bruner, City Clerk

Alan S. Zimmet, City Attorney

ATTACHMENT C

**HERNANDO COUNTY SIGN
REGULATIONS**

Sec. 25.5-5. Flags, banners, temporary signs, temporary directional signs, and displays.

(a) No more than one (1) permanent banner with a maximum size of twenty-four (24) square feet shall be allowed on a lot or parcel zoned for commercial or industrial use except pursuant to subsection (c) below. Such banner shall be securely mounted and kept in good maintenance. No zoning permit or certificate of use will be required for this permanent banner.

(b) No more than three (3) flags shall be allowed on a lot or parcel zoned for residential, commercial or industrial use, except pursuant to subsection (c) below. Notwithstanding the foregoing, any commercial or industrial parcel with more than three hundred (300) feet of frontage on a roadway classified as arterial or major collector may display one (1) permanent flag for each one hundred (100) feet of such frontage, or portion thereof. No zoning permit or certificate of use is required for permanent flags.

(c) (1) Except as provided in subsections (a) and (b) above or as otherwise expressly permitted by this chapter, flags, pennants and banners, portable signs, streamers, balloons, sandwich board signs and other similar devices are hereby prohibited, except that such devices may be utilized in connection with a permittee's activity on a lot or parcel zoned for recreational, commercial or industrial use not more than six (6) times during a calendar year and the aggregate duration of all such events totals no more than sixty (60) days per calendar year. Additional events may be permitted, even if the sixty-day total for that lot or parcel has been used in a calendar year, but any such additional events shall be limited to fifteen (15) days each and may occur no more than once per year for the occupant of a single-use lot or parcel or for any single occupant of a multi-occupant parcel. One additional twenty-one-day period may be permitted for a new business within sixty (60) days of the opening of a new business at a new or existing business location. "Opening" shall mean the day upon which the new business is first open to the general public.

(2) The applicant for temporary signage authorized herein is required to obtain a temporary sign permit from the county with the dates of display stated on the permit. If the applicant is not the record owner of the lot or parcel, the application for a permit shall include authorization from the record owner or such owner's authorized agent. No other zoning permit or certificate of use will be required for these types of devices. By this requirement, it is the specific intent of the board of county commissioners that no such devices shall be allowed except pursuant to the provisions of this paragraph and that any provision of the Hernando County Code of Ordinances relating to non-conforming uses shall not apply to such devices. Temporary uses or structures other than signs as defined herein shall remain subject to such other requirements as may be set forth in the Hernando County Zoning Ordinance, as amended from time to time.

(3) Where the applicant is the owner or lessee of a lot or parcel and is a fraternal or patriotic organization pursuant to articles of incorporation filed with the State of Florida, the administrative official may issue a permit for such lot or parcel to allow up to three (3) additional flags beyond the maximum of three (3) authorized hereunder provided that such additional flags shall be setback at least seventy-five (75) feet from any road frontage on an arterial or collector roadway to minimize the potential of traffic safety issues due to distraction. Such organization may be for profit or not for profit but must have service to and for its members as its principal business purpose.

(4) If the lot or parcel has occupants other than the record owner, any citation for violating this subsection regarding temporary signage may be issued to the record owner, the occupant in violation, or both.

(d) Temporary flags, pennants and banners, portable signs, streamers, balloons, sandwich board signs and other similar devices are allowable on a temporary basis for community

service uses proximate in time to events and activities associated with the community service use. Such temporary signage shall be removed upon the end of the event. No permit is required for the temporary community service event signage.

(e) In addition to any other signs allowed or permitted pursuant to this chapter, temporary directional signs shall be allowed on a privately-owned lot or parcel for special events, real estate open houses, garage sales and similar events. Such directional signs shall not be allowed on the county right-of-way. No permit is required for a temporary directional sign. The sign shall indicate the dates of the event, the party responsible for the event and the address of the event, which event information is for county monitoring purposes only and is not required to be visible from the street. Such signs shall be made of durable water proof material and may be no greater than six (6) square feet in size. Any such sign shall be posted no earlier than 7:00 a.m. on the day first day of the event to which the sign relates and shall be removed by sundown on the last day of the event to which the sign relates; provided that such signs for special events which have a conditional use permit or a special event permit may be placed a maximum of forty-eight (48) hours prior to the beginning of the event and must be removed within twenty-four (24) hours of the conclusion of the event.

(f) The provisions of this subsection shall not apply to portable signs, wall signs and sandwich board signs which are:

- (1) Displayed to persons or customers who are already physically on the lot, parcel or other premises owned or leased by a business or nonprofit entity; and
- (2) Not intended for display or legibly visible to members of the general public not already on the specific business or entity lot, parcel or leasehold.

For purposes of this limited exception, "leasehold" may include a common area shared with or by other lessees.

(Ord. No. 2008-03, § 5, 2-5-08)

ATTACHMENT D

**BROOKSVILLE CODE OF
ORDINANCES CHAPTER 125, SIGNS**

Chapter 125 SIGNS*

***State law references:** Authority to enact sign regulations consistent with state and federal law, F.S. § 166.0425; mandatory that land development regulations regulate signage, F.S. § 163.3203(1)(f); sign regulations to be consistent with state and federal law, F.S. § 166.0425.

- Sec. 125-1. Definitions.
- Sec. 125-2. Purpose and intent.
- Sec. 125-3. Permit required.
- Sec. 125-4. Fees.
- Sec. 125-5. Exemptions.
- Sec. 125-6. Prohibited signs.
- Sec. 125-7. Nonconforming signs.
- Sec. 125-8. General provisions.
- Sec. 125-9. Violations and penalties.

Sec. 125-1. 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:

Abandoned sign means a permitted sign which was erected on property in conjunction with a particular use which use has been discontinued.

Administrative official means that person designated by the city manager to administer and enforce the provisions of this chapter.

Attached sign means any sign affixed directly to or painted on or otherwise inscribed on an exterior wall of any building.

Back-to-back sign means a sign constructed on a single set of supports with messages visible on any side; provided, that double message boards are physically contiguous.

Banner, on-site, means any sign of durable fabric or similar material mounted to or hung from a building, adequately secured on all four extreme corners and used in conjunction with a special event. National flags, state or municipal flags or the official flag of any institution or business shall not be considered a banner. An on-site banner shall be considered an attached sign.

Banner, special event, means any sign of durable fabric or similar material, secured on all four extreme corners and used in conjunction with a specific event. National flags, state or municipal flags or the official flag of any institution or business shall not be considered a special event banner.

Beaconlight means any light with one or more beams directed into the atmosphere or directed at one or more points not on the same lot as the light source; also, any light with one or more beams that rotate or move.

Billboard means any outdoor advertising sign erected and maintained by an advertising business or service whose surface is sold, rented or leased for the display of advertising material. A billboard shall be considered a freestanding or detached sign.

Canopy sign means a sign which is a part of a canopy. A canopy sign shall be considered an attached sign.

Central business district means that district as delineated on the future land use map of the city's comprehensive plan as presently adopted or as hereinafter amended.

Dilapidated sign means any sign which is structurally unsound, has defective parts or is in need of painting or maintenance.

Directional sign means a sign which directs vehicular or pedestrian traffic and parking on private property.

Electrical sign means a self-illuminated sign or sign structure in which electric wiring, connections or fixtures are used as part of the sign proper.

Erect means to build, construct, attach, hang, place, suspend or affix.

Establishment means a commercial, industrial, institutional, educational, office, business or financial entity.

Existing sign means any sign that was erected, mounted or displayed prior to the adoption of this chapter.

Facade means the entire building wall, including main street wall face, and parapet, fascia, windows, doors, canopy and roof on any complete elevation.

Flag means a fabric or bunting containing distinctive colors, patterns or symbols used as a symbol of a government, political subdivision or other entity.

Flashing sign means a sign designed to attract attention through the use of a flashing, changing, revolving or flickering light source, or a change of light intensity.

Freestanding or detached sign means a sign supported by a structure secured in the ground and which is wholly independent of any building, fence, vehicle or other object. By definition, freestanding or detached signs include all signs defined herein which are supported by a structure in the ground.

Frontage means the length of the property line of any one premises along a street on which it borders.

Height of sign means the vertical distance measured from the finished grade at the base of the sign to the top of the sign face or sign structure, whichever is greater.

Illuminated sign means a sign which contains a source of light or which is designed or arranged to reflect light from an artificial source including indirect lighting, neon, incandescent lights, backlighted and reflectorized signs which depend upon automobile headlights for an image.

Mansard sign means any sign attached to or erected against a mansard roof of a building, with the face horizontally parallel to the building wall. Since such sign is to be mounted parallel to and within the limitations of the building wall on which the same is to be mounted, the same is deemed to be a wall sign and not a roof sign.

Marquee means a structure constructed of rigid materials, including, but not limited to, metal, wood, concrete, plastic or glass, which is attached to and supported by a building and extends more than one foot from the building face.

Nonconforming sign means any sign which does not conform to the requirements of this chapter.

Painted wall sign means any sign which is applied with paint or a similar substance on the face of a wall. A painted wall sign shall be considered an attached sign.

Pennant/streamer means any lightweight plastic, fabric or other material, whether or not containing a message of any kind, suspended from a rope, wire or string, usually in series, designed to move in the wind.

Pole sign means a sign supported by a pole (sometimes more than one) and otherwise separated from the ground by air. A pole sign shall be considered a freestanding or detached sign.

Political sign means a sign identifying and urging voter support of or opposition to a particular issue, political party, or candidate for public office. For purposes of this section, a "political sign" does not include bumper stickers, magnetic signs, window decals and any similar items attached or affixed to a licensed motor vehicle, or balloons, stickers, novelty items or any type of item designed to be worn by a person.

Portable sign means any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels and signs converted to A-frames or T-frames.

Premises means any area of land with its appurtenances and buildings which, because of its unity of use, may be regarded as the smallest conveyable unit of real estate.

Projecting sign means any sign other than a wall sign affixed to any building or wall whose leading edge extends beyond such building or wall.

Real estate sign means a sign indicating the availability for sale, rent or lease of the specific lot, building or portion of a building upon which the sign is erected or displayed.

Roof sign means any sign erected, constructed and maintained wholly upon or over the roof of any building with the principal support on the roof structure.

Sandwich board sign means a double-faced or single-faced portable display designed for temporary use which may readily be moved from place to place. Each sign face shall not exceed a maximum of two feet wide by three feet high. The sign height shall not exceed five feet, or occupy more than 13 square feet of ground space.

Sign face means the area of a sign on which the copy is placed which may or may not be part of the support structure as may be determined by the administrative official.

Sign support structure means any construction used or designated to support a sign, provided no advertising, lettering or other information is contained thereon.

Snipe sign means any sign of any material whatsoever that is attached in any way to a utility pole, tree, fence post or any other similar object located or situated on public or private property. Snipe signs shall not include "posted property" signs, such as "no hunting," "no trespassing," etc.

Spinner means any device designed to attract attention to the premises upon which it is displayed through mechanical movement or through movement caused by the wind.

Subdivision sign means any sign designated to identify a subdivision or neighborhood.

Temporary sign means a sign or advertising display constructed of cloth, canvas, fabric, paper, plywood or other light material and intended to be displayed for a short period of time. Included in this category are retailers' signs temporarily displayed for the purpose of informing the public of a sale or special offer and banner signs.

Vehicle sign means a permanent or temporary sign affixed to or placed in or upon any parked vehicle, parked trailer or other parked device capable of being towed, the primary purpose of which is to attract the attention of the traveling public; provided, that this definition does not include any signs which are required by any unit of government and does not include a single sign placed on a single vehicle or trailer at a residence of an individual which sign identifies the vehicle or trailer as being for sale.

Wall sign means a sign attached to or erected against the wall of a building with the face in a parallel plane to the plane of the building wall and not extending more than one foot. A wall sign shall be considered an attached sign.

Window sign means any sign placed inside or upon a window facing the outside and which is intended to be seen from the exterior. A window sign shall be considered an attached sign.

(Code 1988, § 12.5-2; Ord. No. 501-E, § 1(12.5-2), 8-16-2004)

Sec. 125-2. Purpose and intent.

(a) This chapter shall be construed and implemented to create a comprehensive and balanced system of sign control which accommodates both the need for a well-maintained, safe and attractive community, and the need for effective business identification, advertising and communication in a manner that implements the goals, objectives, policies and standards in the city's comprehensive plan, particularly as set forth in the future land use and conservation elements. It is the intent of this chapter, and it shall be interpreted, to promote the health, safety, convenience, aesthetics and general welfare of the community by controlling signs which are intended to communicate to the public, and to authorize the use of signs which are:

- (1) Compatible with their surroundings thereby enhancing the attractiveness and economic well-being of the city as a place to live and conduct business;
- (2) Designed, constructed, installed and maintained in a manner which does not endanger public safety or unduly distract motorists;
- (3) Appropriate to the type of activity to which they pertain;
- (4) Large enough to convey sufficient information about the owner or occupants of a particular property, the products or services available on the property, or the activities conducted on the property, and small enough to satisfy the aesthetic and safety needs of the community; and
- (5) Reflective of the identity and creativity of individual occupants.

(b) The standards and regulations are designed to protect the city against:

- (1) The unlimited proliferation in number and location of offsite and on-site signs, including mobile signs;
- (2) Construction and placement of oversized, unsightly, animated, flashing and other aesthetically unpleasant signs which dominate and detract from the surrounding visual environment;
- (3) Commercial and other signs being placed in residential and rural neighborhoods which unpleasantly commercialize and clutter such neighborhoods for residents and travelers;
- (4) Signs being constructed and placed without first obtaining proper permits as well as permission of the owner of the property on which the signs were placed;
- (5) Signs failing to be properly maintained once erected and placed; and
- (6) Signs which are placed dangerously in or near street or driveway intersections and rights-of-way so as to pose actual or potential hazards to traffic.

(Code 1988, § 12.5-1)

Sec. 125-3. Permit required.

Any person intending to erect, relocate or alter any sign within the city shall, except as provided hereafter, first apply for and obtain a sign permit from the office of the department of development. The administrative official or his designee is authorized to promulgate rules and procedures to accommodate for the permit application process.

(Code 1988, § 12.5-3)

Sec. 125-4. Fees.

Each application for signage shall be accompanied by permit fees as shall from time to time be established by resolution by the city council and are on file with the city clerk.

(Code 1988, § 12.5-4)

Sec. 125-5. Exemptions.

The following signs shall be allowed in any zoning district without the necessity of obtaining a sign permit, providing such sign is not in conflict with any other provision of this chapter. Noncompliance with the terms set forth below shall cause such sign to forfeit its exempt status and require the owner to obtain a permit as set forth in section 125-3. Owners or lessees of such signs shall ensure that exempt signs conform to all other applicable regulations and they shall be responsible for the safe and proper erection and maintenance of such signs. Failure to comply with the provisions of this section shall subject the violator to the penalties as outlined in section 125-9. Each violation shall constitute a separate offense.

- (1) One non-illuminated sign not to exceed two square feet identifying a residence.
- (2) One sign customary and necessary in the offering of real estate for sale or to let by the owner or the owner's licensed broker or agent not to exceed six square feet in residential zones or 24 square feet in nonresidential zones. Upon sale of the property, the sign must be removed within 14 days.
- (3) Signs, memorials or plaques erected by or on behalf of the United States of America, the state or local governments pursuant to and in discharge of any governmental function or required or permitted by any law, ordinance or governmental regulation.
- (4) On-site banners, when used in conjunction with a specific special event, provided the banner area when combined with the area of existing attached signs does not exceed ten percent of the total area of the exterior wall to which it is affixed. Banners are to be maintained in good condition at all times.
- (5) Special event banners, when used by governmental, charitable or nonprofit organizations in conjunction with a specific special event of city-wide significance. Special event banners permitted under this section shall in no instance remain in place for more than 30 days.
- (6) Sandwich board signs. Such signs must be placed in a location so as not to impede pedestrian or vehicular visibility and general public safety, and may only be placed outdoors in front of the advertised business during business hours. One sandwich board

sign will be allowed per building on single lot developments, or one sandwich board sign per unit in buildings designed as multiunit, independent, separate entry storefronts.

(7) Political signs are permitted to be erected no more than 90 days prior to the applicable election day and shall be removed within ten days after said election day. The candidate for office or a designee shall have the responsibility for removal of signs advertising the candidacy. Signs that are not removed within the time period referenced herein shall be subject to removal by the city and may be disposed of pursuant to administrative policies set up by the city manager. The size of such signs shall not exceed six square feet in a residential district and 24 square feet in a nonresidential district. No signs may be posted within public rights-of-way or on utility poles, trees, traffic or regulating signs of any nature.

(8) Construction or contractor signs. One per location identifying the project, the building and subcontractors, not to exceed 12 square feet in residential areas and 24 feet in nonresidential areas and must be removed upon completion of the job.

(9) Holiday signs are allowed 30 days prior to and 15 days after the specific holiday. Holidays are defined and include all federal, state or local legal holidays.

(10) Signs necessary for the identification, operation or protection of public service structures or signs incident to a legal process or necessary to the public safety or welfare.

(11) Directing or instructing signs for vehicular or pedestrian traffic and parking on private property, providing such signs bear no advertising matter and do not exceed six square feet in area.

(12) Graphic presentations and murals approved by the city council which feature cultural, civil or historical events containing no commercial advertising material.

(Code 1988, § 12.5-5; Ord. No. 501-D, 3-5-2001; Ord. No. 501-E, § 1(12.5-5), 8-16-2004)

Sec. 125-6. Prohibited signs.

The following signs shall not be permitted in any zoning district within the city:

(1) Abandoned or dilapidated signs.

(2) Beaconlights.

(3) Flags, pennants/streamers and spinners when used solely for the purpose of attracting attention or conveying messages to the public except when associated with new business openings, not to exceed 30 days.

(4) Portable signs.

(5) Signs which incorporate any flashing, moving or changing illumination or animation or which emit sound, odor or visible matter and signs which incorporate strobe lights in any

manner. Time or temperature displays incorporated in signs which otherwise comply with all provisions of this section, may be approved by the city council.

(6) Signs using the words "stop," "danger" or any other word, phrase, symbol or character in a manner that misleads, confuses or distracts a vehicle driver.

(7) Signs which pose a safety hazard to the general public.

(8) Signs which exhibit statements, words or pictures of obscene or pornographic subjects.

(9) Snipe signs.

(10) Tethered balloons, flying paraphernalia and inflatable signs.

(11) Vehicle signs. No person shall park any vehicle or trailer on a public right-of-way, or on public property or on private property so as to be visible from a public right-of-way which has attached thereto or located thereon any sign or advertising device for the basic purpose of providing advertisement of product, or directing people to a business or activity, located on the same or nearby property.

(Code 1988, § 12.5-6)

Sec. 125-7. Nonconforming signs.

(a) The following signs shall be removed or made to conform to this chapter within 30 days from the effective date of this chapter:

(1) All prohibited signs as defined by this chapter.

(2) All temporary signs other than those permitted by this chapter.

(3) Any nonconforming signs that are located within a public right-of-way.

(b) Subject to the limitation imposed by this regulation, all other nonconforming signs shall be maintained in good condition. However, nonconforming signs shall not be:

(1) Structurally altered to prolong the life of the sign, except to meet safety requirements.

(2) Altered in any manner that increases the degree of nonconformity.

(3) Expanded.

(4) Continued in use after cessation or change of the business or activity to which the sign pertains.

(5) Reestablished after damage or destruction exceeding 50 percent of the sign.

(6) Continued in use when a conforming sign or sign structure shall be permitted and erected on the same premises or unit.

(7) Continued in use if the property is sold or leased to another party, or when any land use to which the sign pertains has ceased for a period of 90 consecutive days.

(c) Property owners with signs that are required to be removed as a result of any governmental activity may be permitted to move the existing sign to a new location on the same property. The sign's relocation may be permitted provided that the sign structure and new location will not exceed the scope of the structure's existing nonconformity and will not pose a safety hazard at the new location.

(Code 1988, § 12.5-7)

Sec. 125-8. General provisions.

All signs shall be subject to the following regulations except where otherwise provided for in this chapter:

(1) *Freestanding or detached signs.* Only one freestanding or detached sign shall be permitted on the premises. All freestanding or detached signs and all parts thereof shall be located at least 25 feet from all street right-of-way lines and at least 20 feet from all property lines or area of traffic circulation. The maximum height of such signs shall not exceed 16 feet and when such signs are located within a parking lot or area of traffic circulation, shall provide for a clearance space of at least eight feet so as not to obstruct the vision of approaching vehicles. No freestanding or detached sign shall exceed 32 square feet in size. Signs excepted from the above provisions may be permitted if one or more of the following circumstances are presented:

a. The parcel fronts 500 feet minimum on each of more than one street in which case one freestanding sign not to exceed 96 square feet or two freestanding signs not to exceed 48 square feet each may be permitted provided the signs maintain a separation of 250 feet.

b. The parcel contains two or more units, each of which contain a business establishment or use with a separate identity from other uses on the premises in which case one freestanding sign not to exceed 72 square feet for under four units or 96 square feet for four or more units may be permitted.

c. Freestanding signs located in the central business district may be permitted to utilize five-foot setbacks from property lines provided such placement does not constitute a visual obstruction for pedestrian or vehicular traffic.

(2) *Attached signs.* No attached sign shall extend or project more than six feet above or beyond the building walls. A clear space of not less than eight feet shall be provided below all parts of such signs. In no case, however, shall an attached sign be permitted to extend or project beyond a line drawn perpendicularly upward from two feet inside the curblines facing a street or alley. No attached sign shall exceed ten percent of the total area of the exterior wall, including any glass area, to which it is being attached.

(3) *Lighting.* No sign shall be permitted which involves lighting or motion resembling traffic or directional signals, warnings or other similar devices which are normally associated with highway safety or regulations or which constitutes a safety hazard or hindrance because of light, glare, focus, animation, rotation, flashing or intensity of illumination. Lighted signs shall be designated and located so as to prevent direct glare or hazardous interference of any kind to adjoining streets or properties.

(4) *Maintenance.* Every sign shall be structurally sound, securely attached to its supporting structure, adequately maintained including proper alignment of structures, continued readability of the sign face and preservation of the structure with paint or other preservatives. If any sign is not maintained in conformance with this chapter, the administrative official shall give written notice of such nonconformance to the owner of such sign in accordance with the provisions of section 125-9.

(5) *Building code compliance.* All signs shall comply with the provisions of the Standard Building Code.

(6) *Zoning districts.* Unless otherwise provided for in this chapter, no signage shall be permitted in single-family residential districts.
(Code 1988, § 12.5-8)

Sec. 125-9. Violations and penalties.

Those persons, including the property owner, lessor, lessee or occupant, who may violate any portion of this chapter shall first be notified by certified mail citing time, place, date and nature of the violation and date certain when violation is to be brought into compliance. Violations existing beyond the above referenced date certain shall be deemed a civil infraction and shall be punished by a fine not to exceed \$50.00. Each day any violation of any provision of this chapter shall continue shall constitute a separate offense. The city shall have the right to remove any sign that remains in noncompliance beyond 30 days after notification. Violations which involve signs found to be structurally unsound, insecurely attached or otherwise posing hazards to the immediate safety and general welfare of the public are subject to the structure's removal by the city. The violator, upon receiving actual notice of the safety violations from the administrative official, shall be responsible for correcting the violation immediately, or the city is authorized to compel the structure to be removed. Signs impounded for a period of 30 days, if unclaimed, shall be disposed of as abandoned property in accordance with public law. The city will bill the owner for the cost of such removal, storage and disposal. If unpaid after 90 days, the sign will be considered abandoned and a lien will be filed on the property for the city's cost of removal, storage, disposal and legal processing.

(Code 1988, § 12.5-9)



**AGENDA ITEM
MEMORANDUM**

TO: HONORABLE MAYOR AND CITY COUNCIL

VIA: T. JENNENE NORMAN-VACHA
CITY MANAGER

FROM: JENNIFER C. REY, ESQ. 
THE HOGAN LAW FIRM, LLC
AS CITY ATTORNEY

SUBJECT: RESOLUTION 2011-02; SUNTRUST FINANCING AGREEMENT

DATE: MAY 24, 2011

GENERAL SUMMARY: At its regular public meeting on Monday, May 16, 2011, the City Council approved entering into a financing agreement with Sun Trust Equipment Financing & Leasing Co. and authorized the Mayor to execute the final documents as reviewed and approved by the City Attorney. As part of our review of the final documents, typographical edits were made to the head note and body of the resolution. These edits are not of a substantive or material nature. However, in order to clarify the record, we are asking that City Council ratify the revised resolution so that the head note and resolution may be properly reflected in the record.

 **BUDGET NOTE:** There is no budget impact with ratifying this Resolution.

 **LEGAL REVIEW:** The City is vested with home rule authority pursuant to Article VII, Section 2 of the Constitution of the State of Florida and Chapter 166, Florida Statutes. Pursuant to Section 1.03 of the Charter, the City has all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services.

STAFF RECOMMENDATION: Staff recommends that the City Council ratify Resolution 2011-02.

RESOLUTION NO. 2011-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BROOKSVILLE, FLORIDA AUTHORIZING THE ISSUANCE OF A CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2011, A IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$3,333,022.00, TO FINANCE THE COST OF ENERGY PERFORMANCE PROJECTS IN THE CITY OF BROOKSVILLE, FLORIDA; PROVIDING THAT THE NOTE SHALL BE A LIMITED, FIRM TERM, BUT NOT GENERAL, OBLIGATION OF THE ISSUER PAYABLE FROM A COVENANT TO BUDGET AND APPROPRIATE NON-AD VALOREM REVENUES; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BROOKSVILLE, FLORIDA, as follows:

Section 1: *Authority for this Resolution.* This Resolution is adopted pursuant to the provisions of the Constitution of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law (collectively, the "Act").

Section 2: *Definitions.* The following words and phrases shall have the following meanings when used herein:

"Act" shall have the meaning ascribed thereto in Section 1 hereof.

"Authorized Denominations" means the stated amount of the Note.

"Council" means the City Council of the City of Brooksville, as the governing body of the City of Brooksville, Florida.

"Business Day" means any day except any Saturday or Sunday or day on which the Principal Office of the Original Purchaser is closed.

"Mayor" means the Mayor of the City or in his/her absence or inability to act, the Vice Mayor of the Council may be duly authorized by the City Council to act on his/her behalf.

"Clerk" means the City Clerk of the City of Brooksville or any Deputy City Clerk.

"Issuer" means the City of Brooksville, Florida.

"Fiscal Year" means the period commencing on October 1st of each year and ending on the succeeding September 30th.

"Maturity Date" means October 1, 2026.

"Mayor" means the duly elected Mayor of the City of Brooksville, Florida, as such person is attested to by the Clerk in the General Certificate of the City, which is incorporated by reference hereto.

"Non- Ad Valorem Revenues" means all legally available non-ad valorem revenues of the Issuer, but shall not include any ad valorem taxes.

"Non-Self-Supporting Debt" means debt obligations of the Issuer, other than debt obligations relating to an Enterprise Fund or GO Bonds of the Issuer.

"Note" means the City of Brooksville, Florida Capital Improvement Revenue Note, Series 2011, A Financing of Energy Performance Projects and authorized pursuant to this Resolution.

"Original Purchaser" means SunTrust Equipment Finance & Leasing Corp. and its successors and assigns

"Owner" or *"Owners"* means the Person or Persons in whose name or names a Note shall be registered on the books of the Issuer kept for that purpose in accordance with provisions of this Resolution.

"Person" means natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies and other legal entities.

"Principal Office" means, with respect to the Original Purchaser, 300 E. Joppa Road, 7th Floor, Towson, Maryland 21286.

"Project" means the Energy Performance Contract with Energy Systems Group located within the City of Brooksville, Florida.

"Resolution" means this Resolution, pursuant to which the Note is authorized to be issued, including any supplemental resolution(s).

"State" means the State of Florida.

Section 3: Findings.

(A) For the benefit of the inhabitants of the Issuer, the Council finds, determines and declares that it is necessary for the continued preservation of the health, welfare, convenience and safety of the Issuer and its inhabitants to finance and undertake the Project. Issuance of the Note to finance the cost of the Project satisfies a paramount public purpose.

(B) The Issuer is without adequate, currently available funds to pay the costs of financing the Project, and it is necessary and desirable and in the best interests of the Issuer that it borrow the moneys necessary to accomplish the financing of the costs of the Project.

(C) The Note will be payable from a non-cancellable pledge of Non-Ad Valorem Revenues; however, the Issuer will be permitted to make payments from any and all legally available funds. The Issuer has determined that Non-Ad Valorem Revenues should be sufficient to pay the Note, as the same becomes due.

(D) Neither the Issuer nor the State of Florida or any political subdivision thereof or governmental authority or body therein, shall ever be required to levy ad valorem taxes to pay the Note and the Note shall not constitute a lien upon the Project, or upon any properties owned by or situated within the Issuer, except as provided herein with respect to the Non-Ad Valorem Revenues, in the manner and to the extent provided herein.

(E) The Issuer has received an offer from the Original Purchaser to purchase the Note.

(F) Because of the characteristics of the Note, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Note, it is in the best interest of the Issuer to accept the offer of the Original Purchaser, to purchase the Note. Prior to the issuance of the Note, the Issuer shall receive from the Original Purchaser, a Purchaser's Certificate, the form of which is attached hereto as Exhibit B and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit C.

Section 4: Authorization. The issuance of an obligation of the Issuer to be known as the "City of Brooksville, Florida Capital Improvement Revenue Note, Series 2011, A Financing Energy Performance Projects" is hereby approved and authorized, in the aggregate principal amount of not to exceed \$3,333,022.00 for the purpose of providing funds to pay the costs of the Project and to pay the costs of issuing the Note. Further, the Project is hereby approved.

Section 5: Description of Note. The Note shall be issued as a single Note and shall be dated the date of its execution and delivery, which shall be a date agreed upon by the Issuer and the Original Purchaser, and shall have such other terms and provisions, including interest rates not exceeding the maximum interest rates permitted by the Act, principal and interest payment terms, maturity date, and prepayment provisions as stated herein and/or in the form of the Note attached hereto as Exhibit A or as determined by supplemental resolution. The

Note is to be in substantially the form set forth on Exhibit A attached hereto, together with such changes as shall be approved by the Mayor, such approval to be conclusively evidenced by the execution thereof by the Mayor. The Note shall be executed with the manual or facsimile signature of the Mayor and the Note shall be attested with the manual or facsimile signature of the Clerk. In case any one or more of the officers who shall have signed or sealed the Note or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Note so signed and sealed have been actually sold and delivered, such Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Note had not ceased to hold such office. The Note may be signed and sealed by such person who at the actual time of the execution of the Note shall hold the proper office of the Issuer, although, at the date of the Note, such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the adoption of this Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Note shall be actually sold and delivered.

Section 6: *Registration and Exchange of Note; Persons Treated as Owners.* The Note will initially be registered to the Original Purchaser. So long as the Note shall remain unpaid, the Issuer will keep books for the registration and transfer of the Note. The Note shall be transferable only upon such registration books and in Authorized Denominations.

The Person in whose name a Note shall be registered shall be deemed and regarded as the absolute Owner thereof for all purposes, and payment of principal and interest on such Note shall be made only to or upon the written order of the Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

Section 7: *Note Mutilated, Destroyed, Stolen or Lost.* In case a Note shall become mutilated, or be destroyed, stolen or lost, the Issuer shall issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and in substitution for such mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the Owner furnishing the Issuer reasonable proof of ownership thereof and indemnity reasonably satisfactory to the Issuer and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. The Note so surrendered shall be canceled.

Section 8: *Payment of Note; Limited Obligation.* The Issuer promises that it will promptly pay the Note at the place, on the dates and in the manner provided therein, including via wire transfer if requested by an Owner, according to the true intent and meaning hereof and thereof. The Note shall not be or constitute general obligations or indebtedness of the Issuer as "Note" within the meaning of Article VII, Section 12 of the Constitution of Florida and is subordinate to such obligations, but shall be payable from the Non-Ad Valorem Revenues, in the manner and to the extent provided herein. No holder of any Note issued hereunder shall ever have the

right to compel the exercise of any ad valorem taxing power to pay such Note, or be entitled to payment of such Note from any funds of the Issuer except from the Non-Ad Valorem Revenues, in the manner and to the extent provided herein. Nothing in this section shall be construed as to limit the Issuer's ability to use any Non-Ad Valorem Revenues to make any payments coming due.

Section 9. *Security for the Note.* The Issuer covenants and agrees to budget and appropriate, by amendment, specific resolution, or other action(s), if and to the extent necessary, in its annual budget for each Fiscal Year in which the Note remains outstanding, sufficient amounts of Non-Ad Valorem Revenues for the payment of principal of and interest on the Note in each such Fiscal Year. Such covenant and agreement on the part of the Issuer shall be non-cancellable in that it will continue for the entire term of the Note and be cumulative and shall continue until all payments of principal and interest on the Note shall have been budgeted, appropriated and actually paid. The Issuer agrees that this covenant and agreement to budget and appropriate Non-Ad Valorem Revenue shall be deemed to be entered into for the benefit of the holders of the Note and that this obligation may be enforced in a court of competent jurisdiction only in the State Circuit Court in and for Hernando County, Florida. The Issuer shall have no right to terminate its obligations under the Note by any failure to appropriate legally available funds to make payments and meet its obligations under the Note. This covenant and agreement shall not be construed as a limitation on the ability of the Issuer to pledge all or a portion of such Non-Ad Valorem Revenues for other legally permissible purposes. Nothing herein shall be deemed to pledge ad valorem taxation revenues or to permit or constitute a mortgage upon any assets owned by the Issuer and no Person may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer for the payment of the Issuer's obligations hereunder. The Note shall not be or constitute general obligations or indebtedness of the Issuer as "bonds" within the meaning of the Constitution of the State of Florida. The obligation of the Issuer to appropriate Non-Ad Valorem Revenues shall be subject in all respects to the obligation of the Issuer to provide for essential governmental services and further shall be subject to the provisions of Section 166.341, Florida Statutes. Notwithstanding any provisions of this Resolution to the contrary, the Issuer shall not be obligated to exercise ad valorem taxing power to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or other Non-Ad Valorem Revenues. All deposits into the funds and accounts created by this Resolution shall be deemed to be held in trust by the Issuer for the benefit of the Owner(s) and otherwise for the purposes herein provided and used and applied only for the purposes and in the manner herein provided.

Section 10: *Optional Prepayment.* The Note shall be subject to prepayment, in whole or in part, on any Payment Date at the option of the Issuer for the Prepayment Option Price referenced on the Payment Schedule attached to the Note. Notwithstanding the foregoing, the Issuer shall have the option to make only one partial prepayment per Fiscal Year, in any amount greater than \$50,000.00 and on any payment date following 30 days prior written notice to the Owner, which shall be payable at 101% of the par value.

Section 11: *Application of Proceeds of Note.* Proceeds from the sale of the Note shall be used to finance the cost of the Project and to pay the costs of issuance (including but not limited to legal fees and expenses).

The Issuer covenants that it will establish an account or accounts at SunTrust Bank (herein called the "Project Account") into which, at the time of delivery of the Note herein authorized, shall be deposited the proceeds from the sale of the Note remaining after payment of any costs or expenses incurred in connection with the issuance of the Note.

Moneys in the Project Account shall be secured and invested in the SunTrust Bank-SunTrust Leasing NOW account, a demand deposit account for mutual customers of SunTrust Bank and SunTrust Equipment Finance & Leasing Corp., the principal balance of which is FDIC insured to all applicable limits and fully collateralized by investment bonds or obligations of the United States, and/or bonds or obligations guaranteed as to principal and interest by the United States, or in any other manner prescribed by the laws of the State of Florida relating to the securing of public funds, if and to the extent applicable, but in all cases in permitted investments under the laws of the State. The earnings from any such investment shall be retained in the Project Account.

All moneys deposited in said Project Account shall be and constitute a trust fund created for the purpose stated, and there is hereby created a lien upon such fund in favor of the Owner of the Note until the moneys thereof shall have been applied in accordance with this Resolution.

Section 12. *Application of Revenues.* For so long as any of the principal of and interest on the Note shall be outstanding and unpaid or until the Issuer has made provision for payment of principal of and interest, with respect to the Note, the Issuer covenants as follows:

A. **Funds and Accounts.** The Issuer covenants and agrees to establish separate funds to be known as the "Revenue Fund," the "Debt Service Fund," the "Construction Fund" and the "Rebate Fund." Moneys in the aforementioned funds, other than the Rebate Fund, until applied in accordance with the provisions hereof, shall be subject to a lien and charge in favor of the Owner and for the further security of the Owner.

The Issuer may, but shall not be required to, at any time and from time to time appoint one or more depositories to hold, for the benefit of the Owner, any one or more of the funds and accounts established hereby. Such depository or depositories shall perform at the direction of the Issuer the duties of the Issuer in depositing, transferring and disbursing moneys to and from each of such funds and accounts as herein set forth, and all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Issuer and its agents and employees. Any such depository shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital, surplus and undivided profits aggregating not

less than five million dollars (\$5,000,000).

All deposits into the funds and accounts created by this Resolution shall be deemed to be held in trust by the Issuer for the benefit of the Owner for the purposes herein provided and used and applied only for the purposes and in the manner herein provided.

B. Flow of Funds.

(1) The Issuer shall credit the appropriated and budgeted amounts of Non-Ad Valorem Revenue to the Revenue Fund. The moneys in the Revenue Fund shall be deposited or credited on or before the last day of each month, commencing with the month in which delivery of the Note shall be made to the purchaser or purchasers thereof, or such later date as hereinafter provided, in the following manner and in the following order of priority:

(a) Debt Service Fund. The Issuer shall deposit into or credit to the Debt Service Fund the sum which, together with the balance in said fund, shall be equal to the interest and the principal amount on all Outstanding Note accrued and unpaid and to accrue to the end of the then current calendar month. Moneys in the Debt Service Fund shall be used to pay principal of and interest on the Note as and when the same become due, whether by redemption or otherwise, and for no other purpose. In determining the amount to deposit for principal, the Issuer shall take into account that portion of the principal due on the next principal payment date which would have accrued on said Note during the then current calendar month if such principal amounts were deemed to accrue monthly (assuming that a year consists of twelve (12) equivalent calendar months of thirty (30) days each) in equal amounts from the next preceding principal payment due date, or, if there is no such preceding principal payment due date, from a date one year preceding the due date of such principal amount. The Issuer shall adjust the amount of the deposit into the Debt Service Fund not later than the month immediately preceding any payment date so as to provide sufficient moneys in the Debt Service Fund to pay the principal of and interest on the Note coming due on such payment date.

(b) Balance. The balance of any moneys after the deposits required by Section 12(B)(1) hereof may be transferred to any appropriate fund or account of the Issuer or may be used for any lawful purpose.

(2) The Issuer, in its discretion, may use moneys in the Debt Service Fund to prepay the principal or interest coming due in future years.

(3) On the date established for payment of any principal of or redemption price, if applicable, or interest on the Note, the Issuer shall withdraw from the Debt Service Fund sufficient moneys to pay such principal or redemption price, if applicable, or interest and deposit such moneys with the Paying Agent.

C. Rebate Fund. Amounts on deposit in the Rebate Fund shall be held in trust by the Issuer and used solely to make required rebates to the United States (except to the extent the same may be transferred to the Revenue Fund) and the Owner shall have no right to have the same applied for debt service on the Note. The Issuer agrees to undertake all actions required of it in its arbitrage certificate, dated the date of issuance of the Note, relating to such Note, including, but not limited to:

(1) making a determination in accordance with the Code of the amount, if any, required to be deposited in the Rebate Fund;

(2) depositing the amount determined in clause (1) above into the Rebate Fund;

(3) paying on the dates and in the manner required by the Code to the United States Treasury from the Rebate Fund and any other legally available moneys of the Issuer such amounts as shall be required by the Code to be rebated to the United States Treasury; and

(4) keeping such records of the determinations made pursuant to this Section as shall be required by the Code, as well as evidence of the fair market value of any investments purchased with proceeds of the Note.

The provisions of the above-described arbitrage certificate may be amended from time to time as shall be necessary, in the opinion of a mutually agreeable and competent tax counsel, to comply with the provisions of the Code.

Section 13. Representations and Warranties of the Issuer. The Issuer represents and warrants:

(a) Issuer is a local government or local government body, duly and validly existing under the Constitution and laws of the State, constitutes a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as from time to time amended, (the "Code"), and is authorized under the Constitution and laws of the State to enter into this Resolution, the Note and the transactions contemplated hereby and thereby, and to perform all of its obligations under this Resolution and the Note.

(b) The execution and delivery of this Resolution and the Note have been duly authorized by all necessary action of the Board and such action is in compliance with all public bidding and other State and federal laws applicable to this Resolution, the Note, the acquisition and/or undertaking of the Project, the covenant to budget and appropriate Non-Ad Valorem Revenue, the financing of the Project by the Issuer, and the security for the Note as more fully described herein.

(c) This Resolution and the Note have been duly executed and delivered by and constitute the valid and binding obligation of Issuer, enforceable against Issuer in accordance with their respective terms.

(d) The execution, delivery and performance of this Resolution and the Note by Issuer shall not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction,

decree, or regulation of any court or other governmental agency or body applicable to Issuer, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, resolution, deed of trust, lease or other obligation to which Issuer is bound.

(e) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Issuer's knowledge, threatened against or affecting Issuer, challenging Issuer's authority to enter into this Resolution or the Note or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Resolution or the Note.

(f) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Issuer has been a party at any time during the past ten (10) years has been terminated by Issuer as a result of either insufficient funds being appropriated in any Fiscal Year, or the non-payment of any firm-term or general obligation rental or other payments. No event has occurred which would constitute a payment-related event of default under any debt, note, revenue bond or obligation which Issuer has issued during the past ten (10) years.

(g) To the extent applicable and in accordance with the express limitations of this Resolution, the Issuer and/or Issuer's governing body has pledged and/or taken all required and legally permissible actions necessary to provide moneys sufficient to pay all Payments during the current Fiscal Year and will take any required actions to secure moneys sufficient to pay all Payments due and owing during the term of any Note issued hereunder, and such moneys will be applied in payment of all Payments due and payable during such the term of said Note.

(h) The financial information concerning the Issuer heretofore delivered to the Original Purchaser is complete and correct and fairly presents the financial condition of the Issuer for the period(s) referred to and has been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the period(s) involved. There are no liabilities (of the type required to be reflected on balance sheets prepared in accordance with generally accepted accounting principles), direct or indirect, fixed or contingent, of the Issuer as of the date of such financial information which are not reflected therein. There has been no material adverse change in the financial condition or operations of the Issuer since the date of such information (and to the Issuer's knowledge no such material adverse change is pending or threatened), and the Issuer has not guaranteed the obligations of, or made any investment in or loans to, any Person except as disclosed in such information. The Issuer has good and marketable title to and full ownership of all of its properties and assets related to the Project, and all of such properties and assets are free and clear of encumbrances, except as reflected in such financial information.

(i) The Issuer represents and warrants that the Issuer's covenant to budget and appropriate Non-Ad Valorem Revenues is a non-cancellable obligation of the Lessee, which shall continue until all payment of other amounts due under this Resolution and Note are paid in full, and such covenant is legally valid, not deemed to be unconstitutional issuance of debt, and is otherwise given in accordance with the Act.

Section 14. *Covenants of the Issuer.*

A. The Issuer covenants to provide its Certified Audited Financial Report, budgets and other reasonable financial information, if requested by the Owner.

B. The Owner will have the right to inspect any and all of the Issuer's books and records during normal business hours, including but not limited to any records, accountings, statements, or other documentation and the like including but not limited to the Project Fund, Revenue Fund, Debt Service Fund, and Construction Fund.

Section 15. *Tax-Exemption.* The Issuer covenants with the Owner of the Note that it shall not use in any manner or permit any omission with regards to the proceeds of such Note which would cause the interest on such Note to be or become includable in the gross income of the Owner for federal income tax purposes and the Issuer further covenants with the Owner of the Note that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Note from the gross income of the Owner for federal income tax purposes, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code.

(a) The Issuer makes each of the representations, warranties and covenants contained in the Tax and Arbitrage Certificate delivered with respect to the Note. By this reference, all terms, conditions, and covenants in said Tax and Arbitrage Certificate are incorporated in and made a part of this Resolution.

(b) If the Owner receives a final, non-appealable notice, in any form, from the Internal Revenue Service that Owner may not exclude any interest paid under the Note from its federal gross income (an "Event of Taxability"), the Issuer shall pay to Owner upon demand (x) an amount which, with respect to payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest due through the date of such event), will restore to Owner its after-tax yield (assuming tax at the highest marginal tax rate and taking into account the time of receipt of payments and reinvestment at the after-tax yield rate) on the transaction evidenced by such Note through the date of such event and (y) as additional payments to Owner on each succeeding date of payment such amount as will maintain such after-tax yield to Owner.

Section 16: *Events of Default; Remedies of Noteholder.* (A) The following shall constitute Events of Default: (i) if the Issuer fails to pay any payment of principal of or interest on any Note within 10 days after the same becomes due and payable; (ii) if the Issuer defaults in the performance or observance of any covenant or agreement contained in this Resolution (other than set forth in (i) above) and fails to cure the same within thirty (30) days following written notice; or (iii) filing of a petition by or against the Issuer relating to bankruptcy, reorganization, arrangement or readjustment of debt of the Issuer or for any other relief relating to the Issuer under the United States Bankruptcy Code, as amended, or any other insolvency act or law now

or hereafter existing, or the involuntary appointment of a receiver or trustee for the Issuer, and the continuance of any such event for 90 days undischarged; or (iv) an Event of Taxability, which cannot reasonably be cured within 30 days.

(B) If the Owner has not received payment of principal and interest within 10 days after it becomes due and regardless of whether any Owner has declared an Event of Default, the Issuer shall be subject to and required to pay additional interest at, the lesser of, the daily equivalent rate of 12% per annum for the total number of days for which the late payment is past due, or the maximum rate permitted by law.

(C) Upon the occurrence and during the continuation of any Event of Default, the Owner of the Note may, in addition to any remedy authorized in the Note: (i) accelerate all payments due under the Note, (ii) enforce and perfect its rights in the Project Fund and other funds and accounts referenced herein, (iii) either at law or in equity, by suit, action, mandamus or other proceeding (including specific performance) in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted or contained in this Resolution, and (iv) enforce and compel the performance of all duties required by this Resolution, or by any applicable statutes to be performed by the Issuer or by any officer thereof. In any such default, the Issuer shall also be obligated to pay as part of the indebtedness evidenced by the Note, all costs of collection and enforcement hereof, including such reasonable attorneys' fees as may be incurred, including on appeal or incurred in any proceeding under bankruptcy laws as they now or hereafter exist.

Section 17: *Amendment.* This Resolution shall not be modified or amended in any respect subsequent to the issuance of the Note except with the written consent of the Owner of the majority of the principal amount of the Note.

Section 18: *Impairment of Contract.* The Issuer covenants with the Owner of the Note that it will not, without the written consent of the Owner of the Note, adopt any resolution which repeals, impairs or amends in any manner adverse to the Owner the rights granted to the Owner of the Note hereunder.

Section 19: *Limitation of Rights.* With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Note is intended or shall be construed to give to any Person other than the Issuer and the Owner any legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Owner.

Section 20: *Severability.* If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall be stricken solely to the extent of the invalidity and shall not affect any other provision herein or render

any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

Section 21: *Business Days.* In any case where the due date of interest on or principal of a Note or any other action date is not a Business Day, then payment of such principal or interest need not be made or action need not be taken on such date but may be made or taken on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Owner.

Section 22: *Applicable Provisions of Law.* All questions, issues, or disputes arising out of or under this Agreement, shall be governed by the laws of the State of Florida and jurisdiction is hereby agreed by the parties to be solely and exclusively in State Circuit Court in and for Hernando County, Florida. In the event suit is commenced to enforce this Agreement, costs of said suit including reasonable attorneys fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing party by the other party. In the event that any litigation is commenced by either party to enforce this Agreement, the action will be filed and litigated, if necessary, in a court of competent jurisdiction located in Hernando County, Florida; and if the City elects to bring such action in Hernando County, Florida, the parties waive any and all rights to have this action brought in any place other than Hernando County, Florida under applicable venue laws. The parties hereby agree that the jurisdiction and venue of all disputes arising out of this Agreement lie in no Court other than those stated above. Unless such matter is a federal question, and is expressly required by law to be heard before a federal court, and in that case such matters will be heard in the U.S. District Court for the Middle District of Florida, Tampa Division.

Section 23: *Rules of Interpretation.* Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

Section 24: *Captions.* The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

Section 25: *Members and Agents Exempt from Personal Liability.* No recourse under or upon any obligation, covenant or agreement of this Resolution or the Note or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the City Council (the "Members") or any officer, director, employee or agent of the Issuer, the Original Purchaser or any Owner (the "Agents"), as such, past, present or future, either directly or through the Issuer and Owner it being expressly understood (a) that no personal liability

whatsoever shall attach to, or is or shall be incurred by, the Members or Agents, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Member or Agents, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution, on the part of the Issuer and Owner(s).

Section 26: *Authorizations.* The Mayor, the Clerk, The City Manager of the Issuer, the City Attorney of the Issuer, the Finance Director of the Issuer and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the Note and are authorized and empowered, collectively or individually, to take all action and steps, to make such representations and certificates, and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the Note, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

Section 27: *Repealer.* All resolutions or parts thereof in conflict herewith are hereby repealed.

Section 28: *No Third Party Beneficiaries.* Except such other persons as may be expressly described in this Resolution or in the Note, nothing in this Resolution or in the Note, expressed or implied, is intended or shall be construed to confer upon any Person, other than the holders, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, or of the Note, all provisions thereof being intended to be and being for the sole and exclusive benefit of the persons who shall from time to time be the holders.

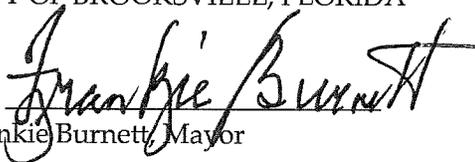
Section 29: *Effective Date.* This Resolution shall become effective immediately upon its passage and adoption.

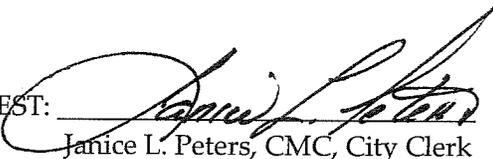
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SIGNATURE PAGE TO RESOLUTION NO. 2011-02

ADOPTED this 16 day of may, 2011

CITY OF BROOKSVILLE, FLORIDA

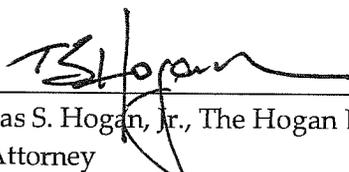
BY: 
Frankie Burnett, Mayor

ATTEST: 
Janice L. Peters, CMC, City Clerk

VOTE OF COUNCIL

Bernardini ___
Bradburn ___
Burnett ___
Johnston ___
Pierce ___

APPROVED AS TO LEGAL FORM FOR THE
RELIANCE OF THE CITY OF BROOKSVILLE
ONLY:


Thomas S. Hogan, Jr., The Hogan Law Firm, LLC
City Attorney

***Highlighted
Changes/Revisions***

HEADNOTE CHANGES FROM RESOLUTION APPROVED BY CITY
COUNCIL AT ITS MAY 16, 2011 MEETING.

RESOLUTION 2011-02

A RESOLUTION OF THE ~~MAYOR AND~~ CITY COUNCIL OF THE CITY OF BROOKSVILLE, FLORIDA AUTHORIZING THE ISSUANCE A CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2011, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$3,333,022.00, TO FINANCE THE COST OF ENERGY PERFORMANCE PROJECTS IN THE CITY OF BROOKSVILLE, FLORIDA; PROVIDING THAT THE NOTE SHALL BE A LIMITED, FIRM TERM, BUT NOT GENERAL NON-CANCELLABLE OBLIGATION OF THE ISSUER PAYABLE FROM A COVENANT TO BUDGET AND APPROPRIATE NON-AD VALOREM REVENUES; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

RESOLUTION NO. 2011-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BROOKSVILLE, FLORIDA AUTHORIZING THE ISSUANCE OF A CAPITAL IMPROVEMENT REVENUE NOTE, SERIES 2011, A IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$3,333,022.00, TO FINANCE THE COST OF ENERGY PERFORMANCE PROJECTS IN THE CITY OF BROOKSVILLE, FLORIDA; PROVIDING THAT THE NOTE SHALL BE A LIMITED, FIRM TERM, BUT NOT GENERAL, OBLIGATION OF THE ISSUER PAYABLE FROM A COVENANT TO BUDGET AND APPROPRIATE NON-AD VALOREM REVENUES; PROVIDING FOR THE RIGHTS, SECURITIES AND REMEDIES FOR THE OWNER OF THE NOTE; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BROOKSVILLE, FLORIDA, as follows:

Section 1: *Authority for this Resolution.* This Resolution is adopted pursuant to the provisions of the Constitution of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law (collectively, the "Act").

Section 2: *Definitions.* The following words and phrases shall have the following meanings when used herein:

"Act" shall have the meaning ascribed thereto in Section 1 hereof.

"Authorized Denominations" means the stated amount of the Note.

"Council" means the City Council of the City of Brooksville, as the governing body of the City of Brooksville, Florida.

"Business Day" means any day except any Saturday or Sunday or day on which the Principal Office of the Original Purchaser is closed.

"Mayor" means the Mayor of the City or in his/her absence or inability to act, the Vice Mayor of the Council may be duly authorized by the City Council to act on his/her behalf.

"Clerk" means the City Clerk of the City of Brooksville or any Deputy City Clerk.

"Issuer" means the City of Brooksville, Florida.

"Fiscal Year" means the period commencing on October 1st of each year and ending on the succeeding September 30th.

"Maturity Date" means October 1, 2026.

"Mayor" means the duly elected Mayor of the City of Brooksville, Florida, as such person is attested to by the Clerk in the General Certificate of the City, which is incorporated by reference hereto.

"Non- Ad Valorem Revenues" means all legally available non-ad valorem revenues of the Issuer, but shall not include any ad valorem taxes.

"Non-Self-Supporting Debt" means debt obligations of the Issuer, other than debt obligations relating to an Enterprise Fund or GO Bonds of the Issuer.

"Note" means the City of Brooksville, Florida Capital Improvement Revenue Note, Series 2011, A Financing of Energy Performance Projects and authorized pursuant to this Resolution.

"Original Purchaser" means SunTrust Equipment Finance & Leasing Corp. and its successors and assigns

"Owner" or "Owners" means the Person or Persons in whose name or names a Note shall be registered on the books of the Issuer kept for that purpose in accordance with provisions of this Resolution.

"Person" means natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies and other legal entities.

"Principal Office" means, with respect to the Original Purchaser, 300 E. Joppa Road, 7th Floor, Towson, Maryland 21286.

"Project" means the Energy Performance Contract with Energy Systems Group located within the City of Brooksville, Florida.

"Resolution" means this Resolution, pursuant to which the Note is authorized to be issued, including any supplemental resolution(s).

"State" means the State of Florida.

Section 3: Findings.

(A) For the benefit of the inhabitants of the Issuer, the Council finds, determines and declares that it is necessary for the continued preservation of the health, welfare, convenience and safety of the Issuer and its inhabitants to finance and undertake the Project. Issuance of the Note to finance the cost of the Project satisfies a paramount public purpose.

(B) The Issuer is without adequate, currently available funds to pay the costs of financing the Project, and it is necessary and desirable and in the best interests of the Issuer that it borrow the moneys necessary to accomplish the financing of the costs of the Project.

(C) The Note will be payable from a non-cancellable pledge of Non-Ad Valorem Revenues; however, the Issuer will be permitted to make payments from any and all legally available funds. The Issuer has determined that Non-Ad Valorem Revenues should be sufficient to pay the Note, as the same becomes due.

(D) Neither the Issuer nor the State of Florida or any political subdivision thereof or governmental authority or body therein, shall ever be required to levy ad valorem taxes to pay the Note and the Note shall not constitute a lien upon the Project, or upon any properties owned by or situated within the Issuer, except as provided herein with respect to the Non-Ad Valorem Revenues, in the manner and to the extent provided herein.

(E) The Issuer has received an offer from the Original Purchaser to purchase the Note.

(F) Because of the characteristics of the Note, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Note, it is in the best interest of the Issuer to accept the offer of the Original Purchaser, to purchase the Note. Prior to the issuance of the Note, the Issuer shall receive from the Original Purchaser, a Purchaser's Certificate, the form of which is attached hereto as Exhibit B and the Disclosure Letter containing the information required by Section 218.385, Florida Statutes, a form of which is attached hereto as Exhibit C.

Section 4: Authorization. The issuance of an obligation of the Issuer to be known as the "City of Brooksville, Florida Capital Improvement Revenue Note, Series 2011, A Financing Energy Performance Projects" is hereby approved and authorized, in the aggregate principal amount of not to exceed \$3,333,022.00 for the purpose of providing funds to pay the costs of the Project and to pay the costs of issuing the Note. Further, the Project is hereby approved.

Section 5: Description of Note. The Note shall be issued as a single Note and shall be dated the date of its execution and delivery, which shall be a date agreed upon by the Issuer and the Original Purchaser, and shall have such other terms and provisions, including interest rates not exceeding the maximum interest rates permitted by the Act, principal and interest payment terms, maturity date, and prepayment provisions as stated herein and/or in the form of the Note attached hereto as Exhibit A or as determined by supplemental resolution. The

Note is to be in substantially the form set forth on Exhibit A attached hereto, together with such changes as shall be approved by the Mayor, such approval to be conclusively evidenced by the execution thereof by the Mayor. The Note shall be executed with the manual or facsimile signature of the Mayor and the Note shall be attested with the manual or facsimile signature of the Clerk. In case any one or more of the officers who shall have signed or sealed the Note or whose facsimile signature shall appear thereon shall cease to be such officer of the Issuer before the Note so signed and sealed have been actually sold and delivered, such Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Note had not ceased to hold such office. The Note may be signed and sealed by such person who at the actual time of the execution of the Note shall hold the proper office of the Issuer, although, at the date of the Note, such person may not have held such office or may not have been so authorized. The Issuer may adopt and use for such purposes the facsimile signatures of any such persons who shall have held such offices at any time after the date of the adoption of this Resolution, notwithstanding that either or both shall have ceased to hold such office at the time the Note shall be actually sold and delivered.

Section 6: *Registration and Exchange of Note; Persons Treated as Owners.* The Note will initially be registered to the Original Purchaser. So long as the Note shall remain unpaid, the Issuer will keep books for the registration and transfer of the Note. The Note shall be transferable only upon such registration books and in Authorized Denominations.

The Person in whose name a Note shall be registered shall be deemed and regarded as the absolute Owner thereof for all purposes, and payment of principal and interest on such Note shall be made only to or upon the written order of the Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

Section 7: *Note Mutilated, Destroyed, Stolen or Lost.* In case a Note shall become mutilated, or be destroyed, stolen or lost, the Issuer shall issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and in substitution for such mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the Owner furnishing the Issuer reasonable proof of ownership thereof and indemnity reasonably satisfactory to the Issuer and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer may incur. The Note so surrendered shall be canceled.

Section 8: *Payment of Note; Limited Obligation.* The Issuer promises that it will promptly pay the Note at the place, on the dates and in the manner provided therein, including via wire transfer if requested by an Owner, according to the true intent and meaning hereof and thereof. The Note shall not be or constitute general obligations or indebtedness of the Issuer as "Note" within the meaning of Article VII, Section 12 of the Constitution of Florida and is subordinate to such obligations, but shall be payable from the Non-Ad Valorem Revenues, in the manner and to the extent provided herein. No holder of any Note issued hereunder shall ever have the

right to compel the exercise of any ad valorem taxing power to pay such Note, or be entitled to payment of such Note from any funds of the Issuer except from the Non-Ad Valorem Revenues, in the manner and to the extent provided herein. Nothing in this section shall be construed as to limit the Issuer's ability to use any Non-Ad Valorem Revenues to make any payments coming due.

Section 9. Security for the Note. The Issuer covenants and agrees to budget and appropriate, by amendment, specific resolution, or other action(s), if and to the extent necessary, in its annual budget for each Fiscal Year in which the Note remains outstanding, sufficient amounts of Non-Ad Valorem Revenues for the payment of principal of and interest on the Note in each such Fiscal Year. Such covenant and agreement on the part of the Issuer shall be non-cancellable in that it will continue for the entire term of the Note and be cumulative and shall continue until all payments of principal and interest on the Note shall have been budgeted, appropriated and actually paid. The Issuer agrees that this covenant and agreement to budget and appropriate Non-Ad Valorem Revenue shall be deemed to be entered into for the benefit of the holders of the Note and that this obligation may be enforced in a court of competent jurisdiction only in the State Circuit Court in and for Hernando County, Florida. The Issuer shall have no right to terminate its obligations under the Note by any failure to appropriate legally available funds to make payments and meet its obligations under the Note. This covenant and agreement shall not be construed as a limitation on the ability of the Issuer to pledge all or a portion of such Non-Ad Valorem Revenues for other legally permissible purposes. Nothing herein shall be deemed to pledge ad valorem taxation revenues or to permit or constitute a mortgage upon any assets owned by the Issuer and no Person may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Issuer for the payment of the Issuer's obligations hereunder. The Note shall not be or constitute general obligations or indebtedness of the Issuer as "bonds" within the meaning of the Constitution of the State of Florida. The obligation of the Issuer to appropriate Non-Ad Valorem Revenues shall be subject in all respects to the obligation of the Issuer to provide for essential governmental services and further shall be subject to the provisions of Section 166.341, Florida Statutes. Notwithstanding any provisions of this Resolution to the contrary, the Issuer shall not be obligated to exercise ad valorem taxing power to maintain or continue any of the activities of the Issuer which generate user service charges, regulatory fees or other Non-Ad Valorem Revenues. All deposits into the funds and accounts created by this Resolution shall be deemed to be held in trust by the Issuer for the benefit of the Owner(s) and otherwise for the purposes herein provided and used and applied only for the purposes and in the manner herein provided.

Section 10: Optional Prepayment. The Note shall be subject to prepayment, in whole or in part, on any Payment Date at the option of the Issuer for the Prepayment Option Price referenced on the Payment Schedule attached to the Note. Notwithstanding the foregoing, the Issuer shall have the option to make only one partial prepayment per Fiscal Year, in any amount greater than \$50,000.00 and on any payment date following 30 days prior written notice to the Owner, which shall be payable at 101% of the par value.

Section 11: *Application of Proceeds of Note.* Proceeds from the sale of the Note shall be used to finance the cost of the Project and to pay the costs of issuance (including but not limited to legal fees and expenses).

The Issuer covenants that it will establish an account or accounts at SunTrust Bank (herein called the "Project Account") into which, at the time of delivery of the Note herein authorized, shall be deposited the proceeds from the sale of the Note remaining after payment of any costs or expenses incurred in connection with the issuance of the Note.

Moneys in the Project Account shall be secured and invested in the SunTrust Bank-SunTrust Leasing NOW account, a demand deposit account for mutual customers of SunTrust Bank and SunTrust Equipment Finance & Leasing Corp., the principal balance of which is FDIC insured to all applicable limits and fully collateralized by investment bonds or obligations of the United States, and/or bonds or obligations guaranteed as to principal and interest by the United States, or in any other manner prescribed by the laws of the State of Florida relating to the securing of public funds, if and to the extent applicable, but in all cases in permitted investments under the laws of the State. The earnings from any such investment shall be retained in the Project Account.

All moneys deposited in said Project Account shall be and constitute a trust fund created for the purpose stated, and there is hereby created a lien upon such fund in favor of the Owner of the Note until the moneys thereof shall have been applied in accordance with this Resolution.

Section 12. *Application of Revenues.* For so long as any of the principal of and interest on the Note shall be outstanding and unpaid or until the Issuer has made provision for payment of principal of and interest, with respect to the Note, the Issuer covenants as follows:

A. **Funds and Accounts.** The Issuer covenants and agrees to establish separate funds to be known as the "Revenue Fund," the "Debt Service Fund," the "Construction Fund" and the "Rebate Fund." Moneys in the aforementioned funds, other than the Rebate Fund, until applied in accordance with the provisions hereof, shall be subject to a lien and charge in favor of the Owner and for the further security of the Owner.

The Issuer may, but shall not be required to, at any time and from time to time appoint one or more depositories to hold, for the benefit of the Owner, any one or more of the funds and accounts established hereby. Such depository or depositories shall perform at the direction of the Issuer the duties of the Issuer in depositing, transferring and disbursing moneys to and from each of such funds and accounts as herein set forth, and all records of such depository in performing such duties shall be open at all reasonable times to inspection by the Issuer and its agents and employees. Any such depository shall be a bank or trust company duly authorized to exercise corporate trust powers and subject to examination by federal or state authority, of good standing, and having a combined capital, surplus and undivided profits aggregating not

less than five million dollars (\$5,000,000).

All deposits into the funds and accounts created by this Resolution shall be deemed to be held in trust by the Issuer for the benefit of the Owner for the purposes herein provided and used and applied only for the purposes and in the manner herein provided.

B. Flow of Funds.

(1) The Issuer shall credit the appropriated and budgeted amounts of Non-Ad Valorem Revenue to the Revenue Fund. The moneys in the Revenue Fund shall be deposited or credited on or before the last day of each month, commencing with the month in which delivery of the Note shall be made to the purchaser or purchasers thereof, or such later date as hereinafter provided, in the following manner and in the following order of priority:

(a) Debt Service Fund. The Issuer shall deposit into or credit to the Debt Service Fund the sum which, together with the balance in said fund, shall be equal to the interest and the principal amount on all Outstanding Note accrued and unpaid and to accrue to the end of the then current calendar month. Moneys in the Debt Service Fund shall be used to pay principal of and interest on the Note as and when the same become due, whether by redemption or otherwise, and for no other purpose. In determining the amount to deposit for principal, the Issuer shall take into account that portion of the principal due on the next principal payment date which would have accrued on said Note during the then current calendar month if such principal amounts were deemed to accrue monthly (assuming that a year consists of twelve (12) equivalent calendar months of thirty (30) days each) in equal amounts from the next preceding principal payment due date, or, if there is no such preceding principal payment due date, from a date one year preceding the due date of such principal amount. The Issuer shall adjust the amount of the deposit into the Debt Service Fund not later than the month immediately preceding any payment date so as to provide sufficient moneys in the Debt Service Fund to pay the principal of and interest on the Note coming due on such payment date.

(b) Balance. The balance of any moneys after the deposits required by Section 12(B)(1) hereof may be transferred to any appropriate fund or account of the Issuer or may be used for any lawful purpose.

(2) The Issuer, in its discretion, may use moneys in the Debt Service Fund to prepay the principal or interest coming due in future years.

(3) On the date established for payment of any principal of or redemption price, if applicable, or interest on the Note, the Issuer shall withdraw from the Debt Service Fund sufficient moneys to pay such principal or redemption price, if applicable, or interest and deposit such moneys with the Paying Agent.

C. Rebate Fund. Amounts on deposit in the Rebate Fund shall be held in trust by the Issuer and used solely to make required rebates to the United States (except to the extent the same may be transferred to the Revenue Fund) and the Owner shall have no right to have the same applied for debt service on the Note. The Issuer agrees to undertake all actions required of it in its arbitrage certificate, dated the date of issuance of the Note, relating to such Note, including, but not limited to:

(1) making a determination in accordance with the Code of the amount, if any, required to be deposited in the Rebate Fund;

(2) depositing the amount determined in clause (1) above into the Rebate Fund;

(3) paying on the dates and in the manner required by the Code to the United States Treasury from the Rebate Fund and any other legally available moneys of the Issuer such amounts as shall be required by the Code to be rebated to the United States Treasury; and

(4) keeping such records of the determinations made pursuant to this Section as shall be required by the Code, as well as evidence of the fair market value of any investments purchased with proceeds of the Note.

The provisions of the above-described arbitrage certificate may be amended from time to time as shall be necessary, **in the opinion of a mutually agreeable and competent tax counsel**, to comply with the provisions of the Code.

Section 13. Representations and Warranties of the Issuer. The Issuer represents and warrants:

(a) Issuer is a local government or local government body, duly and validly existing under the Constitution and laws of the State, constitutes a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as from time to time amended, (the "Code"), and is authorized under the Constitution and laws of the State to enter into this Resolution, the Note and the transactions contemplated hereby and thereby, and to perform all of its obligations under this Resolution and the Note.

(b) The execution and delivery of this Resolution and the Note have been duly authorized by all necessary action of the Board and such action is in compliance with all public bidding and other State and federal laws applicable to this Resolution, the Note, the acquisition and/or undertaking of the Project, the covenant to budget and appropriate Non-Ad Valorem Revenue, the financing of the Project by the Issuer, and the security for the Note as more fully described herein.

(c) This Resolution and the Note have been duly executed and delivered by and constitute the valid and binding obligation of Issuer, enforceable against Issuer in accordance with their respective terms.

(d) The execution, delivery and performance of this Resolution and the Note by Issuer shall not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction,

decree, or regulation of any court or other governmental agency or body applicable to Issuer, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, resolution, deed of trust, lease or other obligation to which Issuer is bound.

(e) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Issuer's knowledge, threatened against or affecting Issuer, challenging Issuer's authority to enter into this Resolution or the Note or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Resolution or the Note.

(f) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase to which Issuer has been a party at any time during the past ten (10) years has been terminated by Issuer as a result of either insufficient funds being appropriated in any Fiscal Year, or the non-payment of any firm-term or general obligation rental or other payments. No event has occurred which would constitute a payment-related event of default under any debt, note, revenue bond or obligation which Issuer has issued during the past ten (10) years.

(g) To the extent applicable and in accordance with the express limitations of this Resolution, the Issuer and/or Issuer's governing body has pledged and/or taken all required and legally permissible actions necessary to provide moneys sufficient to pay all Payments during the current Fiscal Year and will take any required actions to secure moneys sufficient to pay all Payments due and owing during the term of any Note issued hereunder, and such moneys will be applied in payment of all Payments due and payable during such the term of said Note.

(h) The financial information concerning the Issuer heretofore delivered to the Original Purchaser is complete and correct and fairly presents the financial condition of the Issuer for the period(s) referred to and has been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the period(s) involved. There are no liabilities (of the type required to be reflected on balance sheets prepared in accordance with generally accepted accounting principles), direct or indirect, fixed or contingent, of the Issuer as of the date of such financial information which are not reflected therein. There has been no material adverse change in the financial condition or operations of the Issuer since the date of such information (and to the Issuer's knowledge no such material adverse change is pending or threatened), and the Issuer has not guaranteed the obligations of, or made any investment in or loans to, any Person except as disclosed in such information. The Issuer has good and marketable title to and full ownership of all of its properties and assets related to the Project, and all of such properties and assets are free and clear of encumbrances, except as reflected in such financial information.

(i) The Issuer represents and warrants that the Issuer's covenant to budget and appropriate Non-Ad Valorem Revenues is a non-cancellable obligation of the Lessee, which shall continue until all payment of other amounts due under this Resolution and Note are paid in full, and such covenant is legally valid, not deemed to be unconstitutional issuance of debt, and is otherwise given in accordance with the Act.

Section 14. *Covenants of the Issuer.*

A. The Issuer covenants to provide its Certified Audited Financial Report, budgets and other reasonable financial information, **if requested by the Owner.**

B. The Owner will have the right to inspect any and all of the Issuer's books and records during normal business hours, including but not limited to any records, accountings, statements, or other documentation and the like including but not limited to the Project Fund, Revenue Fund, Debt Service Fund, and Construction Fund.

Section 15. *Tax-Exemption.* The Issuer covenants with the Owner of the Note that it shall not use in any manner or permit any omission with regards to the proceeds of such Note which would cause the interest on such Note to be or become includable in the gross income of the Owner for federal income tax purposes and the Issuer further covenants with the Owner of the Note that it will comply with all provisions of the Code necessary to maintain the exclusion of interest on the Note from the gross income of the Owner for federal income tax purposes, including, in particular, the payment of any amount required to be rebated to the U.S. Treasury pursuant to the Code.

(a) The Issuer makes each of the representations, warranties and covenants contained in the Tax and Arbitrage Certificate delivered with respect to the Note. By this reference, all terms, conditions, and covenants in said Tax and Arbitrage Certificate are incorporated in and made a part of this Resolution.

(b) If the Owner receives a final, non-appealable notice, in any form, from the Internal Revenue Service that Owner may not exclude any interest paid under the Note from its federal gross income (an "Event of Taxability"), the Issuer shall pay to Owner upon demand (x) an amount which, with respect to payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest due through the date of such event), will restore to Owner its after-tax yield (assuming tax at the highest marginal tax rate and taking into account the time of receipt of payments and reinvestment at the after-tax yield rate) on the transaction evidenced by such Note through the date of such event and (y) as additional payments to Owner on each succeeding date of payment such amount as will maintain such after-tax yield to Owner.

Section 16: *Events of Default; Remedies of Noteholder.* (A) The following shall constitute Events of Default: (i) if the Issuer fails to pay any payment of principal of or interest on any Note within 10 days after the same becomes due and payable; (ii) if the Issuer defaults in the performance or observance of any covenant or agreement contained in this Resolution (other than set forth in (i) above) and fails to cure the same within thirty (30) days following written notice; or (iii) filing of a petition by or against the Issuer relating to bankruptcy, reorganization, arrangement or readjustment of debt of the Issuer or for any other relief relating to the Issuer under the United States Bankruptcy Code, as amended, or any other insolvency act or law now

or hereafter existing, or the involuntary appointment of a receiver or trustee for the Issuer, and the continuance of any such event for 90 days undismissed or undischarged; or (iv) an Event of Taxability, which cannot reasonably be cured within 30 days.

(B) If the Owner has not received payment of principal and interest within 10 days after it becomes due and regardless of whether any Owner has declared an Event of Default, the Issuer shall be subject to and required to pay additional interest at, the lesser of, the daily equivalent rate of 12% per annum for the total number of days for which the late payment is past due, or the maximum rate permitted by law.

(C) Upon the occurrence and during the continuation of any Event of Default, the Owner of the Note may, in addition to any remedy authorized in the Note: (i) accelerate all payments due under the Note, (ii) enforce and perfect its rights in the Project Fund and other funds and accounts referenced herein, (iii) either at law or in equity, by suit, action, mandamus or other proceeding (including specific performance) in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State, or granted or contained in this Resolution, and (iv) enforce and compel the performance of all duties required by this Resolution, or by any applicable statutes to be performed by the Issuer or by any officer thereof. In any such default, the Issuer shall also be obligated to pay as part of the indebtedness evidenced by the Note, all costs of collection and enforcement hereof, including such reasonable attorneys' fees as may be incurred, including on appeal or incurred in any proceeding under bankruptcy laws as they now or hereafter exist.

~~**Section 17: Amendment.** This Resolution shall not be modified or amended in any respect subsequent to the issuance of the Note except with the written consent of the Owner of the majority of the principal amount of the Note.~~

Section 18: Impairment of Contract. The Issuer covenants with the Owner of the Note that it will not, without the written consent of the Owner of the Note, adopt any resolution which repeals, impairs or amends in any manner adverse to the Owner the rights granted to the Owner of the Note hereunder.

Section 19: Limitation of Rights. With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Resolution or the Note is intended or shall be construed to give to any Person other than the Issuer and the Owner any legal or equitable right, remedy or claim under or with respect to this Resolution or any covenants, conditions and provisions herein contained; this Resolution and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Owner.

Section 20: Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable in any context, the same shall be stricken solely to the extent of the invalidity and shall not affect any other provision herein or render

any other provision (or such provision in any other context) invalid, inoperative or unenforceable to any extent whatever.

Section 21: *Business Days.* In any case where the due date of interest on or principal of a Note or any other action date is not a Business Day, then payment of such principal or interest need not be made or action need not be taken on such date but may be made or taken on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Owner.

Section 22: *Applicable Provisions of Law.* All questions, issues, or disputes arising out of or under this Agreement, shall be governed by the laws of the State of Florida and jurisdiction is hereby agreed by the parties to be solely and exclusively in State Circuit Court in and for Hernando County, Florida. In the event suit is commenced to enforce this Agreement, costs of said suit including reasonable attorneys fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing party by the other party. In the event that any litigation is commenced by either party to enforce this Agreement, the action will be filed and litigated, if necessary, in a court of competent jurisdiction located in Hernando County, Florida; and if the City elects to bring such action in Hernando County, Florida, the parties waive any and all rights to have this action brought in any place other than Hernando County, Florida under applicable venue laws. The parties hereby agree that the jurisdiction and venue of all disputes arising out of this Agreement lie in no Court other than those stated above. **Unless such matter is a federal question, and is expressly required by law to be heard before a federal court, and in that case such matters will be heard in the U.S. District Court for the Middle District of Florida, Tampa Division.**

Section 23: *Rules of Interpretation.* Unless expressly indicated otherwise, references to sections or articles are to be construed as references to sections or articles of this instrument as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this Resolution and not solely to the particular portion in which any such word is used.

Section 24: *Captions.* The captions and headings in this Resolution are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Resolution.

Section 25: *Members and Agents Exempt from Personal Liability.* No recourse under or upon any obligation, covenant or agreement of this Resolution or the Note or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the City Council (the "Members") or any officer, director, employee or agent of the Issuer, the Original Purchaser or any Owner (the "Agents"), as such, past, present or future, either directly or through the Issuer and Owner it being expressly understood (a) that no personal liability

whatsoever shall attach to, or is or shall be incurred by, the Members or Agents, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Member or Agents, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution, on the part of the Issuer and Owner(s).

Section 26: *Authorizations.* The Mayor, the Clerk, The City Manager of the Issuer, the City Attorney of the Issuer, the Finance Director of the Issuer and such other officials and employees of the Issuer as may be designated by the Issuer are each designated as agents of the Issuer in connection with the issuance and delivery of the Note and are authorized and empowered, collectively or individually, to take all action and steps, to make such representations and certificates, and to execute all instruments, documents, and contracts on behalf of the Issuer that are necessary or desirable in connection with the execution and delivery of the Note, and which are specifically authorized or are not inconsistent with the terms and provisions of this Resolution.

Section 27: *Repealer.* All resolutions or parts thereof in conflict herewith are hereby repealed.

Section 28: *No Third Party Beneficiaries.* Except such other persons as may be expressly described in this Resolution or in the Note, nothing in this Resolution or in the Note, expressed or implied, is intended or shall be construed to confer upon any Person, other than the holders, any right, remedy or claim, legal or equitable, under and by reason of this Resolution, or any provision thereof, or of the Note, all provisions thereof being intended to be and being for the sole and exclusive benefit of the persons who shall from time to time be the holders.

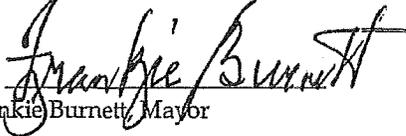
Section 29: *Effective Date.* This Resolution shall become effective immediately upon its passage and adoption.

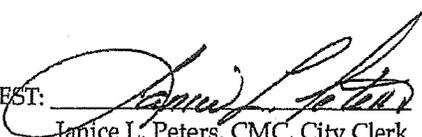
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SIGNATURE PAGE TO RESOLUTION NO. 2011-02

ADOPTED this 16 day of may, 2011

CITY OF BROOKSVILLE, FLORIDA

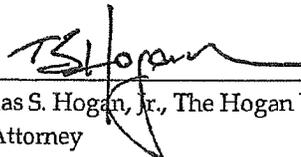
BY: 
Frankie Burnett, Mayor

ATTEST: 
Janice L. Peters, CMC, City Clerk

VOTE OF COUNCIL

APPROVED AS TO LEGAL FORM FOR THE
RELIANCE OF THE CITY OF BROOKSVILLE
ONLY:

Bernardini ___
Bradburn ___
Burnett ___
Johnston ___
Pierce ___


Thomas S. Hogan, Jr., The Hogan Law Firm, LLC
City Attorney



AGENDA ITEM NO. F-3
6/6/11

**AGENDA ITEM
MEMORANDUM**

TO: HONORABLE MAYOR AND CITY COUNCIL
VIA: T. JENNENE NORMAN-VACHA, CITY MANAGER *(Signature)*
FROM: STEPHEN J. BAUMGARTNER, FINANCE DIRECTOR *(Signature)*
SUBJECT: PUBLIC RISK MANAGEMENT OF FLORIDA (PRM) RENEWAL
FOR 2011-12 POLICY YEAR
DATE: MAY 27, 2011

GENERAL SUMMARY/BACKGROUND: The City is currently insured through Public Risk Management of Florida (PRM) for property, package policies, liability and workers' compensation coverages. Our current insurance coverage year was for a one (1) year period (April 1, 2010 to April 1, 2011); however, PRM, in changing the policy year for the entire pool, extended coverages to an eighteen (18) month period (ending October 1, 2011). There was no change in rates for the extended policy period.

With the change in the policy year, the City's renewal will occur on October 1, 2011 again for a one (1) year period (ending October 1, 2012).

Public Risk Management of Florida has provided a total renewal package of coverages for the 2011-12 policy year in the amount of \$445,801. This reflects a very slight decrease (less \$222) in premiums as compared to the last policy year. The renewal package is the third policy year (representing 30 months in time/April 1, 2009 – October 1, 2012) that the City will receive no increase in premiums for coverages. As you will recall, when we renewed the coverage for the 2009-10 policy year the City received an approximate thirty-two percent (32%) decrease in premium costs. This will mean, if City Council approves/accepts the 2011-12 renewal package, we will be renewing with premium costs that are still \$206,632 less than the premium costs that were paid by the City in its 2008-09 policy year.

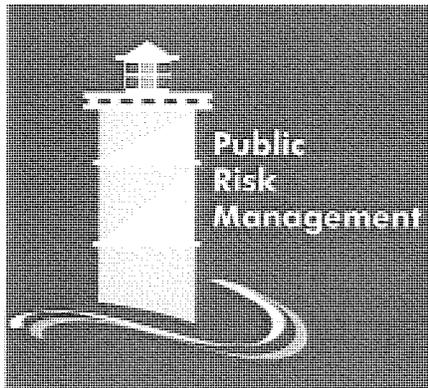
PRM has been very aggressive in their pursuit and ability to "lock in" property and excess policy coverage costs for the 2011-12 renewal period. We believe that with the recent catastrophic events, i.e. the Japan tsunami, flooding in Alabama and Tennessee, and the raging tornados throughout the mid-west over the last couple of months, property and excess insurance markets will demand premium increases as policies renew, possibly by as much as 35% to 50%. This allows the City to renew without that chance for increase, enjoying a flat/no increase in costs.

SB **BUDGET IMPACT:** The renewal will impact the budget for FY 2011-12 and therefore will be reflected within the FY 2011-12 budget documents.

JK **LEGAL REVIEW:** Council has the legal authority to participate in/renew coverages through the Public Risk Management of Florida (PRM) pool. Pursuant to Section 1.03 and 5.01 of the City's Charter, the City has the authority to enter into contracts and to negotiate the terms of its contractual obligations.

STAFF RECOMMENDATION: Staff recommends that the City Council approve insurance renewals for October 1, 2011 through October 1, 2012 as outlined within the attached Renewal Package Proposal (Attachment 1), authorizing signature of acceptance on appropriate documents.

Attachment 1



A Beacon of Financial Strength & Innovation

PUBLIC RISK MANAGEMENT OF FLORIDA

CITY OF BROOKSVILLE

EFFECTIVE: 10/01/11
EXPIRATION: 10/01/12

Date Presented: May 25, 2011

Prepared by:

World Risk Management, LLC
141 Terra Mango Loop, Suite A
Orlando FL 32835
(407) 445-2414 Phone
(407) 445-2868 Fax
(888) 501-0014 Toll Free
www.wrmlc.com

THIS DOCUMENT IN ITS ENTIRETY IS CONFIDENTIAL & PRIVILEGED
PROPRIETARY DOCUMENTATION-NOT PUBLIC RECORD.

Proposal Valid until June 17th, 2011

Refer to specific policies for complete terms & conditions

WORLD



RISK MANAGEMENT, LLC

Who We Are

The WRM ownership/management brings over 50 combined years of insurance industry intellectual capital to our clients dedicated to Public Entity Risk Management and insurance solutions.

Knowing that broad insurance resources and strong market relationships are essential, along with industry expertise and experience, WRM tactically sought out well-respected industry talent, with solid reputations and stellar track records to join our leadership ranks.

WRM employs a highly professional staff that has a proven record of identifying and satisfying client's needs. WRM's team commitment is reflected in a combined risk management knowledge and experience.

What We Do

WRM brings fresh and innovative ideas into the insurance industry. WRM uses our ability of being a "Boutique Broker" to take advantage of the ever changing insurance market opportunities. WRM has the expertise that most small private agents and brokers do not have, and the large publicly traded brokers cannot take advantage of due to their size and corporate structure.

WRM offers clients a thorough and meticulous insurance need analysis, plus delivers competitive cutting edge products and services from nationally recognized insurance carriers based on realistic and reasonable fee and/or commissions. WRM's dedicated Management/Service Team is recognized throughout the industry for their commitment to providing clients with prompt responses and solutions.

Our Reputation

WRM's management team has an industry wide reputation for professionalism, quality service, knowledge, and client involvement on a daily basis at all levels, plus a genuine commitment to protect and shield employees and property of public entity groups and other businesses. WRM believes in its ability to lead in the field of risk management and loss management and provide innovative solutions.

Our Corporate Partners

World Risk Management along with its partner companies' mission is to maintain success through commitment, honest and timely communication, vision innovation and customer satisfaction.

Ballator Insurance Group:
World Risk Management, LLC
First Florida Insurance Brokers
Accretive Insurance Service
Non Profit Insurance Service

Refer to specific policies for complete terms & conditions

HISTORY

As a result of the tight insurance market for the public entities in the mid 1980's, a group of cities and counties in southwest Florida made an extensive study into the feasibility of establishing a Public Entity Pool for property, casualty and workers' compensation competitive coverage.

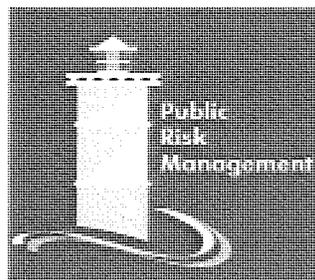
Major objectives of the group were as follows:

- Lower Costs
- Enhanced Coverage
- Outstanding Claim and Loss Control Services
- Stability
- Self Governed by Members
- Professional and Timely Service

As a result of the study, Public Risk Management of Florida (Formerly SFIRMA) was established on October 1, 1987, with eight members. Since that time, Public Risk Management of Florida (PRM) has grown to over 50 members and has expanded its territory to include the entire State of Florida. PRM still maintains those same objectives, meeting each of them with every new policy term. We believe that PRM's continued success and prosperity is largely attributable to the services and benefits received by its members.



Ross Furry
Executive Director
Public Risk Management
3434 Hancock Bridge Pkwy, Suite 203
Fort Myers, FL 33903
Toll-Free 1-800-367-1705
(239) 656-4666
RFurry@prm-fl.com



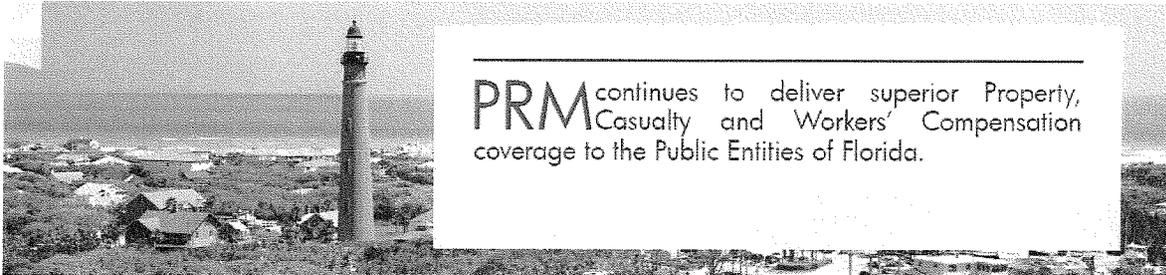
A Beacon of Experience & Innovation

WWW.PRM-FL.COM

Refer to specific policies for complete terms & conditions

Refer to specific policies for complete terms & conditions

BENEFITS



INSURANCE COVERAGES

The PRM coverages are designed to meet the needs of the Public Entity. The basic program has been in place for over twenty (20) years. The coverage's are vastly superior to those that are available in the market place.

COST EFFECTIVE

The PRM program is cost effective for the following reasons:

- a. The assumption of risks at the low or known level, thus the need to purchase less insurance.
- b. Risk Selection - PRM selects members that have an appetite for risk management and loss control, as well as a favorable loss record which helps control their insurance costs.
- c. Emphasis on safety, loss prevention and claims handling by PRM and its members.

STABILITY

Due to sound management by the Board of Directors, Executive Board, and the Executive Director, PRM is very financially stable.

CLAIMS HANDLING

Gallagher Bassett Service, Inc. handles the claims administration. Gallagher Bassett is experienced in handling claims for Florida public entities and Florida Workers' Compensation. They have eight (8) offices staffed with over 250 employees in the state and process claims for over 150 public entities. The client has input and approval in the claims settlement process and in the selection of defense counsel.

GALLAGHER BASSETT INVESTIGATIVE SERVICES

Gallagher Bassett Investigative Services offers a range of investigative tools that, employed separately or in combination, create a formidable first line of defense in such high-risk areas as: insurance fraud; embezzlement, theft and other tangible asset losses; personal and asset protection; due diligence; and pre-employment screening.

MANAGED CARE

PRM contracts with a managed care provider, GENEX, to develop an acceptable Managed Care Program. GENEX provides a network of physicians, hospitals, clinics and ancillary providers. GENEX also provides valuable services such as utilization and peer review, employee education, provider bill audit, as well as encouraging early return to work programs.

DRUG FREE AND SAFETY PROGRAM CREDITS

PRM members can receive a Drug Free Workplace credit with an approved Drug-Free Workplace program. This credit is 5% and is applied to the member's workers' compensation premium. Members can also receive an approved Safety Credit of 3% that is also applied to the member's workers' compensation premium.

Refer to specific policies for complete terms & conditions

Refer to specific policies for complete terms & conditions

LOSS PREVENTION SERVICES

PRM provides on-site loss prevention services to assist members in setting up safety and loss prevention programs, as well as employment practices. Our consultants are very experienced in working with public entities.

RISK MANAGEMENT SERVICES

By joining PRM, the members gain the Risk Management Services provided by the Pool. The Executive Director and his staff have over 50 years experience in the Risk Management field. They are able to assist members in all Risk Management activities, including monitoring and reviewing of all contracts, leases, use agreements and certificates of insurance. A Risk Management manual is provided for each member to better participate in the program.

EDUCATIONAL SEMINARS

Educational seminars are provided on a timely basis, focusing on the needs of the public entity sector.

RISK MANAGEMENT INFORMATION REPORTS

Loss reports are designed to keep members abreast of claim activity on a monthly basis in a timely and accurate manner. The loss reports are broken down by type of claim and department to help monitor the member's Risk Management program.

SELF GOVERNING BY BOARD

PRM is self-governed by its members. Each member has a representative on the Board of Directors and it is the Board that sets the policy for PRM and it is upheld and administered by the Executive Board.

EMPLOYMENT PRACTICES LIABILITY HOT LINE

Pre-Defense Review Service is provided by a recognized law firm for advice and guidelines to prevent possible claims and litigation in labor and employment law issues for Civil Rights Violation(s), Discrimination and Whistle Blower Claims.

LAW ENFORCEMENT HOT LINE

PRM offers a Pre-Defense Review Service on a 24-hour basis for law enforcement related critical incident matters. The primary object is to provide police supervisors with immediate loss prevention including the need for on-scene legal advice on any critical incidents. Expert legal counsel on law enforcement matters provides this service.

APPRAISALS

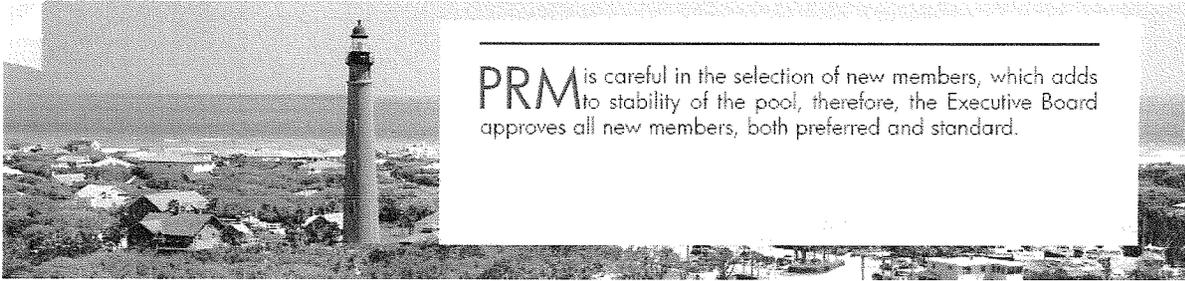
All PRM members are required to have a building/contents appraisal completed upon joining PRM and then every five (5) years. This is done through PRM's designated appraisal service, CBIZ Valuation Group, LLC. The CBIZ appraisal includes a site plan and a color photo of each location. Appraisals are an important tool to assure that the proper limits and coverages are provided on each location.

Refer to specific policies for complete terms & conditions

Refer to specific policies for complete terms & conditions



ORGANIZATION



PRM offers two tiers of Membership, *Preferred Member* and *Standard Member*. Both tiers of membership have benefits and responsibilities, they are as follows:

PREFERRED MEMBERSHIP	STANDARD MEMBERSHIP
<i>Qualifications</i>	<i>Qualifications</i>
<ul style="list-style-type: none"> • Total Premiums above a pre-determined threshold • All Lines of Coverage purchased 	<ul style="list-style-type: none"> • Purchase of some or one line of coverage (unbundling) • All lines purchased but total contribution does not meet Preferred Member Minimum
<i>Benefits</i>	<i>Benefits</i>
<ul style="list-style-type: none"> • Deductible options available • Participation credits made available to Preferred Members only • Receive all loss control & risk management services offered by PRM • No registration fee for Board and Alternate Member at PRM's annual education conference • Representation on the PRM Board of Directors (voting rights) • Able to be elected to the Executive Board 	<ul style="list-style-type: none"> • Deductible options available • Ability to unbundle coverage • Receive all loss control & risk management services offered by PRM
<i>Responsibilities</i>	<i>Responsibilities</i>
<ul style="list-style-type: none"> • 60 day notice of intent not to renew • Purchase all lines package product • Eligible to new Members only with over \$250,000 in funding per year 	<ul style="list-style-type: none"> • 45 day notice of intent not to renew • Purchase of standard insurance policies
Public Risk Management is a Non-Assessable Pool, or Association. S	

Refer to specific policies for complete terms & conditions

Refer to specific policies for complete terms & conditions

PRM MEMBERSHIP

PRM Preferred and Standard Memberships are organized under an Interlocal Agreement. The Executive Board approves all new members, both Preferred and Standard.

Preferred Membership:

PRM is self governed and each Preferred Member has representation on the Board of Directors. Each entity also designates an alternate who acts in the stead of the designated member when he/she is not available. All decisions are made by the Executive Board and/or Board of Directors.

The Executive Board approves all new members, both preferred and standard. PRM is careful in the selection of new members, which adds to stability of the pool.

Standard Membership:

Standard Members have the ability to select specific lines of coverage. Standard Members have no entitlement to any vote on the Board of Directors.

PRM has a full time Executive Director and seven employees to provide its members dedicated service. The PRM administrative office provides complete risk management and loss prevention services to Preferred Members & Standard Members including the establishment of Safety Committees, Drug Free Workplace Programs, and Employment Practices. PRM provides various seminars throughout the year.

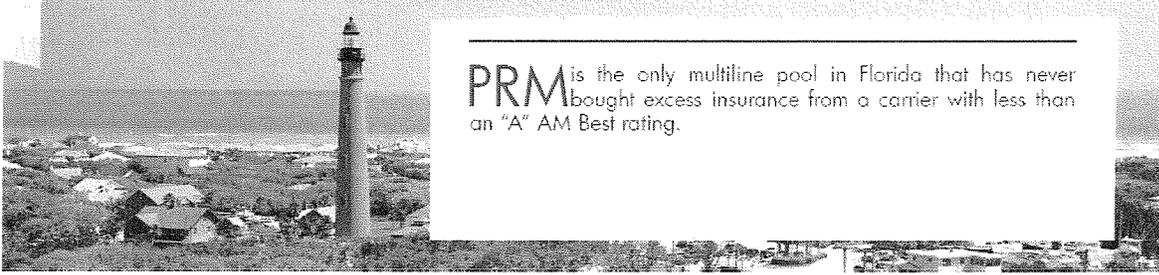
PRM is a Self-Insured Association with each of its members becoming a qualified self insurer with the State of Florida for workers compensation coverage. PRM's staff assists each member with all the necessary filings to be done with the State.

Claims services for both Preferred and Standard Members are provided by Gallagher Bassett Services, Inc. Likewise, GENEX Services provides managed care services for Workers' Compensation claims.

Refer to specific policies for complete terms & conditions

Refer to specific policies for complete terms & conditions

REINSURANCE, FINANCIAL SECURITY



FINANCIAL SECURITY

PRM has consistently provided our members with the financial security of one of the country's most fiscally conservative pools. PRM has a 1:1 premium to surplus ratio. In addition, PRM retains less risk than any of our competitors. PRM has never bought excess insurance from a carrier with less than an "A" AM Best rating.

ACTUARIAL SERVICES AND AUDITED CPA FINANCIAL STATEMENT

Each year PRM has an Actuarial study conducted on its loss and loss expense reserves. This report is incorporated into an annual Audited CPA Financial Statements. PRM fully complies with GASB10 accounting requirements. PRM does not discount loss reserves or take credit in advance of receiving monies for Second Injury Fund recoveries.

INTEREST EARNINGS AND CASH FLOW

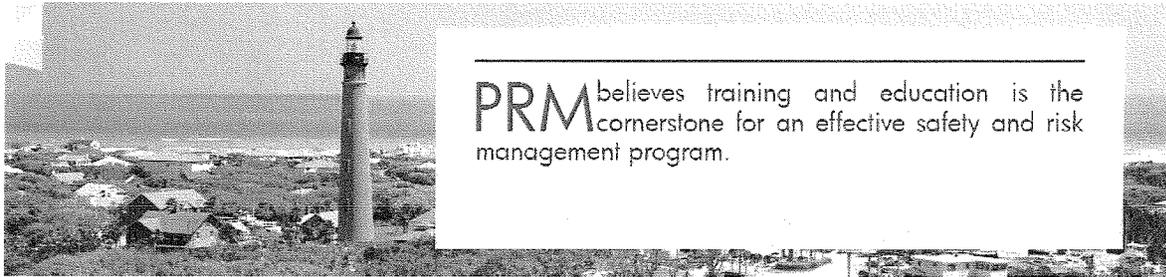
Member contributions earn interest for the benefit of the members. The interest earnings can be used to off-set PRM expenses, used to pay claims, or be returned to the members as participation credits.

Public Risk Management is a Non-Assessable Pool, or Association.

Refer to specific policies for complete terms & conditions



LOSS PREVENTION SERVICES



PRM believes training and education is the cornerstone for an effective safety and risk management program.

RISK ANALYSIS

On site risk analysis services are provided for PRM members in an attempt to identify potential loss producing hazards and to assist with regulatory compliance. A Risk Analysis includes a review of the following areas:

- Record Keeping Analysis
- Written Program Requirements
- Physical Hazards Identification
- Training Needs

SAFETY PROGRAM DEVELOPMENTS

A variety of written safety & loss prevention programs are available to meet the needs of our members. Whether they require a basic program to comply with a specific regulation, or a city/county wide safety program, PRM Loss Prevention Services can help.

- Individual Regulatory Programs
- Comprehensive Programs
- State Approved Discount Programs

SAFETY TRAINING

PRM believes training and education is one of the most effective methods in reducing workplace accidents and losses. Our Loss Prevention Services include training support at both the supervisory & employee levels.

- Formal Classroom Training Sessions
- Training Literature & Materials
- Supervisor "Safety Talks"
- Safety Video Library

REGULATORY ASSISTANCE

Numerous OSHA and safety related technical resources are available to assist members in complying with a multitude of Federal & State safety regulations.

- Compliance Assistance & Guidelines
- Regulatory Interpretations
- Post Audit Consultations
- Citation Validation

TECHNICAL ASSISTANCE

PRM offers a wide variety of specialty services as a part of our Loss Prevention Program. We discuss individual concerns and provide results-oriented solutions that meet your needs.

- Job Hazard Analysis
- Indoor Air Quality Studies
- Safety Committee Set-Up & Participation
- Industrial Hygiene Evaluations

EMPLOYMENT PRACTICES

PRM provides Employment Practices Liability loss prevention services to its members by providing an in-depth review and audit of all employment related practices and policies with additional legal support from the offices of Allen, Norton & Blue, who specialize in labor law.

- Employment Practices Audit/Analysis upon request
- Assistance in preparing Employee Handbook or Personnel Rules and Regulations and Job Descriptions
- Assistance in Salary Surveys
- Assistance in Benefit Surveys
- Human Resources Video Library

LOSS TRENDING

PRM provides frequent loss trending reports to each member. These reports provide valuable information that identifies potential problem areas within each line of coverage. We believe this information allows our members to intervene before experiencing a serious loss situation.

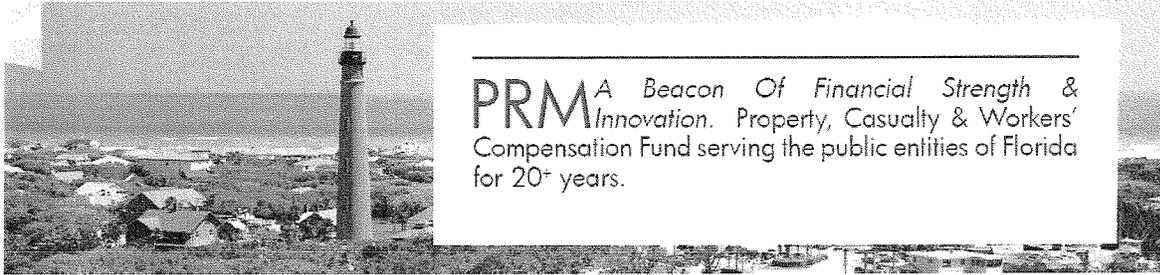
- Injury Frequency Trending
- Comparative Analysis with other Members
- Major Sources of Losses

Refer to specific policies for complete terms & conditions

Refer to specific policies for complete terms & conditions



COVERAGES AVAILABLE IN THE PRM PROGRAM



COVERAGES:

- Property
- Crime
- General Liability, including Law Enforcement Liability
- Errors & Omissions
- Auto Liability
- Workers' Compensation

Ancillary Coverage through Broker:

- Airport or Aircraft Liability
- Boiler and Machinery
- Bonds
- Builders Risk
- Excess Liability Limits
- Executive Travel Accident
- Facilities Use and Special Events Insurance
- Fiduciary Liability
- Florida Statutory AD&D
- Inmate/Community Service Workers Accident Insurance
- National Flood Insurance Program
- Pollution Liability
- Sports Accident
- Storage Tanks

ELIGIBLE ENTITIES:

- Airports
- Cities
- Counties
- Fire Districts
- Towns
- Other Special Taxing Districts
- Port Authorities
- Utility Authorities
- Water Districts

Refer to specific policies for complete terms & conditions

Refer to specific policies for complete terms & conditions

PROPOSAL
CITY OF BROOKSVILLE
 Public Risk Management of Florida
 Property

Limits and Retentions: Per Occurrence
 Deductible: \$1,000

Line of Coverage	Member Insured Values	Association Limits
Property	\$37,172,428	\$500,000,000 AOP* \$75,000,000 Wind

* Could be revised to \$250,000,000 AOP

Association Limits

Total All Risk Limit (AOP)* \$500,000,000 Per Occurrence: All Perils, Coverage's and Insured's/Members combined subject to following sub-limits:

Flood Limit (excluding zones A&V) \$50,000,000 per occurrence

Flood Sublimit (zones A&V) \$50,000,000 per occurrence Dedicated Flood Sublimit – in excess of Max NFIP. Does not increase the specific flood limit of liability

Earthquake Limit \$25,000,000 replacement cost per occurrence
Dedicated Limit for Earthquake Shock – Per Occurrence & Annual Aggregate

Wind/Hail Limit \$75,000,000 per occurrence

Deductibles

All Risk Basic Deductible:

Member Deductible: \$1,000

Named Windstorm 5% per affected building values for Named Windstorm Retention shall apply.

Refer to specific policies for complete terms & conditions

CITY OF BROOKSVILLE
Public Risk Management of Florida
Property

Association Limits:

Business Interruption Limit (Included in Policy limits)	Up to \$100,000,000 Scheduled \$2,500,000 Unscheduled
Extra Expense Limit	\$50,000,000
Extended Period of Indemnity Limit	120 days
Automatic Acquisition Limit	\$25,000,000
Unscheduled Landscaping Limit	\$1,000,000
Scheduled Landscaping Limit	\$5,000,000
Errors & Omissions Limit	\$40,000,000
Course of Construction Limit	\$25,000,000
Unscheduled Fine Arts Limit	\$2,500,000
Accidental Contamination Limit	\$250,000/\$500,000
Tunnels & Bridges Limit	\$500,000
ICC Limit	\$40,000,000
Transit Limit	\$25,000,000
Animals Limit	\$1,000,000
Co insurance clause	None
Auto Physical Damage	Actual Cash Value

Refer to specific policies for complete terms & conditions

Employees Tools Covered if scheduled as contents
\$10,000 per member

Watercraft Limit \$2,500,000

Off Premises Service
Interruption Limit \$25,000,000

EQ Limit (Vehicles, CE &
Fine Art) \$5,000,000

Flood Limit (Vehicles, CE
& Fine Art) \$5,000,000

Contingent Business
Interruption Limit \$2,500,000

Jewelry, Furs, & Precious
Metals Limit \$500,000

Claims Preparation Limit \$500,000

All Risk Expediting
Expense Limit \$50,000,000

Personal Property Limit
(Outside US) \$500,000

Exclusions included but
not limited to:

Mold, Terrorism, Rust, Wet or Dry Rot, Land and Land
Values

Refer to specific policies for complete terms & conditions

CITY OF BROOKSVILLE
Public Risk Management of Florida
Crime

Coverage Provided, Limit and Deductible:

Single Loss Coverage Forms	Limit	Single Loss Deductible
Employee Theft-Per Loss Coverage	\$500,000	\$1,000
Employee Theft-Per Employee Coverage	Not Covered	
Forgery or Alteration	\$500,000	\$1,000
Inside Premises-Theft of Money & Securities	\$500,000	\$1,000
Inside Premises-Robbery, Safe Burglary-Other Prop	\$500,000	\$1,000
Outside the Premises	\$500,000	\$1,000
Computer Fraud	\$500,000	\$1,000
Funds Transfer Fraud	\$500,000	\$1,000
Money Orders and Counterfeit Paper Currency	\$500,000	\$1,000

Refer to specific policies for complete terms & conditions

CITY OF BROOKSVILLE
Public Risk Management of Florida
General Liability

Limit of Liability: \$2,000,000 per Occurrence

Coverage provided to follow PRM Memorandum of Coverage via ASI Follow Form.
Coverage is including, but not limited to, the following:

- Employee Benefit Liability
- Law Enforcement Liability
- Miscellaneous Professional

Terms to Include:

- Bodily Injury/Property Damage
- Mental Injury
- Mental Anguish
- Shock
- False Arrest
- False Imprisonment
- Detention
- Malicious Prosecution
- Invasion of Rights of Privacy
- Assault & Battery
- Blanket Contractual-Hold Harmless Agreement included for Governmental & Non-Governmental entities
- Includes Property in the Care, Custody, & Control of the entity
- Host & Liquor Liability
- EMT/Paramedical covered
- Law Enforcement Activities

Exclusion included but not limited to:

Aircraft Liability
Medical Payments (Not Legal Liability)
War, Nuclear Hazards
Product Recall, Tampering or Guarantee

Refer to specific policies for complete terms & conditions

CITY OF BROOKSVILLE
Public Risk Management of Florida
Auto Liability

Limit of Liability: \$2,000,000 CSL Per Member*

Deductible: NONE

Coverage provided to follow PRM Memorandum of Coverage via ASI Follow Form.
Coverage is including, but not limited to, the following:

- Personal Injury Protection (Statutory Minimum)
- Hired / Non-Owned Auto Coverage (included)
- Hired / Non-Owned Physical Damage (included)

Public Officials Liability
CLAIMS MADE

Public Officials Liability: \$2,000,000 per Claim
 \$6,000,000 Aggregate Per Member*

Employment Practices Liability: \$2,000,000 per Claim
 \$6,000,000 Aggregate Per Member*

*Both POL and EPLI is subject to a per member combined aggregate of \$5,700,000

Retro Date: 10/1/1988

Deductible: NONE

Coverage provided to follow PRM Memorandum of Coverage via ASI Follow Form.
Coverage is including, but not limited to, the following:

- Wrongful Acts of Public Officials
- Negligence
- Errors and Omissions
- Sexual Harassment
- Breaches of Duty
- Misfeasance, Malfeasance, and Nonfeasance
- Elected Officials, Appointed Officers

Exclusions under Auto Liability included but not limited to: Medical Payments, Uninsured Motorist coverage.

Refer to specific policies for complete terms & conditions

CITY OF BROOKSVILLE
Public Risk Management of Florida
Worker's Compensation & Employer's Liability

Coverages Being Offered: Worker's Compensation & Employer's Liability

Limit: Statutory for Worker's Compensation
\$3,000,000 Employer's Liability Insurance

Terms and Conditions:

- Employer Delineation of Insured Members
- Maritime Coverage Endorsement
- Broad Form All States
- Voluntary Compensation Endorsement

SUBJECT TO ANNUAL POLICY AUDIT: 10/1/11 – 10/1/12
PAYROLL

Refer to specific policies for complete terms & conditions

CITY OF BROOKSVILLE

Public Risk Management of Florida Boiler & Machinery Quote

Limit Per Accident:	\$50,000,000
Association Sub Limits:	
Expediting Expenses	Policy Limit
Ammonia Contamination	Policy Limit
Water Damage	Policy Limit
Hazardous Substance	\$2,000,000
Demolition/Increased Cost	\$1,000,000
Media	\$500,000
Brands & Labels	Policy Limit
Errors in Description	Policy Limit
Newly Acquired Location	Policy Limit
Contingent Business Interruption/Extra Expense	\$250,000
Unnamed locations	\$1,000,000
Deductible	\$10,000 Transformer KVA and over/\$1,000 All other objects

Coverage Extensions Including But Not Limited To:

Broad Comprehensive Coverage (Including certain electronic control equipment)

Repair or Replacement Value

Business Interruption/Extra Expense at Policy Limit

Refrigeration Interruption (Spoilage) at Policy Limit

Service Interruption at Policy Limit-Excludes Property Perils-4 hour waiting period.

Joint Loss Agreement at Policy Limit

Expanded Electronic Computer Control at Policy Limit

Locations Insured: As submitted and on file with Travelers

Major Perils Excluded Include but not limited to: Freeze, flood, earthquake, lightning, & EC Perils. Furnace explosion excluded.

Refer to specific policies for complete terms & conditions

CITY OF BROOKSVILLE

Public Risk Management of Florida Excess Liability - OPTIONAL

*Please contact WRM for quote

Line of Coverage Excess of	Limit	Excess of Limits	Coverage Trigger
General Liability including Law Enforcement Legal	\$3,000,000	\$2,000,000	Per Occurrence
Employee Benefit Liability	\$3,000,000	\$2,000,000	Per Claim
Automobile Liability	\$3,000,000	\$2,000,000	Per Accident
Miscellaneous Professional	\$3,000,000	\$2,000,000	Per Claim
Employment Practices Liability	\$3,000,000	\$2,000,000	Per Claim

Abuse or Molestation Exclusion
Airport Liability Exclusion
Dams, Levees, Dikes, or Reservoirs Exclusion
Employers Liability Exclusion
Failure to Supply Exclusion-Utilities
Police or Law Enforcement Activities Exclusion
Property Damage Exclusion-Real &/or Personal Property
Wharfingers' Liability Exclusion
Asbestos Exclusion
Pollution Liability Exclusion – Hostile Fire Coverage
Fungi or Bacteria Exclusion
War Exclusion
Workers Compensation Exclusion
Sexual Harassment Exclusion
Automobile First Party Coverage Exclusion
Nursing Home Exclusion
Silica or Dust Exclusion
Terrorist Activity Exclusion

***\$3,000,000 combined XS Liability Aggregate applies per member**

Refer to specific policies for complete terms & conditions

CITY OF BROOKSVILLE
Public Risk Management of Florida
Rating Exposures

2010-2011 2011-2012 Increase/Decrease

RENEWAL EXPOSURES

PROPERTY VALUES			
TOTAL BUILDING VALUES	\$17,925,000	\$26,866,300	
TOTAL CONTENT VALUES	\$9,925,100	\$2,635,500	
DECLARED/PROP IN OPEN	\$6,957,400	\$2,054,600	
EDP Equipment (Hardware)	\$137,773	\$152,200	
BUSINESS INTERRUPTION/ EXTRA EXPENSE	\$1,500,000	\$1,500,000	
EQUIPMENT VALUES	\$1,082,056	\$1,096,153	
AUTOMOBILE VALUES	\$1,711,406	\$2,855,675	
RENTAL VALUES	\$12,000	\$12,000	
MISCELLANEOUS PROPERTY/ACCT REC			
TOTAL INSURABLE VALUES	\$39,250,735	\$37,172,428	-5.29%

<u>AUTOMOBILES</u>			<u>Increase/Decrease</u>
TOTAL AUTOS	94	99	5%

Refer to specific policies for complete terms & conditions

CITY OF BROOKSVILLE

Public Risk Management of Florida Workers Compensation Exposures

Description	Class Code	2010 Estimated Payroll	2011 Estimated Payroll	Inc/Decrease
Street or Road Paving	5509	\$144,614	\$202,668	
Bus Co: All other employees	7382			
Waterworks OP & Drivers	7520	\$704,766	\$689,206	
Sewage Disp Plant Op & Drivers	7580			
Garbage Works	7590			
Firefighters & D	7704	\$797,368	\$784,259	
Ambulance Drivers	7705			
Police Officer & Driver	7720	\$1,163,643	\$1,333,862	
Auto/Service Repair	8380	\$64,733	\$64,273	
Architects or Engineers	8601			
Sales/ Collection - Outside	8742			
Clerical	8810	\$1,110,337	\$1,050,843	
Attorney- All Employees & Clerical	8820			
Building Maintenance by Owner	9015	\$124,169	\$108,474	
Golf Course	9060	\$69,816	\$82,140	
Parks NOC All & Driver	9102	\$271,601	\$150,633	
Cemetery Op & Driver	9220	\$55,433	\$54,924	
Street Cleaning & Driver	9402			
Garbage/Ash/Refuse Collect & Driver	9403	\$200,474	\$237,988	
Municipal/Town/County State NOC	9410	\$108,996	\$91,957	
Irrigation Workers	251			
	Total Payroll	\$4,815,950	\$4,851,227	1%
Experience Mod		1.15	1.09	

Refer to specific policies for complete terms & conditions

CITY OF BROOKSVILLE
Public Risk Management of Florida

	2011-2012
PREFERRED MEMBERSHIP PRICING	
PRM PREMIUM – PROPERTY AND CRIME COVERAGE	\$204,277
PRM PREMIUM – BOILER & MACHINERY	\$3,097
PRM PREMIUM – AL/GL/E&O	\$144,708
PRM PREMIUM – WORK COMP	\$153,456
TOTAL	\$505,538
PREFERRED MEMBER PARTICIPATION CREDIT:	\$-59,737
GRAND TOTAL	\$445,801

Year	2008-2009	2009-2010	2010-2011	2011-2012	Increase/Decrease
Premium	\$652,433	\$446,023	\$446,023	\$445,801	-31.7%

Refer to specific policies for complete terms & conditions

City of Brooksville

Binding Authority

We accept this proposal as of this date _____

OPTIONAL COVERAGES (Please Make Selection)

Accept	Decline	
<input type="checkbox"/>	<input type="checkbox"/>	Inverse Condemnation-\$100,000 Per Occurrence/Aggregate is available for an additional premium of \$11,250
<input type="checkbox"/>	<input type="checkbox"/>	Non-Monetary Damages - \$10,000 Per Occurrence/Aggregate is available for an additional premium \$1,800

Signature

Date

Printed Name

Title

Proposal valid until June 17th , 2011

THIS DOCUMENT IN ITS ENTIRETY IS CONFIDENTIAL & PRIVILEGED
PROPRIETARY DOCUMENTATION-NOT PUBLIC RECORD.

Refer to specific policies for complete terms & conditions



6/6/11

AGENDA ITEM
MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL

VIA: T. JENNENE NORMAN-VACHA
CITY MANAGER

FROM: JENNIFER C. REY, ESQ.
THE HOGAN LAW FIRM, LLC
AS CITY ATTORNEY

SUBJECT: MUTUAL SETTLEMENT AGREEMENT AND RELEASE: CITY OF
BROOKSVILLE V. TRAVELERS CASUALTY AND SURETY
COMPANY AND CHUBB GROUP INSURANCE COMPANIES

DATE: MAY 27, 2011

GENERAL SUMMARY: In May, 2003, the City entered into a development agreement with certain LandMar entities (the "LandMar Developers") to develop the Southern Hills Plantation project. Between 2003 and 2008, the development agreement was amended and other related agreements were entered into between the City and the LandMar Developers (these development agreements, amendments and related agreements are referred to as the "Development Agreements").

In June, 2008, the LandMar Developers and their affiliated companies ("LandMar Debtors") filed for protection under Chapter 11 of the U.S. Bankruptcy Code in Austin, Texas in a case styled *In re Crescent Resources, LLC, et. al.*; United States Bankruptcy Court, Western District of Texas, Chapter 11, Case number 09-11507-CAG (the "Bankruptcy Action"). As a result of the LandMar Developers failure to complete their obligations under the Development Agreements and the LandMar Developers subsequent Bankruptcy Action, the City foreclosed on the performance bonds securing the improvements associated with the Southern Hills Plantation project and certain obligations of the LandMar Developers as set forth in the Development Agreements. Specifically, the performance bonds in question are Bond No. 104332127 and Bond No. 104720158 issued to the City by Travelers and Bond No. 82133490, Bond No. 82036733 and Bond No. 82133509 issued to the City by Chubb.

In September 2010, the City filed suit against Traveler's Casualty and Surety Company ("Traveler's") and Chubb Group Insurance Companies ("Chubb") in a case styled, *City of Brooksville v. Travelers Casualty and Surety Company and Chubb Group Insurance Companies (Federal Insurance Company)*, Case No. CA-10-2915 in the Fifth Judicial Circuit Court in and for Hernando County, Florida. Travelers and Chubb removed the action to federal court in a case-styled *City of Brooksville v. Travelers Casualty and Surety Company and Chubb Group Insurance Companies (Federal Insurance Company)*, Case No. 8:10-cv-02326-JSW-EAJ, in the U.S. District Court for

the Middle District of Florida. Duke Energy Corporation (“Duke”), the guarantor on the bonds subject to the litigation, petitioned the court to intervene in the action.

On March 28, 2011, the City, Traveler’s, Chubb and Duke participated in settlement negotiations and reached a tentative agreement subject to direction and approval by the City Council. The City Council convened in executive session (shade meeting) on April 18, 2011 to discuss the litigation and potential settlement. The attached Mutual Settlement Agreement and Release is being proposed in full and final settlement of the Case No. CA-10-2915 and Case No. 8:10-cv-02326-JSW-EAJ; and it has been executed by all other parties in the litigation.

BUDGET NOTE: This settlement will require the analysis of staff in order to determine which of the City Funds are recipients of these settlement funds. After that determination is made, a subsequent 10/11 Budget amendment will be brought back to City Council for approval.

LEGAL REVIEW: The Mutual Settlement Agreement and Release has been reached between the parties but is conditioned on City Council approval. Approval of the Mutual Settlement Agreement and Release will resolve Case No. CA-10-2915 and Case No. 8:10-cv-02326-JSW-EAJ.

STAFF RECOMMENDATION: Staff recommends that the City Council (1) approve the negotiated Mutual Settlement Agreement and Release which has been executed by Duke, Traveler’s and Chubb; and (2) authorize the Mayor to sign the Mutual Settlement Agreement and Release.

MUTUAL SETTLEMENT AGREEMENT AND RELEASE

THIS MUTUAL SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is entered into this ____ day of May, 2011, by and between the CITY OF BROOKSVILLE, a municipal corporation under the laws of the State of Florida, (hereinafter referred to as "the City"), TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a Connecticut corporation, and its successors and assigns (hereinafter referred to as "Travelers"), FEDERAL INSURANCE COMPANY d/b/a CHUBB GROUP INSURANCE COMPANIES, an Indiana corporation, and its successors and assigns, (hereinafter referred to as "Federal") and DUKE ENERGY CORPORATION, a Delaware corporation, and its successors and assigns, (hereinafter referred to as "Duke" or "Guarantor") for the purpose of resolving a dispute between the parties with respect to bonds issued by Travelers and Federal (collectively, the "Sureties") and guaranteed by Duke. The City, Travelers, Federal and Duke are collectively referred to from time to time in this Mutual Settlement Agreement and Release as the "Parties."

WHEREAS, the City filed suit against Travelers and Federal in the Fifth Judicial Circuit Court in and for Hernando County, Florida in a case styled *City of Brooksville v. Travelers Casualty and Surety Company and Chubb Group Insurance Companies (Federal Insurance Company)*, Case No. CA-10-2915, and the Sureties thereafter removed the action to the United States District Court for the Middle District of Florida in a case styled *City of Brooksville v. Travelers Casualty and Surety Company and Chubb Group Insurance Companies (Federal Insurance Company)*, Case No. 8:10-cv-02326-JDW-EAJ (collectively, the "Litigation");

WHEREAS, the Litigation arises from disputed issues related to Bond No. 104332127 and Bond No. 104720158 issued to the City by Travelers (the "Travelers Bonds") and Bond No. 82133490, Bond No. 82036733 and Bond No. 82133509 issued to the City by Federal (the "Federal Bonds");

WHEREAS, Duke has filed a Motion to Intervene in the above-styled case regarding disputed issues related to the Travelers Bonds and the Federal Bonds, as the guarantor on each of the bonds;

WHEREAS, on March 28, 2011, the City, Travelers, Federal, and Duke participated in settlement discussions and reached an agreement the terms of which are set forth herein;

WHEREAS, the Parties acknowledge that this Mutual Settlement Agreement and Release is intended to amicably resolve the matters of the above-styled case;

WHEREAS, the Parties desire to resolve their dispute as set forth herein.

NOW, THEREFORE, in exchange for due and valuable consideration the delivery and the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Payment to City.** In consideration for the Mutual Settlement Agreement and Release, Duke Energy Corporation hereby agrees to pay to the City of Brooksville the sum of Three Million Five Hundred Thousand Dollars (\$3,500,000.00 USD) (the "Settlement Amount") within ten (10) calendar days following notification from the City that a copy of this Agreement signed by the Sureties and Duke has been approved by the City Council of the City of Brooksville and the same

has been executed by the Mayor of said City Council. The full Settlement Amount shall be wired into The Hogan Law Firm Trust Account pursuant to the following wiring instructions:

**Independent Banker's Bank
615 Crescent Executive Court, Suite 400
Lake Mary, Florida 32746
Routing/Transit No. 063-111-596**

**for Credit to Florida Community Bank
f/k/a Cortez Community Bank
1000 South Broad Street
Brooksville Florida 34601
Account No. 527517**

**For further credit to
The Hogan Law Firm Trust Account
Incoming Wire Transfer Deposits
Re: City of Brooksville v. Travelers Casualty and Surety Company, et al.
Account No. 1005008**

2. **Mutual Release between the City and Travelers.** The City and Travelers hereby mutually Release (as "Release" is defined below), acquit and discharge each other and their successors, assigns, parents, subsidiaries, affiliates, and related and interrelated firms, companies and corporations (if applicable), as well as all officers, directors, attorneys acting on their behalf and all employees of said entities, and all underwriters at risk for the same (the "Released Entities") from those claims or causes of action which they may have against each other at the time of the execution of this Agreement in connection with and by reason of the Litigation and issuance of the Travelers Bonds. "Release" shall mean the relinquishment, concession or giving up of those claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, attorney fees, costs, torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises, variances, trespasses, warranty claims and indemnity rights, whatsoever, at law or in equity, or otherwise, whether direct or indirect, known or unknown, which the City and Travelers now own or hold against each other, which are based upon any facts, acts, omissions, conduct, expressed or implied, warranties (express or implied), guarantees, representations, contracts, agreements, claims, events, causes, indemnity agreements, or matters of any kind occurring or existing at any time on or before the date of this release that pertain to and/or arise from the transactions and/or events, allegations, claims, and circumstances raised in the Litigation or which could have been raised in the Litigation, including but not limited to the Travelers Bonds, and this Release shall be a complete bar to all claims or suits for expenses or damages of any nature resulting from the same.

3. **Mutual Release between the City and Federal.** The City and Federal hereby Mutually Release (as "Release" is defined below), acquit and discharge each other and their successors, assigns, parents, subsidiaries, affiliates, and related and interrelated firms, companies and corporations (if applicable), as well as all officers, directors, attorneys acting on their behalf and all employees of said entities, and all underwriters at risk for the same (the "Released Entities") from any and all claims or causes of action which they may have against each other at the time of the execution of this Agreement. "Release" shall mean the relinquishment, concession or giving up of

any and all claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, attorney fees, costs, torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises, variances, trespasses, warranty claims and indemnity rights, whatsoever, at law or in equity, or otherwise, whether direct or indirect, known or unknown, which the City and Federal now own or hold against each other, which are based upon any facts, acts, omissions, conduct, expressed or implied, warranties (express or implied), guarantees, representations, contracts, agreements, claims, events, causes, indemnity agreements, or matters of any kind occurring or existing at any time on or before the date of this release, including but not limited to all claims that pertain to and/or arise from the transactions and/or events, allegations, claims, and circumstances raised in the Litigation or which could have been raised in the Litigation, including but not limited to the Federal Bonds, and this Release shall be a complete bar to all claims or suits for expenses or damages of any nature resulting from the same.

4. Mutual Release between the City and Duke. The City and Duke hereby Mutually Release (as "Release" is defined below), acquit and discharge each other and their successors, assigns, parents, subsidiaries, affiliates, and related and interrelated firms, companies and corporations (if applicable), as well as all officers, directors, attorneys acting on their behalf and all employees of said entities, and all underwriters at risk for the same (the "Released Entities") from any and all claims or causes of action which they may have against each other at the time of the execution of this Agreement. "Release" shall mean the relinquishment, concession or giving up of any and all claims, demands, causes of action, actions, rights, liabilities, contract obligations, damages, attorney fees, costs, torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises, variances, trespasses, warranty claims and indemnity rights, whatsoever, at law or in equity, or otherwise, whether direct or indirect, known or unknown, which the City and Duke now own or hold against each other, which are based upon any facts, acts, omissions, conduct, expressed or implied, warranties (express or implied), guarantees, representations, contracts, agreements, claims, events, causes, indemnity agreements, or matters of any kind occurring or existing at any time on or before the date of this release, including but not limited to all claims that pertain to and/or arise from the transactions and/or events, allegations, claims, and circumstances raised in the Litigation or which could have been raised in the Litigation, including but not limited to the Travelers Bonds and the Federal Bonds, and this Release shall be a complete bar to all claims or suits for expenses or damages of any nature resulting from the same.

5. Preservation of Certain Claims Against Debtors, Hampton Ridge Developers and LandMar Group, LLC. Nothing herein constitutes a waiver or release by the City of any unsecured claim asserted and filed by the City against Hampton Ridge Developers (HRD) or LandMar Group, LLC (LandMar), the reorganized HRD or LandMar entities (collectively, the "Debtors") in the bankruptcy case styled *In re Crescent Resources, LLC, et. al.*; United States Bankruptcy Court, Western District of Texas, Chapter 11, Case number 09-11507-CAG.

6. Voluntary Dismissal with Prejudice and Release of Bonds. No later than ten (10) days after satisfaction of the Conditions Precedent set forth in paragraph 7 of this Agreement, the City will (1) cause to be filed with the Court in the above-styled case a *Stipulation of Dismissal with Prejudice* in substantially the same form as set forth in "Exhibit A"; and (2) cause to be issued a Bond Release Letter in substantially the same form as set forth in "Exhibits B & C," respectively, printed on the City of Brooksville's letterhead and executed by an authorized official, releasing the Travelers Bonds and the Federal Bonds. The dismissal of the case will not impair the rights of the Parties to enforce the terms of this Agreement or in any way limit remedies available for the breach

of this Agreement.

7. Conditions Precedent to Dismissal of Legal Action and Release of Bond.

Dismissal of the aforementioned case and release of the referenced bonds is conditioned upon: (a) the approval of this Agreement by the City Council of the City of Brooksville; and (b) payment to the City.

8. Authority of the Parties. The Parties jointly represent and warrant that they have full right, power, and authority to enter into this Agreement, and that they now own or have the right to Release each and all of the Released Entities and Claims that they purport to Release, and that they have not transferred any interest in any of their Released Claims to any third party and further, the Parties affirm that these Releases are fairly and knowingly made.

9. Resolution of Dispute and No Admission of Liability. It is fully understood and agreed that acceptance by the Parties hereto of the consideration described in this Agreement is not an admission or acknowledgment of liability or fault in reference to any matter by any of the Parties, but rather, this Agreement is intended to be an amicable resolution to disputed and uncertain litigation. The Parties further agree and stipulate that all issues raised in the above-styled lawsuit have been resolved by the Parties by virtue of this Agreement.

10. Voluntary Acceptance. The Parties hereby declare that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise, adjustment and settlement of any and all claims, disputed or otherwise, on account of the claims, injuries, and damages abovementioned, and for the express purpose of precluding forever any further or additional claims arising out of the issuance of the Travelers Bonds, the Federal Bonds, and/or the subject of the Release.

11. Reliance on Counsel. The parties each acknowledge that no other party has made any promise or representation to it that is not expressed in this Mutual Settlement Agreement and Release; and that each has not been induced into entering this Mutual Settlement Agreement and Release by any representations about the nature and extent of its existing and/or potential claims or damages made by any attorney, representative or agent of any other Party hereby released.

12. Joint Preparation. Preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. All Parties have had an opportunity to review, modify, and approve the language of this Agreement with advice of counsel. This Agreement shall not be construed more strongly against any party to the Agreement, regardless of who may be deemed to have prepared it.

13. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective their successors, assigns, parents, subsidiaries, affiliates, and related and interrelated firms, heirs, representatives, legatees, and agents.

14. Amendment and Modification. This Agreement may not be amended or modified except by written agreement of the parties.

15. Remedies. Each party to this Agreement shall be entitled to seek enforcement of this

Agreement against the other party and shall have all remedies available at law or in equity, including the remedy of specific performance and all forms of injunctive relief.

16. **Waiver.** No waiver or estoppel as to or against any party shall result from any failure to exercise or enforce any right or power hereunder, save only to the extent necessarily implied as to the particular matter directly concerned and then only for time being with respect thereto, and not in any way as to the future or as to any other matter.

17. **Attorney's Fees and Costs.** The City and Travelers mutually agree to abandon any claim for attorneys' fees and costs as against each other. The City and Federal mutually agree to abandon any claim for attorneys' fees and costs as against each other. The City and Duke mutually agree to abandon any claim for attorneys' fees and costs as against each other. In the event suit is commenced to enforce this Agreement, costs of said suit including reasonable attorney's fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing party by the other party.

18. **Captions or Paragraph Headings.** The captions, headings and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

19. **Counterparts.** This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

20. **Applicable Law; Jurisdiction and Venue.** All questions, issues or disputes arising out of or under this Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation to this Agreement shall be exclusively in the Tampa Division of the United States District Court in and for the Middle District of Florida. The parties hereby irrevocably waive any claim that the Tampa Division of the United States District Court in and for the Middle District of Florida is an inconvenient forum.

21. **Entire Agreement.** This Mutual Settlement Agreement and Release contains and constitutes the entire understanding and agreement between the City, on the one hand, and, on the other hand, each of Travelers, Federated and Duke, with respect to the matters set forth herein; and this Agreement supersedes and cancels any previous negotiations, agreements, commitments, and writings with respect to the above referenced litigation.

22. **General.** The invalidity of any provision of this Agreement or any covenant herein contained on the part of any party shall not affect the validity of any other provision or covenant hereof or herein contained which shall remain in full force and effect. Parties agree to sign all such documents and do all such things as may be necessary or desirable to completely and effectively carry out the terms and conditions of this Agreement. Time shall be of the essence of this Agreement. In this agreement, wherefore the singular and masculine are used, they shall be construed as if the plural or the feminine or the neuter had been used, where the context or the party or parties so requires, and the rest of the sentence shall be construed as if the grammatical and the terminological changes thereby rendered necessary had been made.

23. **Severability.** Whenever possible each provision and term of this Agreement will be interpreted in a manner to be effective and valid but if any provision or term of this Agreement is held to be prohibited or invalid, then such provision or term will be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK]

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, one of which is to be delivered to each of the Parties.

ATTEST:

CITY OF BROOKSVILLE, FLORIDA

JANICE PETERS, CMC
CITY CLERK

By: _____
FRANKIE BURNETT, MAYOR

COUNTY OF HERNANDO

STATE OF FLORIDA

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, Mayor of the City of Brooksville, a municipal corporation under the laws of the State of Florida, who is personally known to me and who did (did not) take an oath.

(Signature of Notary Public)

(Print, Type or Stamp Name of Notary Public)

Commission No.: _____

My Commission Expires: _____

APPROVED AS TO FORM FOR THE RELIANCE
OF THE CITY OF BROOKSVILLE ONLY:

Thomas S. Hogan, Jr.
City Attorney

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, one of which is to be delivered to each of the Parties.

Signed, sealed and delivered in the presence of:

TRAVELERS CASUALTY AND SURETY COMPANY, a Connecticut corporation,

By: [Signature]
Print Name: Robert G. Lavitt

By: [Signature]
Its: Technical Director

By: [Signature]
Print Name: Theresa Asikainen

COUNTY OF Hartford
STATE OF Connecticut

The foregoing instrument was acknowledged before me this 27 day of May, 2011, by Robert Scanlon, on behalf of the company, who is personally known to me or has produced _____ as identification and who did (did not) take an oath.

[Signature]
(Signature of Notary Public)
Carol A. Thompson
(Print, Type or Stamp Name of Notary Public)

Commission No.: _____
My Commission Expires: 12-31-2012

My Commission Expires December 31, 2012

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, one of which is to be delivered to each of the Parties.

Signed, sealed and delivered
in the presence of:

FEDERAL INSURANCE COMPANY, an
Indiana corporation,

By: Christine L. Romeo
Print Name: CHRISTINE L. ROMEO

By: Rubyn Stovall
Its: Manager - Surety Claims

By: Diana Dobosiewicz
Print Name: Diana Dobosiewicz

COUNTY OF Somerset
STATE OF New Jersey

The foregoing instrument was acknowledged before me this 27th day of May, 2011,
by _____, _____, an Indiana corporation, on behalf of the company, who is
personally known to me or has produced _____ as identification and who did
(did not) take an oath.

Sherron Rowe-Hohn
(Signature of Notary Public)
SHERRON ROWE-HOHN
A Notary Public of New Jersey
My Commission Expires 9/5/2011
(Print, Type or Stamp Name of Notary Public)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, one of which is to be delivered to each of the Parties.

Signed, sealed and delivered
in the presence of:

DUKE ENERGY CORPORATION, a
Delaware corporation,

By: Nadene N. Wallace
Print Name: Nadene N. Wallace

By: Daniel J. Reilly
Its: Director, FE&G Accounting

By: Ted J. Kenyon
Print Name: Ted J. Kenyon

COUNTY OF Mecklenburg
STATE OF North Carolina

The foregoing instrument was acknowledged before me this 27th day of May, 2011,
by Daniel J. Reilly, on behalf of the company, who is personally known to
me or has produced _____ as identification and who did ~~(did not)~~ take an oath.

Lisa S. Moore
(Signature of Notary Public) For Gaston County, NC

Lisa S. Moore
(Print, Type or Stamp Name of Notary Public)

Commission No.: _____
My Commission Expires: 04-13-2014



Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CITY OF BROOKSVILLE,
a Florida municipality,

CASE NO. 8:10-cv-02326-JDW-EAJ

Plaintiff,

v.

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, a Connecticut
corporation, and
CHUBB GROUP INSURANCE
COMPANIES (FEDERAL INSURANCE
COMPANY), an Indiana corporation,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff CITY OF BROOKSVILLE and Defendants TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA and CHUBB GROUP OF INSURANCE COMPANIES (FEDERAL INSURANCE COMPANY) hereby stipulate to dismissal with prejudice of all claims in this action, with each party to bear its own attorneys' fees and costs.

CITY OF BROOKSVILLE

By _____

Jennifer C. Rey, Esq.
The Hogan Law Firm
Post Office Box 485
Brooksville, FL 34605
Tel: 352-799-8423
Fax: 352-799-8294

Attorneys for Plaintiff City of Brooksville

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA

-and-

CHUBB GROUP OF INSURANCE
COMPANIES (FEDERAL INSURANCE
COMPANY)

By _____

Edward O. Savitz, Esq.
Anne-Leigh Gaylord Moe, Esq.

1801 North Highland Avenue
Tampa, Florida 33602
(813) 224-9255
Fax: (813) 223-9620
*Attorneys for Defendants Travelers Casualty
and Surety Co. of America and Chubb Group
of Ins. Cos. (Federal Ins. Co.)*

CERTIFICATE OF SERVICE

I hereby certify that on _____, I electronically filed the foregoing
STIPULATION OF DISMISSAL WITH PREJUDICE with the Clerk of Court by using the
CM/ECF system, which will send a notice of electronic filing to all registered users.

Jennifer C. Rey

Exhibit B

RELEASE

City of Brooksville ("Obligee") does hereby fully, finally and unconditionally release and forever discharge Travelers Casualty and Surety Company of America, its affiliates and subsidiaries (collectively, "Travelers") from any and all past, present and future liability by reason of or in connection with Travelers' issuance of Bond Number 104332127 and Bond Number 104720158 each issued on behalf of the principal Hampton Ridge Developers, LLC (collectively, the "Bonds"). Contemporaneous with the execution of this document, the Bonds are fully and unconditionally discharged and no longer in force and effect.

The undersigned further represents and warrants that he or she has the authority to execute this Release on behalf of the Obligee and to bind the Obligee hereunder. In addition, in the event there is any inconsistency between the terms of this Release and any and all other documents, the Obligee hereby agrees that the terms of this Release shall control. Please find enclosed each original Bond which is hereby returned to Travelers as null and void.

Date: _____

City of Brooksville

By: _____
Its: _____

**This document must be executed before a Notary
Public and include the attached Notary
Acknowledgment.**

Exhibit C

RELEASE

City of Brooksville ("Obligee") does hereby fully, finally and unconditionally release and forever discharge Federal Insurance Company, its affiliates and subsidiaries (collectively, "Federal") from any and all past, present and future liability by reason of or in connection with Federal's issuance of Bond Number 82133490, Bond Number 82036733, and Bond Number 82133509 each issued on behalf of the principal Hampton Ridge Developers, LLC (collectively, the "Bonds"). Contemporaneous with the execution of this document, the Bonds are fully and unconditionally discharged and no longer in force and effect.

The undersigned further represents and warrants that he or she has the authority to execute this Release on behalf of the Obligee and to bind the Obligee hereunder. In addition, in the event there is any inconsistency between the terms of this Release and any and all other documents, the Obligee hereby agrees that the terms of this Release shall control. Please find enclosed each original Bond which is hereby returned to Federal as null and void.

Date: _____

City of Brooksville

By: _____
Its: _____

This document must be executed before a Notary Public and include the attached Notary Acknowledgment.

CORRESPONDENCE-TO-NOTE
REGULAR COUNCIL MEETING – June 6, 2011

1. **TYPE:** Letter
 DATE RECEIVED: May 14, 2011
 RECEIVED FROM: Clover Leaf Neighborhood Watch and Residents
 ADDRESSED TO: Police Chief
 SUBJECT: Letter of Appreciation

2. **TYPE:** Letter
 DATE RECEIVED: May 16, 2011
 RECEIVED FROM: Florida League of Cities, Inc.
 ADDRESSED TO: Municipal Key Official
 SUBJECT: 85th Annual FLC Conference

3. **TYPE:** Letter
 DATE RECEIVED: May 18, 2011
 RECEIVED FROM: Southwest Florida Water Management District
 ADDRESSED TO: Mayor
 SUBJECT: Springs Coast Minimum Flows Public Workshops

4. **TYPE:** Memorandum
 DATE RECEIVED: May 23, 2011
 RECEIVED FROM: Tim Mossgrove
 ADDRESSED TO: City Clerk
 SUBJECT: Election of Firefighters' Pension Board Members

5. **TYPE:** Letter
 DATE RECEIVED: May 23, 2011
 RECEIVED FROM: The Florida Bar
 ADDRESSED TO: Mayor
 SUBJECT: Proclamation and Pledge of Civility in the Month of May

6. **TYPE:** Memorandum
 DATE RECEIVED: May 25, 2011
 RECEIVED FROM: Finance Director
 ADDRESSED TO: City Manager
 SUBJECT: Refund of Ad Valorem Taxes from previous Fiscal Years

7. **TYPE:** Letter
 DATE RECEIVED: May 26, 2011
 RECEIVED FROM: The Enrichment Center
 ADDRESSED TO: Parks, Facilities & Recreation Director
 SUBJECT: Grand Opening Appreciation

CLOVER LEAF NEIGHBORHOOD WATCH, INC PO BOX 1601 BROOKSVILLE, FL 34605
AND
THE CLOVER LEAF FARMS & FOREST RESIDENTS

MAY 14, 2011

TO: CHIEF GEORGE TURNER
CITY OF BROOKSVILLE POLICE DEPARTMENT
89 VETERANS AVE
BROOKSVILLE, FL 34601

Dear Chief Turner,

On behalf of the Clover Leaf Neighborhood Watch, Inc's President Ken Eustice and many residents of Clover Leaf Farms & Forest I have been requested to write this letter of appreciation and thanks - to you and your department.

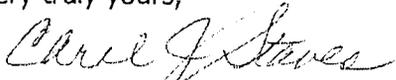
Visually, the officers of the BPD bring a sense of security and relief when the patrol cars are seen patrolling within the parameters of the park. Being senior citizens for the most part, the patrols aid in both ones physical and emotional health. At this time of the year when so many of our neighbors have gone for the summer, many sections are some what isolated and the patrols are a welcomed site.

Our members have enjoyed the presence of your officers at our monthly meetings, again providing that support to our security. Officers Matheson and Williams have become familiar faces and are noted to have dialog with some of our residents after the meetings. Your officers are informative and well versed in alerting us to various scams, & tips as to how to use or avoid certain situations to protect ourselves while out in the community and within our homes.

We just want you to know how much we appreciate the work you do for us.

In the absence of our CLNW President, Ken Eustice and will his approval, I am;

Very truly yours,



Carol J. Staves
Secretary

cc: file

*CTN
05-05-11
[Signature]*



301 South Bronaugh Street • Suite 300 • P.O. Box 1757 • Tallahassee, FL 32302-1757 • (850) 222 9684 • Fax (850) 222 3806 • www.flcities.com

TO: Municipal Key Official
FROM: Michael Sittig, Executive Director
DATE: May 16, 2011
SUBJECT: 85th Annual FLC Conference – Cities Work
VOTING DELEGATE AND RESOLUTION INFORMATION
August 11-13, 2011 – World Center Marriott, Orlando

As you know, the Florida League of Cities' Annual Conference will be held at the World Center Marriott, Orlando, Florida on August 11-13. This year we are celebrating Cities Work which will provide valuable educational opportunities to help Florida's municipal officials serve their citizenry more effectively.

It is important that each municipality designate one official to be the voting delegate. Election of League leadership and adoption of resolutions are undertaken during the business meeting. One official from each municipality will make decisions that determine the direction of the League.

In accordance with the League's by-laws, each municipality's vote is determined by population, and the League will use the Estimates of Population from the University of Florida for 2010, which are the same as the 2010 Census.

Registration materials will be sent to each municipality the week of June 1st. Materials will also be posted on-line. Call us if you need additional copies. The League adopts resolutions each year to take positions on commemorative, constitutional or federal issues. We have attached the procedures your municipality should follow for proposing resolutions to the League membership. A resolution is not needed to become a voting delegate. If you have questions regarding resolutions, please call Allison Payne at the League at (850) 701-3602 or (800) 616-1513, extension 3602. Proposed resolutions must be received by the League no later than July 6, 2011.

If you have any questions on voting delegates, please call Gail Dennard at the League (850) 701-3619 or (800) 616-1513, extension 3619. Voting delegate forms must be received by the League no later than August 1, 2011.

Attachments: Form Designating Voting Delegate
Procedures for Submitting Conference Resolution

President **Joy Cooper**, Mayor, Hallandale Beach
First Vice President **Patricia J. Bates**, Mayor, Altamonte Springs • Second Vice President **Manny Maroño**, Mayor, Sweetwater
Executive Director **Michael Sittig** • General Counsel **Harry Morrison, Jr.**

CTN
06-06-11
JWW



An Equal
Opportunity
Employer

Southwest Florida Water Management District

2379 Broad Street, Brooksville, Florida 34604-6899
(352) 796-7211 or 1-800-423-1476 (FL only)
TDD only: 1-800-231-6103 (FL only)
On the Internet at WaterMatters.org

Bartow Service Office
170 Century Boulevard
Bartow, Florida 33830-7700
(863) 534-1448 or
1-800-492-7862 (FL only)

Sarasota Service Office
6750 Fruitville Road
Sarasota, Florida 34240-9711
(941) 377-3722 or
1-800-320-3503 (FL only)

Tampa Service Office
7601 Highway 301 North
Tampa, Florida 33637-6759
(813) 985-7481 or
1-800-836-0797 (FL only)

Ronald E. Oakley
Chair, Pasco

Hugh M. Gramling
Vice Chair, Hillsborough

H. Paul Senft, Jr.
Secretary, Polk

Douglas B. Tharp
Treasurer, Sumter

Neil Combee
Former Chair, Polk

Todd Pressman
Former Chair, Pinellas

Judith C. Whitehead
Former Chair, Hernando

Jeffrey M. Adams
Pinellas

Carlos Beruff
Manatee

Bryan K. Beswick
DeSoto

Jennifer E. Closshey
Hillsborough

Albert G. Joerger
Sarasota

Maritza Rovira-Forino
Hillsborough

David L. Moore
Executive Director

William S. Bilenky
General Counsel

May 16, 2011

The Honorable Frankie Burnett
Mayor, City of Brooksville
City Hall
201 Howell Avenue
Brooksville, Florida 34601

Subject: Springs Coast Minimum Flows Public Workshops

Dear Mayor Burnett:

I'm writing to request your organization's participation in a planned series of public workshops to be hosted by the Southwest Florida Water Management District for discussion of minimum flows for the Chassahowitzka, Crystal, Homosassa and Weeki Wachee river systems of the Springs Coast. The workshops will focus on existing data and minimum-flows methods, additional data collection or analyses that could be implemented to enhance minimum flows development, and minimum flows compliance for the four spring-dominated systems.

Workshop participants will include invited representatives from governmental organizations and local stakeholder groups, as well as other interested individuals that choose to attend the publically noticed meetings. Invited representatives will be given ample opportunity for interaction at each meeting. To promote efficiency input from other attendees will occur during a public comment period.

The first workshop is scheduled for June 8, 2011, beginning at 2 p.m., and will be held in room 166 at the Lecanto Government Services Building, 3600 West Sovereign Path, Lecanto, Florida 34461. The District believes that your organization has much to offer to the workshop series and is requesting your participation or that of a designated representative at the first and subsequent meetings.

Please contact me with the name of your organization's representative by June 1. I can be reached at 1-800-423-1476 or 352-796-7211, extension 4272 or doug.leeper@watermatters.org. I will be happy to answer any questions regarding the workshops.

Sincerely,

Douglas A. Leeper
Chief Environmental Scientist
Resource Projects Department

DAL/brm

cc: Project File
Jennene Norman-Vacha, City Manager

CTN
06.06.11

FIREFIGHTERS' PENSION TRUST FUND BOARD OF TRUSTEES

85 Veterans Ave, Brooksville, Fl. 34601
352-544-5445 Fax- 352-540-3840

MEMORANDUM

TO: JANICE PETERS, CITY CLERK
FROM: TIMOTHY A. MOSSGROVE, CHAIRMAN *Timothy Mossgrove*
RE: ELECTION OF PENSION BOARD MEMBERS
DATE: MAY 23, 2011

Effective June 1, 2011, Timothy Mossgrove and Gerald Ward who serve on the Firefighters' Pension Trust Fund Board of Trustees, have chosen to enter the DROP. According to Ordinance No. 525, Section 3.1. - "Drop Participants cannot be elected as or vote for elected Trustees".

A notice for these positions was duly posted in the Department on May 2, 2011. Joseph Keefer and William Kaplan were the only two members of the Plan to express an interest in serving on the Board. Therefore, Joseph W. Keefer, Driver/Engineer, and William C. Kaplan, Captain, are elected to fill the unexpired terms of Timothy Mossgrove and Gerald Ward ending on December 31, 2012. Please convey this information to Council at its next meeting.

Thank you for your assistance.

Pc: Board
Scott Christiansen, Attorney

CHIEF TIMOTHY A. MOSSGROVE, CHAIRMAN DISTRICT CHIEF GERALD E. WARD, VICE CHAIRMEN PAUL D. BABCOCK, SECRETARY
REGINA MARTIN, MEMBER WAYNE SUFFICOOL, MEMBER

*CTN
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CITY, COUNTY AND LOCAL GOVERNMENT LAW SECTION

www.locgov.org

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May 4, 2011

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The Florida Bar
rlibbert@flabar.org

Re: Proclamation and Pledge of Civility in the Month of May

To Whom It May Concern:

Please join with other cities and counties in the State of Florida to proclaim May as Civility Month.

We hope that the pledge of civility will uplift the tone and conduct in your meetings. Civility uplifts our common life, and invites citizens to participate in their government. The art of civility requires constant application every day.

The attorneys of the City, County and Local Government Law Section of The Florida Bar ask you to renew the pledge of public conduct. A sample proclamation is enclosed for your use. We urge all citizens to exercise civility toward each other throughout the year.

Thank you for your attention to this important matter.

Sincerely,

[Handwritten signature of Vivien Monaco]

Vivien Monaco
Chair

Enclosure

VM:rl

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05-23-11 P05:17 IN



MEMORANDUM

TO: T. Jennene-Norman Vacha, City Manager
FROM: Steve Baumgartner, Finance Director *Steve*
SUBJECT: Refund of Ad Valorem Taxes from previous Fiscal Years
DATE: May 25, 2011

In the last several months, the City has been invoiced from the Hernando County Tax Collector for adjustments on previous received Ad Valorem Tax Revenues. Below is a recap of those refunds this Fiscal Year:

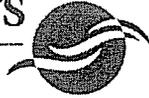
Invoice Date	Amount Refunded	Tax Year Refunded	Reason for Refund	Taxpayer Name
3/21/11	\$285.29	2009	Land value error	Elise Kegley
4/4/11	\$7,472.08	2007	Erroneous payment	Center State Bank
5/13/11	\$3,587.59	2009	Tangible personal property value adjustment	CEMEX
Grand total Remitted to Tax Collector	\$11,344.96			

In consultation in the past with our Auditor, Mary Beth Gary, CPA; Ms. Gary has advised us to debit our Ad Valorem Revenue line item for the refunds. She advised that regardless of the tax year we are refunding that we should charge the current year's Ad Valorem revenue line item for the refund.

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Enrichment Centers

Your friends for healthy, active living.



Dear Mike Walker & Staff,

The Enrichment Centers thank you so much for making our Mining Association Enrichment Center Grand Opening a tremendous success. We could not have done it without you!

You & your Staff worked long and hard and your efforts were tremendous. You have created a show place for everyone to enjoy for many years to come.

The Enrichment Center Board of Directors, Members & myself take our Hats off to you. We are fortunate to have you as a partner!

We really appreciate your support!

If you have any questions please don't hesitate to contact me 544-6022.

Thank-you

Deborah L. Walker-Druzbeck
Director-The Enrichment Center

Spring Hill Enrichment Center
Located on the campus of Spring Hill Regional Hospital
10441 Quality Drive
Medical Arts Building Suite # 105
Spring Hill, Florida 34609
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Brooksville Enrichment Center
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www.BrooksvilleRegional.net & www.SpringHillRegional.net

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[Signature]