



CITY OF AVON PARK

Highlands County, Florida

Office of the City Manager
110 East Main Street
Avon Park, Florida 33825

July 10, 2014



RECEIVED

Avon Park City Council
110 E. Main St.
Avon Park, FL 33825

Dear Council Members:

Pursuant to City Ordinance No. 874, you are hereby notified of a Regular Meeting of the City Council on Monday, July 14, 2014, at 6:00 p.m. in the Avon Park City Council Chambers, located at 123 E. Pine St.

If you are unable to attend, please contact me at 452-4403.

Sincerely,

Julian Deleon,
City Manager

/bb

SCANNED



**CITY COUNCIL REGULAR MEETING
CITY COUNCIL CHAMBERS
123 E. Pine St. Avon Park, FL
July 14, 2014
6:00 PM**

A. OPENING

1. Invocation
2. Pledge of Allegiance
3. Roll Call

B. CONSENT AGENDA:

4. Council Minutes – Approval of Regular Council Meeting of June 23, 2014

C CITIZENS/OUTSIDE AGENCIES

5. Lake Hamilton Mayor Marlene Wagner on behalf of Florida League of Cities
6. Dennis Mungall re: Memorial Brick project

D. COMMITTEE REPORTS/ATTY UPDATES/ANNOUNCEMENTS/PRESENTATIONS

- a. **Reminder** Main Street CRA Plan workshop- Tuesday, July 22 @ 6pm

E. ADMINISTRATIVE

7. First Reading for Ordinance 15-14 (Annexation of 2525 US 27 S.) -- City Manager
8. First Reading for Ordinance 16-14 changes to vesting schedule to APFD retirement
9. First Reading Ordinance 18-14, Adopt Flood Hazard Maps -- City Attorney
10. Preliminary Millage Rate – City Manager
11. Preliminary Rate Resolution 14-08, Fire Assessment -- City Manager
12. Heartland Cultural Alliance- Mr. Fred Leavitt
13. Contract for Land Purchase of 70-Acres -- City Manager
14. Authorization for Eng of Effluent Pond and Env. evaluation. --City Manager
15. Authorization to pre-order garbage truck -- City Manager

F. CITIZENS PARTICIPATION

G. ADJOURN

Any person who might wish to appeal any decision made by the City Council of the City of Avon Park, Highlands County, Florida, in public hearing or meeting is hereby advised that he/she will need a record of the proceedings, and for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made which will include the testimony and evidence upon which such appeal is to be based. Any person with disabilities requiring accommodations in order to participate should contact the City Manager prior to the meeting.

(B-4)

CITY COUNCIL REGULAR MEETING MINUTES
Council Chambers – 123 E. Pine St., Avon Park, FL
June 23, 2014
6:00 PM

Members Present: Mayor Sharon Schuler, Councilman Garrett Anderson, Councilman Parke Sutherland and Councilman Terry Heston **Absent:** Deputy Mayor Brenda Giles.

Others Present: City Manager Julian Deleon, and Administrative Services Director Maria Sutherland, Bob Franke from LaRue Consulting and members of the public and press.

Mayor Schuler called the meeting to order at 6:08 P.M. The invocation was given and the Pledge of Allegiance was recited. The roll was called and a quorum was present.

CONSENT AGENDA: City Manager, Julian Deleon, noted the items on the consent agenda. Council Minutes Regular Meeting June 9th 2014. Motion made by Councilman Parke Sutherland, seconded by Councilman Terry Heston to approve consent agenda as presented. Motion carried unanimously.

Motion by Councilman Parke Sutherland, Seconded by Councilman Terry Heston to add to the agenda the use of the 2nd floor by HCA for the Peter Powell Roberts Museum. Vote: Parke Sutherland, Yes, Terry Heston, Yes, Garrett Anderson, No, Mayor Sharon Schuler, No. Motion Failed.

ADMINISTRATIVE:

Final Reading of Ordinance 14-14. Annexation of 3501 Davis Citrus Road. Mayor Sharon Schuler opened the floor for public hearing, with no show of hands, she closed the public hearing.

Motion made by Councilman Parke Sutherland, Seconded by Terry Heston, to approve Final Reading of Ordinance 14-14 as read. Motion carried unanimously.

Contract approval for Program Administration of Southside CDBG project. Motion made by Councilman Parke Sutherland seconded by Terry Heston to approve Guardian CRM as Admin. Project Managers for the Southside CRA CDBG grant. Motion carried unanimously.

Resolution 14-07 Main Street CRA Plan, Jim LaRue Consulting. Bob Franke from LaRue Consulting gave an overview of Resolution 14-07. Tom Macklin asked about the "Morals" component of the plan language. Bob Franke responded.

Peter van den Boom, legal counsel to Garrett Anderson, Brittany Anderson, Mr. & Mrs. James Anderson, Parkview Pre K and Parkview Prep Academy, voiced his opposition to Resolution 14-07. No motion was made, but the Mayor would like to further the discussion that would include more voices from the public. A date was set for July 22 @ 6pm to discuss the Main Street CRA Plan.

Traffic Signal Maintenance & Compensation Agreement w/FDOT. Motion made by Parke Sutherland, seconded by Councilman Garrett Anderson to approve agreement with FDOT. Motion passed unanimously.

Discussion on City Hall Utility Billing hours of operation. Change to 9am – 5:30pm. Staff provided their input regarding change hours of operation at City Hall.

It was brought to the attention of the Council that there was a pothole near the Tennis Courts and a concern with a fire hydrant.

A workshop meeting for CRA Plan was set for July 22, 2014 at 6:00 PM

Meeting adjourned approximately 8:00 PM

Recorded and transcribed by Maria Sutherland.

ATTEST:

Maria Sutherland

Sharon Schuler, Mayor

E-7

ORDINANCE 15-14

AN ORDINANCE TO ANNEX APPROXIMATELY 22.3 ACRES OF LAND OWNED BY LAKE GLENADA R.V. & MOBILE HOME PARK, LLC., LOCATED AT 2525 US 27 SOUTH, INTO THE CITY OF AVON PARK, HIGHLANDS COUNTY, FLORIDA, PROVIDING FOR FINDINGS OF APPROPRIATENESS OF THE ANNEXATION, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Avon Park, Florida is a duly incorporated municipality under the laws of the State of Florida; and

WHEREAS, Lake Glenada R.V. & Mobile Home Park, LLC., is the owner as shown by the legal description attached hereto as Exhibit "B"; and

WHEREAS, the City of Avon Park, would like to incorporate the property, described in Exhibit "B" into the City limits of the City of Avon Park, Florida, as shown by the map, Exhibit "A", attached hereto and incorporated herein; and

WHEREAS, the City has an Annexation Agreement signed by Edgard Hudson, attached hereto and incorporated herein as Exhibit "C"; and

WHEREAS, the City of Avon Park, Florida, finds that the property is contiguous to the existing City Limits as required by Florida Statutes Section 171.044, and has the authority to annex this property; and,

WHEREAS, the City of Avon Park, Florida deems it to be in the best interest of the citizens of the City of Avon Park, Florida, and those entitled to its services, that an Ordinance be passed for the purposes of annexing the said property; and

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF AVON PARK, FLORIDA;

Section 1. Property Suitable for Annexation. The City Council finds that the property is substantially contiguous to the existing city limits, and is otherwise capable of being lawfully annexed into the City.

Section 2. Property Annexed. That the parcel of land with the legal description identified in Exhibit "B" attached hereto and incorporated herein, is hereby voluntarily annexed into the City of Avon Park, Florida, pursuant to Statute 171.044 F.S. The property being annexed is shown on the map attached as Exhibit "A". The City boundaries are hereby redefined so as to include the said described parcel of land.

Section 3. Effective Date. This ordinance shall take effect immediately after passage.

INTRODUCED AND PASSED on First Reading the ____ day of _____, 2014.

PASSED, ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF AVON PARK, FLORIDA ON THE ____ DAY OF _____, 2014.

CITY OF AVON PARK, FLORIDA

Sharon Schuler, Mayor

ATTEST:

Maria Sutherland, Adm. Services Director & City Clerk

Approved as to form:

Gerald T. Buhr, City Attorney

Exhibit "A": Highlands County and Avon Park
Annexation Ordinance 14-14

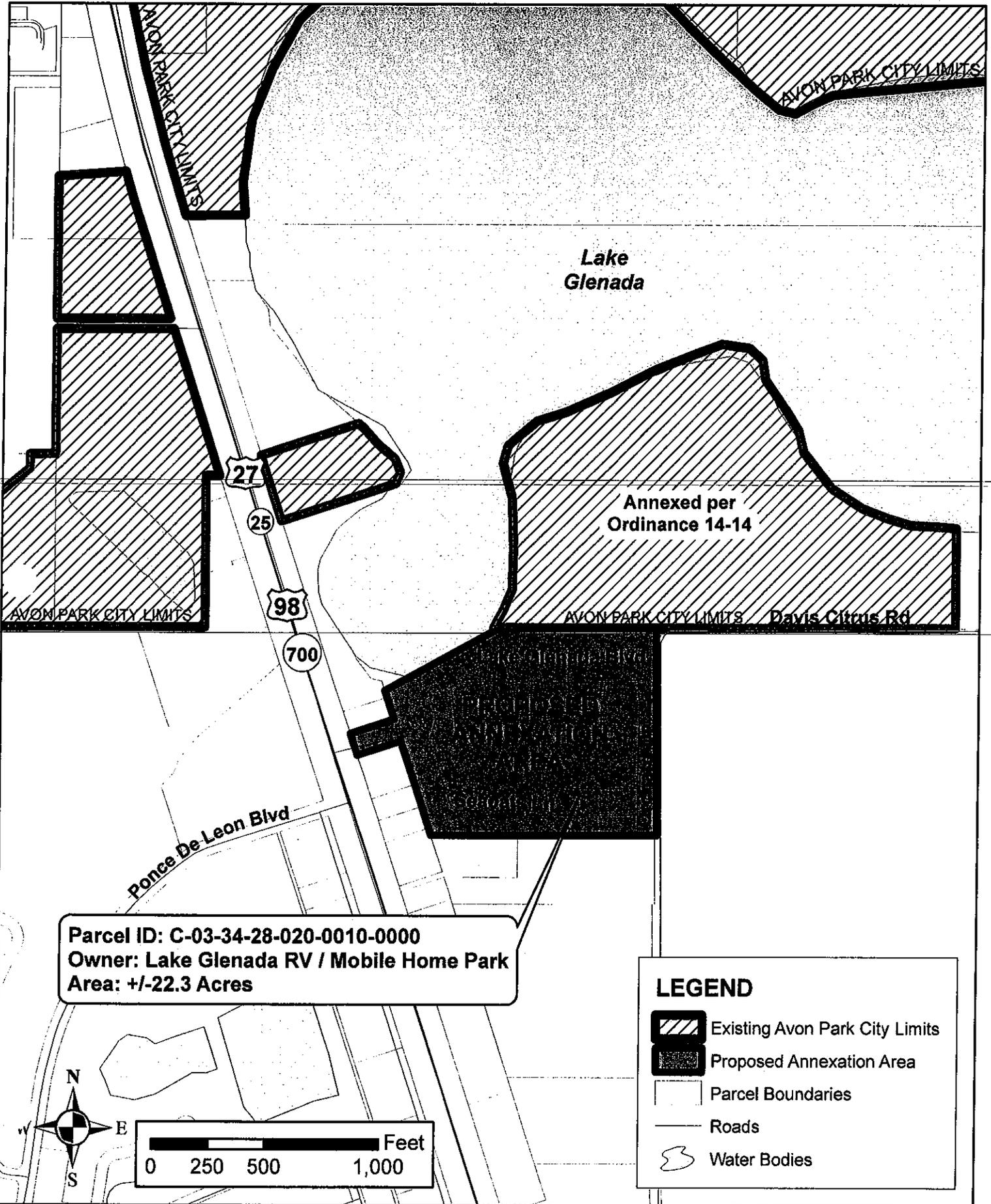
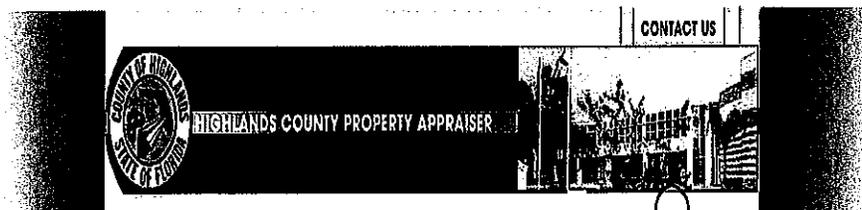


EXHIBIT B



ABOUT HCPAO MEET YOUR APPRAISER [SEARCH PROPERTY RECORDS](#)

PREVIOUS ACCOUNT

NEXT ACCOUNT

C-03-34-28-020-0010-0000
40 County Southwest Water

- [VIEW MAP](#)
- [VALUE SUMMARY](#)
- [SALES HISTORY](#)
- [BUILDINGS](#)
- [LAND LINES](#)
- [EXTRA FEATURES](#)
- [QUERY LIST](#)

Owners

Name 1 : LAKE GLENADA RV + MOBILE HOME PARK
 Name 2 :

SITE ADDRESS

2525 US 27 S
 AVON PARK , FL 33825

MAILING ADDRESS

Addr 1 : 2525 US 27 S
 Addr 2 :
 City : AVON PARK
 State : FL
 Country:
 Zip : 33825

Legal Description

LAKE GLENADA RV + MOBILE
 HOME PARK
 PB 15-PG 22
 ALL OF SUB

[VIEW GIS MAP](#)

DOR Code : 28
[CLICK FOR CODE DESCRIPTION](#)

Neighborhood Code: 2200.00
 RVP RENTAL - RNG 28

Map Id : 25A
[CLICK TO DOWNLOAD](#)
 *Map is in PDF format and file size is large

[TAX COLLECTOR WEB SITE FOR THIS PARCEL.](#)

Please note that property values on this site are continuously being updated and are a work in progress throughout the year. The final values are certified in October of each year.

VALUE SUMMARY

TAXABLE VALUE SUMMARY

Total Building Value	\$0	Total Assessed Value	\$2,447,356
Total OB/XF Value	\$0	Total Exemptions	\$0
Total Land Value	\$2,099,800	Total Taxable Value	\$2,447,356
Land Value - Agri.	\$0	Please note that property values in this office are being updated throughout the year. The final values are certified in October.	
Income	\$2,462,319		
Total Classified Use Value	\$0		

EXHIBIT-C

JB
2700
N/K

Prepared by Utility Billing Department

City of Avon Park
110 E. Main St.
Avon Park, FL 33825

DECLARATIONS OF COVENANTS

Edgar A. Hudson, herein called "Declarant", is the owner in fee of certain real property, herein called the "Property", located in Highlands County, Florida, more particularly described as follows:

Address: 2525 U.S. 27 South, Avon Park, Florida 33825
C 03-34-28-020-0010-0000

Legal Description as follows:

LAKE GLENADA R.V. & MOBILE HOME PARK, BEING A PORTION OF SECTION 3, TOWNSHIP 34 SOUTH, RANGE 28 EAST, HIGHLANDS COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 15, PAGE 22, OF THE PUBLIC RECORDS OF HIGHLANDS COUNTY, FLORIDA.

ALSO DESCRIBED AS FOLLOWS:

LOT 84 IN BLOCK C OF MAXCY PARKWAY SUBDIVISION, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 4, PAGE 72, PUBLIC RECORDS OF HIGHLANDS COUNTY, FLORIDA.

TOGETHER WITH A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 34 SOUTH, RANGE 28 EAST, HIGHLANDS COUNTY, FLORIDA DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 84 IN BLOCK C OF MAXCY PARKWAY SUBDIVISION, THENCE RUNNING EASTERLY PARALLEL TO THE NORTH LINE OF THE NW ¼ OF SECTION 3, TOWNSHIP 34 SOUTH RANGE 28 EAST, TO A POINT LOCATED ON THE EAST LINE OF THE NW ¼ OF SECTION 3, TOWNSHIP 34 SOUTH, RANGE 28 EAST; THENCE NORTHERLY ALONG THE EAST LINE OF SAID NW ¼ TO THE NE CORNER OF SAID NW ¼; THENCE WESTERLY ALONG THE NORTH LINE OF SAID NW ¼ TO A POINT LOCATED ON THE EAST SHORE LINE OF LAKE GLENADA; THENCE SOUTHERLY ALONG THE EAST SHORELINE OF LAKE GLENADA TO A POINT WHERE A LINE EXTENDED FROM THE NE CORNER OF LOT 86, BLOCK C, MAXCY PARKWAY AND RUNNING EASTERLY AND PARALLEL TO THE NORTH LINE OF SAID NW ¼ WOULD INTERSECT SAID EAST SHORELINE OF LAKE GLENADA; THENCE WESTERLY ALONG SAID LINE TO THE EAST LINE OF SAID LOT 86; THENCE SOUTH ALONG THE EAST LINE OF LOTS 86, 85 AND 84 TO THE POINT OF BEGINNING.

TOGETHER WITH THE NORTH 10 ACRES OF THE FOLLOWING DESCRIBED TRACT:

THAT PART OF THE NW ¼ OF SECTION 3, TOWNSHIP 34 SOUTH, RANGE 28 EAST, HIGHLANDS COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF LOT 84, BLOCK C, MAXCY PARKWAY SUBDIVISION AS PER THE PLAT THEREOF RECORDED IN PLAT BOOK 4, PAGE 72, PUBLIC RECORDS OF HIGHLANDS COUNTY, FLORIDA, THENCE RUN EASTERLY ALONG A LINE PARALLEL TO THE NORTH LINE OF SAID NW ¼ OF SECTION 3, TO A POINT LOCATED ON THE EAST LINE OF SAID NW ¼, THENCE SOUTHERLY ALONG THE EAST LINE OF SAID NW ¼, TO THE SE CORNER OF SAID NW ¼, THENCE WESTERLY ALONG THE SOUTH LINE OF SAID NW ¼, TO A

Prepared by:
Return to:

Cheryl Tietjen, City Clerk
City of Avon Park
110 E. Main St.
Avon Park, FL 33825



POINT ON THE EAST LINE OF SAID BLOCK C, MAXCY PARKWAY SUBDIVISION, THENCE NORTHERLY ALONG THE EAST LINE OF SAID BLOCK C, TO THE POINT OF BEGINNING. LESS AND EXCEPT THAT PART THEREOF CONVEYED TO MAXCY SECURITIES, INC., BY DEED DATED AUGUST 8, 1963, AND RECORDED IN O.R. BOOK 181, PAGE 639, PUBLIC RECORDS OF HIGHLANDS COUNTY, FLORIDA.

ALONG WITH THAT CERTAIN PROPERTY DESCRIBED BELOW:

LOTS 82 AND 83, BLOCK C OF MAXCY PARKWAY SUBDIVISION, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 4, PAGE 72, OF THE PUBLIC RECORDS OF HIGHLANDS COUNTY, FLORIDA.

For good and valuable consideration, and in exchange for the right for the Property to receive Water & Sewer service from the City of Avon Park, Declarant hereby declares that the Property shall be subject to the following covenant, which shall constitute a covenant running with the Property and shall be binding on all parties having any right, title or interest in the Property, their heirs, successors and assigns.

When the Property becomes contiguous to the City Limits of the City of Avon Park, the Property shall be subject to annexation into said City Limits and this declaration shall be considered a petition to the City of Avon Park to facilitate the annexation of the Property when it becomes contiguous.

Dated this 15 day of April, 2011.

Declarant: Edgar A. Hudson Edgar A. Hudson
(Print Name) (Signature)

STATE OF FLORIDA
COUNTY OF HIGHLANDS

BEFORE me, personally appeared EDGAR A. HUDSON, personally known or who produced identification FL Drivers License #305-30-38-2870 to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that he (he or she) executed said instrument for the purposes therein expressed and was authorized by said corporation to do so.

WITNESS my hand and official seal this 15 day of April, 2011.

Melinda Springsteen
Notary Public, State of Florida (affix stamp or seal)



Filing Fee: \$11.00 - 1st Page
\$8.50 - Additional Page

Prepared by: Cheryl Tietjen, City Clerk
Return to: City of Avon Park
110 E. Main St.
Avon Park, FL 33825

Agenda Item Summary

Subject: Fire Fighter Retirement vesting schedule Ordinance changes 16-14

Item No.

Placed on Agenda by: City Manager

Total Amount of Project: None

Staff Review: Yes

Attorney Review: Yes

Recommended Motion(s): Approval

Background:

The City's contribution to the firefighter's pension plan has steadily increased during the past decade. For example, the actual historical contributions follow below:

2012	\$254,441 (Actual)
2013	\$283,435 (Actual)
2014	\$344,000 (Budgeted)
2015	\$370,000 (Budgeted)

For the 2015 budget, total payroll for the fire department is expected at \$669,528. The City's contribution is approximately 55% as a percentage of payroll.

These contributions and future liability are based on an employee vesting schedule of 3.2% multiplier per year of service. During Union negotiations, we agreed to allow all of the current employees to retain their 3.2% vesting schedule multiplier, but new hires would start vesting with a 2% multiplier.

The attached ordinance achieves these negotiated changes. While this will not curve the City's immediate financial contributions, in the long term, this ordinance mitigates the City's contribution. The same changes were also implemented on the police retirement system. Accordingly, staff recommends approval.

Law Offices

Christiansen & Dehner, P.A.

63 Sarasota Center Blvd. Suite 107 Sarasota, Florida 34240 • 941-377-2200 • Fax 941-377-4848

May 1, 2014



RECEIVED

5/7/14
BB

Mr. Julian Deleon, City Manager
City of Avon Park
110 E. Main Street
Avon Park, FL 33825

Re: City of Avon Park Firefighters' Retirement System

Dear Mr. Deleon:

As directed by the Board and as requested by you, attached is a proposed ordinance amending the City of Avon Park Firefighters' Retirement System, to decrease the benefit multiplier from 3.16% to 2% for members hired on or after November 1, 2013. This benefit change would only apply to members hired on or after November 1, 2013 and will not affect the benefits of current members.

The definition of Salary is also being amended in this ordinance to comply with the requirements of Chapter 2011-216, Florida Statutes with regard to the limitations on overtime and accrued sick and vacation time.

By copy of this letter to the plan's actuary, Foster & Foster, Inc., I am requesting that they prepare the necessary actuarial impact statement to accompany this ordinance when it is presented to the City for consideration and adoption.

If you have any questions, please feel free to give me a call.

Yours very truly,

Scott R. Christiansen

SRC/dm
enclosure

cc: Carol Knapp, with enclosure
Douglas Lozen, with enclosure

May 29, 2014

VIA EMAIL AND MAIL

Ms. Carol Knapp, Administrator
Avon Park Firefighters' Retirement System
2404 West Russ Road
Avon Park, FL 33825

Re: City of Avon Park
Firefighters' Retirement System

Dear Carol:

In response to Scott Christiansen's letter dated May 1, 2014, we have reviewed the proposed Ordinance (identified on page 5 as dm/avon/fire/04-30-14.ord) illustrating the following proposed benefit changes:

- 1) Amending the definition of Salary to comply with the regulations set forth in Senate Bill 1128. Effective March 12, 2014, Salary shall not include more than three hundred (300) hours of overtime per year. Additionally, Salary will include the lesser of the amount of sick and vacation leave time accrued as of March 12, 2014, or the actual amount of sick and vacation leave time for which the retiree receives payment at the time of retirement.
- 2) For Members hired on or after November 1, 2013, decrease the benefit accrual rate from 3.16% to 2.00% of Average Final Compensation for each year of Credited Service.

Since there is currently no final pay load assumption used in the Actuarial Valuation, it is our opinion that adoption of proposed benefit change (1) will have no impact on the Plan's funding requirements. In addition, since proposed benefit change (2) applies strictly to future new hires, we have determined that adoption of this provision will have no immediate impact on the Plan's funding requirements. However, it is still important to point out that as new hires begin to replace the current active population, the Plan will realize cost savings associated with implementation of the benefit change stated above.

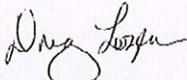
Because the changes do not result in a change in the valuation results, it is our opinion that a formal Actuarial Impact Statement is not required in support of its adoption. However, since the Division of Retirement must be aware of the current provisions of all public pension programs, it is recommended that you send a copy of this letter and a copy of the fully executed Ordinance to each of the following offices:

Mr. Keith Brinkman
Bureau of Local Retirement Systems
Division of Retirement
P. O. Box 9000
Tallahassee, FL 32315-9000

Sarah Carr
Municipal Police and Fire
Pension Trust Funds
Division of Retirement
P.O. Box 3010
Tallahassee, FL 32315-3010

If you have any questions, please let me know.

Sincerely,



Douglas H. Lozen, EA, MAAA
DHL/lke

cc via email: Scott Christiansen, Plan Attorney

ORDINANCE NO. 16-14

AN ORDINANCE OF THE CITY OF AVON PARK, AMENDING CHAPTER 50, FIRE PREVENTION AND PROTECTION, ARTICLE II, FIRE DEPARTMENT, DIVISION 2, FIREFIGHTERS' RETIREMENT SYSTEM, OF THE CODE OF ORDINANCES OF THE CITY OF AVON PARK; AMENDING SECTION 50-51, DEFINITIONS; AMENDING SECTION 50-56, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 50-58, DISABILITY; AMENDING PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AVON PARK, FLORIDA, THAT;

SECTION 1: That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters' Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-51, Definitions, to amend the definition of "Salary", to read as follows:

* * * * *

Salary means the total compensation for services rendered to the city as a firefighter reportable on the member's W-2 form, excluding lump sum payments of accrued sick and vacation time, but including all tax deferred, tax sheltered or tax exempt items of income derived from elective employee payroll deductions or salary reductions. For service earned after March 12, 2014 (the "effective date"), Salary shall not include more than three hundred (300) hours of overtime per calendar year and shall also not include payments for accrued unused sick or annual leave. Provided however, in any event, payments for overtime in excess of three hundred (300) hours per year or accrued unused sick or annual leave accrued as of the effective date and attributable to service earned prior to the effective date, may still be included in Salary for pension purposes even if the payment is not actually made until on or after the effective date. In any event, with respect to unused sick leave and unused annual leave accrued prior to the effective date, Salary will include the lesser of the amount of sick or annual leave time accrued on the effective date or the actual amount of sick or annual leave time for which the retiree receives payment at the time of retirement, regardless of

whether the amount of sick or annual leave was, at some time prior to retirement, reduced below the amount on the effective date.

Compensation in excess of the limitations set forth in section 401(a)(17) of the Code as of the first day of the plan year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any plan year beginning on or after January 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a member's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an eligible employee shall not be less than the amount which was allowed to be taken into account under this definition as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

SECTION 2: That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters' Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-56, Benefit amounts and eligibility, subsection (b), *Normal retirement benefit*, to read as follows:

* * * * *

(b) *Normal Retirement Benefit.* A Member retiring hereunder on or after his normal retirement date shall receive a monthly benefit which shall commence on the first day of the month coincident with or next following his Retirement and be continued thereafter during

Member's lifetime, ceasing upon death, but with 120 monthly payments guaranteed in any event. For members hired before November 1, 2013, the monthly retirement benefit shall equal three and sixteen hundredths percent of average final compensation for each year of credited service. For members hired on or after November 1, 2013, the monthly retirement benefit shall equal two percent of average final compensation, for each year of credited service.

* * * * *

SECTION 3: That Chapter 50, Fire Prevention and Protection, Article II, Fire Department, Division 2, Firefighters' Retirement System, of the Code of Ordinances of the City of Avon Park is hereby amended by amending Section 50-58, Disability, subsection (a), *Disability benefits in the line of duty*, and subsection (c), *Disability benefits not-in-line of duty*, to read as follows:

* * * * *

(a) *Disability benefits in the line of duty.* Any Member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability was directly caused by the performance of his duty as a firefighter, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three and sixteen hundredths percent of his Average Final Compensation multiplied by the total years of Credited Service if the member was hired before November 1, 2013, and two percent of his average final compensation multiplied by the total years of credited service if the member was hired on or after November 1, 2013, but in any event the minimum amount paid to the Member shall be 42% of the average final compensation of the member. Terminated persons, either vested or non-vested, are not eligible for disability benefits; ~~except that those terminated by the city for medical reasons may apply for a disability within 30 days after termination.~~ Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.

* * * * *

(c) *Disability benefits not-in-line of duty.* Any Member with ten years or more credited service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter, which disability is not directly caused by the performance of his duties as a firefighter shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension equal to three and sixteen hundredths percent of his average final compensation multiplied by the total years of credited service if the member was hired before November 1, 2013, and two percent of his average final compensation multiplied by the total years of credited service if the member was hired on or after November 1, 2013. Terminated persons, either vested or non-vested, are not eligible for disability benefits; ~~except that those terminated by the city for medical reasons may apply for a disability within 30 days after termination.~~ Notwithstanding the previous sentence, if a member is terminated by the city for medical reasons, the terminated person may apply for a disability benefit if the application is filed with the board within thirty (30) days from the date of termination. If a timely application is received, it shall be processed and the terminated person shall be eligible to receive a disability benefit if the board otherwise determines that he is totally and permanently disabled as provided for above.

* * * * *

SECTION 4: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Avon Park.

SECTION 5: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 6: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 7: That this Ordinance shall become effective upon adoption.

PASSED ON FIRST READING, this _____ day of _____, 2014.

PASSED AND ADOPTED ON SECOND READING, this _____ day of _____, 2014.

MAYOR

ATTEST:

CITY MANAGER

Approved as to form:

CITY ATTORNEY

E-9

ORDINANCE NO. 18-14

AN ORDINANCE BY THE CITY OF AVON PARK'S CITY COUNCIL AMENDING THE CITY OF AVON PARK CODE OF ORDINANCES TO REPEAL ORDINANCE 06-01 AND REPLACE THE EXISTING REGULATIONS UNDER SECTIONS 22-501 THROUGH 22-506 OF THE CITY CODE WITH THIS ORDINANCE; TO ADOPT FLOOD HAZARD MAPS, TO DESIGNATE A FLOODPLAIN ADMINISTRATOR, TO ADOPT PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; TO AMEND ARTICLE III OF THE CITY CODE TO ADOPT LOCAL ADMINISTRATIVE AMENDMENTS TO THE FLORIDA BUILDING CODE; PROVIDING FOR APPLICABILITY; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has, in Chapter 166 – Municipalities, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Avon Park and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the City of Avon Park was accepted for participation in the Emergency Program of the National Flood Insurance Program on June 16, 2002 and the City Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, Chapter 553, Florida Statutes, was adopted by the Florida Legislature to provide a mechanism for the uniform adoption, updating, amendment, interpretation and enforcement of a state building code, called the *Florida Building Code*; and

WHEREAS, section 553.73(5), Florida Statutes, allows adoption of local administrative amendments to the *Florida Building Code* to implement the National Flood Insurance Program; and

WHEREAS, the City Council has determined that it is in the public interest to adopt the proposed floodplain management regulations that are coordinated with the *Florida Building Code*.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Avon Park that the following floodplain management regulations, and the following local administrative amendments to the 2010 *Florida Building Code*, are hereby adopted.

SECTION 1. RECITALS.

The foregoing whereas clauses are incorporated herein by reference and made a part hereof.

SECTION 2. This ordinance specifically repeals and replaces Ordinance No. 06-01, passed December 3, 2001 and the present regulations under sections 22-500 through 22-506 of the City Code of Ordinances with the regulations provided herein, as follows:

CHAPTER 1 ADMINISTRATION

SECTION 101 GENERAL

101.1 Title. These regulations shall be known as the *Floodplain Management Ordinance* of the City of Avon Park, hereinafter referred to as "this ordinance."

101.2 Scope. The provisions of this ordinance shall apply to all development that is wholly within or partially within any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the *Florida Building Code*; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.

101.3 Intent. The purposes of this ordinance and the flood load and flood resistant construction requirements of the *Florida Building Code* are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

- (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;
- (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
- (3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
- (4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
- (5) Minimize damage to public and private facilities and utilities;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
- (7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
- (8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

101.4 Coordination with the *Florida Building Code*. This ordinance is intended to be administered and enforced in conjunction with the *Florida Building Code*. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the *Florida Building Code*.

101.5 Warning. The degree of flood protection required by this ordinance and the *Florida Building Code*, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this ordinance.

101.6 Disclaimer of Liability. This ordinance shall not create liability on the part of the City Council of the City of Avon Park or by any officer or employee thereof for any flood damage that results from reliance on this ordinance or any administrative decision lawfully made thereunder.

SECTION 102 APPLICABILITY

102.1 General. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

102.2 Areas to which this ordinance applies. This ordinance shall apply to all flood hazard areas within the City of Avon Park, as established in Section 102.3 of this ordinance.

102.3 Basis for establishing flood hazard areas. The Flood Insurance Study for Highlands County, Florida Unincorporated Areas dated August 16, 1982, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the City Hall, 110 East Main Street, Avon Park, FL 33825.

102.3.1 Submission of additional data to establish flood hazard areas. To establish flood hazard areas and base flood elevations, pursuant to Section 105 of this ordinance the Floodplain Administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:

- (1) Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of this ordinance and, as applicable, the requirements of the *Florida Building Code*.
- (2) Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.

102.4 Other laws. The provisions of this ordinance shall not be deemed to nullify any provisions of local, state or federal law.

102.5 Abrogation and greater restrictions. This ordinance supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including but not limited to land development regulations, zoning ordinances, stormwater management regulations, or the *Florida Building Code*. In the event of a conflict between this ordinance and any other ordinance, the more restrictive shall govern. This ordinance shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this ordinance.

102.6 Interpretation. In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

SECTION 103 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

103.1 Designation. The City Manager is designated as the Floodplain Administrator. The Floodplain Administrator may delegate performance of certain duties to other employees.

103.2 General. The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this ordinance. The Floodplain Administrator shall have the authority to render interpretations of this ordinance consistent with the intent and purpose of this ordinance and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this ordinance without the granting of a variance pursuant to Section 107 of this ordinance.

103.3 Applications and permits. The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:

- (1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
- (2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this ordinance;
- (3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;
- (4) Provide available flood elevation and flood hazard information;
- (5) Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;
- (6) Review applications to determine whether proposed development will be reasonably safe from flooding;
- (7) Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*, when compliance with this ordinance is demonstrated, or disapprove the same in the event of noncompliance; and

- (8) Coordinate with and provide comments to the Building Official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this ordinance.

103.4 Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the *Florida Building Code* and this ordinance is required.

103.5 Modifications of the strict application of the requirements of the *Florida Building Code*. The Floodplain Administrator shall review requests submitted to the Building Official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the *Florida Building Code* to determine whether such requests require the granting of a variance pursuant to Section 107 of this ordinance.

103.6 Notices and orders. The Floodplain Administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this ordinance.

103.7 Inspections. The Floodplain Administrator shall make the required inspections as specified in Section 106 of this ordinance for development that is not subject to the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*. The Floodplain Administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

103.8 Other duties of the Floodplain Administrator. The Floodplain Administrator shall have other duties, including but not limited to:

- (1) Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 103.4 of this ordinance;
- (2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain

Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);

- (3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available;
- (4) Review required design certifications and documentation of elevations specified by this ordinance and the *Florida Building Code* and this ordinance to determine that such certifications and documentations are complete; and
- (5) Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Avon Park are modified.

103.9 Floodplain management records. Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this ordinance and the flood resistant construction requirements of the *Florida Building Code*, including Flood Insurance Rate Maps; Letters of Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the *Florida Building Code* and this ordinance; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance and the flood resistant construction requirements of the *Florida Building Code*. These records shall be available for public inspection at City Hall, East Main Street, Avon Park, FL 33825.

SECTION 104 PERMITS

104.1 Permits required. Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this ordinance, including buildings, structures and facilities exempt from the *Florida Building Code*, which is wholly within or partially within any flood hazard area shall first make application to the Floodplain Administrator, and the Building Official if applicable, and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until compliance with the requirements of this ordinance and all other applicable codes and regulations has been satisfied.

104.2 Floodplain development permits or approvals. Floodplain development permits or approvals shall be issued pursuant to this ordinance for any development activities not subject to the requirements of the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

104.2.1 Buildings, structures and facilities exempt from the *Florida Building Code*. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals shall be required for the following buildings, structures and facilities that are exempt

from the *Florida Building Code* and any further exemptions provided by law, which are subject to the requirements of this ordinance:

- (1) Railroads and ancillary facilities associated with the railroad.
- (2) Nonresidential farm buildings on farms, as provided in section 604.50, F.S.
- (3) Temporary buildings or sheds used exclusively for construction purposes.
- (4) Mobile or modular structures used as temporary offices.
- (5) Those structures or facilities of electric utilities, as defined in section 366.02, F.S., which are directly involved in the generation, transmission, or distribution of electricity.
- (6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
- (7) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- (8) Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.
- (9) Structures identified in section 553.73(10)(k), F.S., are not exempt from the *Florida Building Code* if such structures are located in flood hazard areas established on Flood Insurance Rate Maps

104.3 Application for a permit or approval. To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the community. The information provided shall:

- (1) Identify and describe the development to be covered by the permit or approval.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan or construction documents as specified in Section 105 of this ordinance.
- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant or the applicant's authorized agent.
- (7) Give such other data and information as required by the Floodplain Administrator.

104.4 Validity of permit or approval. The issuance of a floodplain development permit or approval pursuant to this ordinance shall not be construed to be a permit for, or approval of, any violation of this ordinance, the *Florida Building Codes*, or any other ordinance of this community. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions.

104.5 Expiration. A floodplain development permit or approval shall become invalid unless the

work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing and justifiable cause shall be demonstrated.

104.6 Suspension or revocation. The Floodplain Administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this ordinance or any other ordinance, regulation or requirement of this community.

104.7 Other permits required. Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:

- (1) The Southwest Florida Water Management District; section 373.036, F.S.
- (2) Florida Department of Health for onsite sewage treatment and disposal systems; section 381.0065, F.S. and Chapter 64E-6, F.A.C.
- (3) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; section 161.055, F.S.
- (4) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
- (5) Federal permits and approvals.

104.8 Permit Fees. The permit fees for the permits required in the regulations adopted herein shall be established by resolution of the city council and are on file in the city clerk's office.

SECTION 105 SITE PLANS AND CONSTRUCTION DOCUMENTS

105.1 Information for development in flood hazard areas. The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.
- (2) Where base flood elevations, or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with Section 105.2(2) or (3) of this ordinance.
- (3) Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with Section 105.2(1) of this ordinance.
- (4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures.
- (5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.

- (6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
- (7) Existing and proposed alignment of any proposed alteration of a watercourse.

The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this ordinance but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this ordinance.

105.2 Information in flood hazard areas without base flood elevations (approximate Zone A). Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator shall:

- (1) Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices.
- (2) Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.
- (3) Where base flood elevation and floodway data are not available from another source, where the available data are deemed by the Floodplain Administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:
 - (a) Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices; or
 - (b) Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.
- (4) Where the base flood elevation data are to be used to support a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a Florida licensed engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

105.3 Additional analyses and certifications. As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

- (1) For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in Section 105.4 of this ordinance and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.

- (2) For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
- (3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in Section 105.4 of this ordinance.

105.4 Submission of additional data. When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

SECTION 106 INSPECTIONS

106.1 General. Development for which a floodplain development permit or approval is required shall be subject to inspection.

106.1.1 Development other than buildings and structures. The Floodplain Administrator shall inspect all development to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.

106.1.2 Buildings, structures and facilities exempt from the *Florida Building Code*. The Floodplain Administrator shall inspect buildings, structures and facilities exempt from the *Florida Building Code* to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.

106.1.2.1 Buildings, structures and facilities exempt from the *Florida Building Code*, lowest floor inspection. Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the *Florida Building Code*, or the owner's authorized agent, shall submit to the Floodplain Administrator:

- (1) If a design flood elevation was used to determine the required elevation of the lowest floor, the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor; or
- (2) If the elevation used to determine the required elevation of the lowest floor was determined in accordance with Section 105.2(3)(b) of this ordinance, the documentation of height of the lowest floor above highest adjacent grade, prepared by the owner or the owner's authorized agent.

106.1.2.2 Buildings, structures and facilities exempt from the *Florida Building Code*, final inspection. As part of the final inspection, the owner or owner's authorized agent shall submit to the Floodplain Administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations shall be prepared as specified in Section 106.1.2.1 of this ordinance.

106.1.3 Manufactured homes. The Building Official shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this ordinance and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted to the Building Official.

SECTION 107 VARIANCES AND APPEALS

107.1 General. The City Council shall hear and decide on requests for appeals and requests for variances from the strict application of this ordinance. Pursuant to section 553.73(5), F.S., the City Council shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the *Florida Building Code*.

107.2 Appeals. The City Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision of City Council may appeal such decision to the Circuit Court, as provided by Florida Statutes.

107.3 Limitations on authority to grant variances. The City Council shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 107.6 of this ordinance, the conditions of issuance set forth in Section 107.7 of this ordinance, and the comments and recommendations of the Floodplain Administrator and the Building Official. The City Council has the right to attach such conditions as it deems necessary to further the purposes and objectives of this ordinance.

107.3.1 Restrictions in floodways. A variance shall not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in Section 105.3 of this ordinance.

107.4 Historic buildings. A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the *Florida Building Code, Existing Building, Chapter 11 Historic Buildings*, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the *Florida Building Code*.

107.5 Functionally dependent uses. A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this ordinance, provided the variance meets the requirements of Section 107.3.1, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

107.6 Considerations for issuance of variances. In reviewing requests for variances, the City Council shall consider all technical evaluations, all relevant factors, all other applicable provisions of the *Florida Building Code*, this ordinance, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- (4) The importance of the services provided by the proposed development to the community;
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- (6) The compatibility of the proposed development with existing and anticipated development;
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

107.7 Conditions for issuance of variances. Variances shall be issued only upon:

- (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this ordinance or the required elevation standards;
- (2) Determination by the City Council that:
 - (a) Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
 - (b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
 - (c) The variance is the minimum necessary, considering the flood hazard, to afford relief;
- (3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and
- (4) If the request is for a variance to allow construction of the lowest floor of a new building,

or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25 for \$100 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

SECTION 108 VIOLATIONS

108.1 Violations. Any development that is not within the scope of the *Florida Building Code* but that is regulated by this ordinance that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this ordinance, shall be deemed a violation of this ordinance. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this ordinance or the *Florida Building Code* is presumed to be a violation until such time as that documentation is provided.

108.2 Authority. For development that is not within the scope of the *Florida Building Code* but that is regulated by this ordinance and that is determined to be a violation, the Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.

108.3 Unlawful continuance. Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law as provided by Section 1-15 of the City Code.

CHAPTER 2 DEFINITIONS

SECTION 201 GENERAL

201.1 Scope. Unless otherwise expressly stated, the following words and terms shall, for the purposes of this ordinance, have the meanings shown in this section.

201.2 Terms defined in the *Florida Building Code*. Where terms are not defined in this ordinance and are defined in the *Florida Building Code*, such terms shall have the meanings ascribed to them in that code.

201.3 Terms not defined. Where terms are not defined in this ordinance or the *Florida Building Code*, such terms shall have ordinarily accepted meanings such as the context implies.

SECTION 202 DEFINITIONS

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the Floodplain Administrator's interpretation of any provision

of this ordinance or a request for a variance.

ASCE 24. A standard titled *Flood Resistant Design and Construction* that is referenced by the *Florida Building Code*. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a 1-percent chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 1612.2.] The base flood is commonly referred to as the "100-year flood" or the "1-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section 1612.2.]

Basement. The portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in FBC, B, Section 1612.2.]

Design flood. The flood associated with the greater of the following two areas: [Also defined in FBC, B, Section 1612.2.]

- (1) Area with a floodplain subject to a 1-percent or greater chance of flooding in any year; or
- (2) Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Design flood elevation. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet. [Also defined in FBC, B, Section 1612.2.]

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

Encroachment. The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

Existing building and existing structure. Any buildings and structures for which the "start of construction" commenced before December 3, 2001. [Also defined in FBC, B, Section 1612.2.]

Existing manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before December 3, 2001.

Expansion to an existing manufactured home park or subdivision. The preparation of

additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land from: [Also defined in FBC, B, Section 1612.2.]

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood damage-resistant materials. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 1612.2.]

Flood hazard area. The greater of the following two areas: [Also defined in FBC, B, Section 1612.2.]

- (1) The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.
- (2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Flood Insurance Rate Map (FIRM). The official map of the community on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 1612.2.]

Flood Insurance Study (FIS). The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and Floodway Map (if applicable), the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 1612.2.]

Floodplain Administrator. The office or position designated and charged with the administration and enforcement of this ordinance (may be referred to as the Floodplain Manager).

Floodplain development permit or approval. An official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and that are determined to be compliant with this ordinance.

Floodway. The channel of a river or other riverine watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot. [Also defined in FBC, B, Section 1612.2.]

Floodway encroachment analysis. An engineering analysis of the impact that a proposed encroachment into a floodway is expected to have on the floodway boundaries and base flood elevations; the evaluation shall be prepared by a qualified Florida licensed engineer using standard engineering methods and models.

Florida Building Code. The family of codes adopted by the Florida Building Commission, including: *Florida Building Code, Building*; *Florida Building Code, Residential*; *Florida Building Code, Existing Building*; *Florida Building Code, Mechanical*; *Florida Building Code, Plumbing*; *Florida Building Code, Fuel Gas*.

Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the *Florida Building Code, Existing Building*, Chapter 11 Historic Buildings.

Letter of Map Change (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

Lowest floor. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the *Florida Building Code* or ASCE 24. [Also defined in FBC, B, Section 1612.2.]

Manufactured home. A structure, transportable in one or more sections, which is eight (8) feet or more in width and greater than four hundred (400) square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value. The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this ordinance, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, Actual Cash Value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser.

New construction. For the purposes of administration of this ordinance and the flood resistant construction requirements of the *Florida Building Code*, structures for which the "start of construction" commenced on or after December 3, 2001 and includes any subsequent improvements to such structures.

New manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after December 3, 2001.

Park trailer. A transportable unit which has a body width not exceeding fourteen (14) feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in section 320.01, F.S.]

Recreational vehicle. A vehicle, including a park trailer, which is: [see in section 320.01, F.S.)

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Special flood hazard area. An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO,

A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 1612.2.]

Start of construction. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 1612.2.]

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. [Also defined in FBC, B Section 1612.2.]

Substantial improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 1612.2.]

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure. [See *Instructions and Notes*]

Variance. A grant of relief from the requirements of this ordinance, or the flood resistant construction requirements of the *Florida Building Code*, which permits construction in a manner that would not otherwise be permitted by this ordinance or the *Florida Building Code*.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

CHAPTER 3 FLOOD RESISTANT DEVELOPMENT

SECTION 301 BUILDINGS AND STRUCTURES

301.1 Design and construction of buildings, structures and facilities exempt from the *Florida Building Code*. Pursuant to Section 104.2.1 of this ordinance, buildings, structures, and facilities that are exempt from the *Florida Building Code*, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24.

Structures exempt from the *Florida Building Code* that are not walled and roofed buildings shall comply with the requirements of Section 307 of this ordinance.

SECTION 302 SUBDIVISIONS

302.1 Minimum requirements. Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

302.2 Subdivision plats. Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats;
- (2) Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 105.2(1) of this ordinance; and
- (3) Compliance with the site improvement and utilities requirements of Section 303 of this ordinance.

SECTION 303 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

303.1 Minimum requirements. All proposed new development shall be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

303.2 Sanitary sewage facilities. All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

303.3 Water supply facilities. All new and replacement water supply facilities shall be

designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

303.4 Limitations on sites in regulatory floodways. No development, including but not limited to site improvements, and land disturbing activity involving fill or regrading, shall be authorized in the regulatory floodway unless the floodway encroachment analysis required in Section 105.3(1) of this ordinance demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.

303.5 Limitations on placement of fill. Subject to the limitations of this ordinance, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the *Florida Building Code*.

SECTION 304 MANUFACTURED HOMES

304.1 General. All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to section 320.8249, F.S., and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this ordinance.

304.2 Foundations. All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that are designed in accordance with the foundation requirements of the *Florida Building Code Residential* Section R322.2 and this ordinance.

304.3 Anchoring. All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

304.4 Elevation. Manufactured homes that are placed, replaced, or substantially improved shall comply with Section 304.4.1 or 304.4.2 of this ordinance, as applicable.

304.4.1 General elevation requirement. Unless subject to the requirements of Section 304.4.2 of this ordinance, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code, Residential* Section R322.2 (Zone A).

304.4.2 Elevation requirement for certain existing manufactured home parks and subdivisions. Manufactured homes that are not subject to Section 304.4.1 of this ordinance, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

- (1) Bottom of the frame of the manufactured home is at or above the elevation required in the *Florida Building Code, Residential Section R322.2 (Zone A)*; or
- (2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.

304.5 Enclosures. Enclosed areas below elevated manufactured homes shall comply with the requirements of the *Florida Building Code, Residential Section R322* for such enclosed areas.

304.6 Utility equipment. Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the *Florida Building Code, Residential Section R322*.

SECTION 305 RECREATIONAL VEHICLES AND PARK TRAILERS

305.1 Temporary placement. Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:

- (1) Be on the site for fewer than 180 consecutive days; or
- (2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

305.2 Permanent placement. Recreational vehicles and park trailers that do not meet the limitations in Section 305.1 of this ordinance for temporary placement shall meet the requirements of Section 304 of this ordinance for manufactured homes.

SECTION 306 TANKS

306.1 Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

306.2 Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section 306.3 of this ordinance shall be permitted in flood hazard areas provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

306.3 Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.

306.4 Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

- (1) At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood;

and

- (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

SECTION 307 OTHER DEVELOPMENT

307.1 General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this ordinance or the *Florida Building Code*, shall:

- (1) Be located and constructed to minimize flood damage;
- (2) Meet the limitations of Section 303.4 of this ordinance if located in a regulated floodway;
- (3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
- (4) Be constructed of flood damage-resistant materials; and
- (5) Have mechanical, plumbing, and electrical systems above the design flood elevation, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

307.2 Fences in regulated floodways. Fences in regulated floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section 303.4 of this ordinance.

307.3 Retaining walls, sidewalks and driveways in regulated floodways. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Section 303.4 of this ordinance.

307.4 Roads and watercourse crossings in regulated floodways. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section 303.4 of this ordinance. Alteration of a watercourse that is part of a road or watercourse crossing shall meet the requirements of Section 105.3(3) of this ordinance.

SECTION 3. The City Code, Article III, is hereby amended by the following administrative amendments to the *Florida Building Code, Building*.

Add a new section 22-112 as follows:

22-112 Modifications of the strict application of the requirements of the Florida Building Code. The Building Official shall coordinate with the Floodplain Administrator to review requests submitted to the Building Official that seek approval to modify the strict application of the flood resistant construction requirements of the Florida Building Code to determine whether such requests require the granting of a variance pursuant to Section 22-114.

Add a new section 22-113 as follows:

22-113 Building permits issued on the basis of an affidavit. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to Section 105.14 and Section 107.6, shall not extend to the flood load and flood resistance construction requirements of the *Florida Building Code*.

Add a new section 22-114 as follows:

22-114 Variances in Flood hazard areas. Pursuant to section 553.73(5), F.S., the variance procedures adopted in the local floodplain management ordinance shall apply to requests submitted to the Building Official for variances to the provisions of Section 1612.4 of the *Florida Building Code, Building* or, as applicable, the provisions of R322 of the *Florida Building Code, Residential*. This section shall not apply to Section 3109 of the *Florida Building Code, Building*.

SECTION 4. FISCAL IMPACT STATEMENT.

In terms of design, plan application review, construction and inspection of buildings and structures, the cost impact as an overall average is negligible in regard to the local technical amendments because all development has been subject to the requirements of the local floodplain management ordinance adopted for participation in the National Flood Insurance Program. In terms of lower potential for flood damage, there will be continued savings and benefits to consumers.

SECTION 5. APPLICABILITY.

For the purposes of jurisdictional applicability, this ordinance shall apply in the City of Avon Park. This ordinance shall apply to all applications for development, including building permit applications and subdivision proposals, submitted on or after the effective date of this ordinance.

SECTION 6. REPEALER.

Any and all ordinances and regulations in conflict herewith are hereby repealed to the extent of any conflict. This ordinance specifically repeals and replaces **Ordinance 06-01 Ordinance 90-09** and the provisions under the current **sections 22-501 through 22-506 Chapter 70** of the City Code of Ordinances.

SECTION 7. INCLUSION INTO THE CODE OF ORDINANCES.

It is the intent of the City Council that the provisions of this ordinance shall become and be made a part of the City of Avon Park's Code of Ordinances, and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 8. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

SECTION 9. EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage.

This ordinance was read for the first time at the Regular Meeting of the City Council on the _____ day of _____, 2014, when it was voted on by members of the City Council as follows:

Yeas _____ Nays _____ Absent _____

This ordinance was read for a second and final time at the Regular Meeting of the City Council on the _____ day of _____, 2014, when it was voted on by members of the City Council as follows:

Yeas _____ Nays _____ Absent _____

ATTEST: CITY OF AVON PARK, FLORIDA

Maria Sutherland, City Clerk

Sharon Schuler, Mayor

APPROVED AS TO FORM:

Gerald T. Buhr, City Attorney

Agenda Item Summary

Subject: Approve the Preliminary Millage rate

Item No. *E 10*

Placed on Agenda by: City Manager

Total Amount of Project: None

Staff Review: Yes

Attorney Review: Yes

Recommended Motion(s): Move to approve the millage at \$0.30 cents per 1000.

Background:

As part of the City's budgetary process, we conducted a budget workshop on July 10th. As proposed on July 10th, we have a balanced budget with our current revenue sources.

Accordingly, staff recommends keeping the taxable millage the same at \$0.30 cents per \$1000 in property valuation.

Agenda Item Summary

Subject: Preliminary Fire Assessment Resolution 14-08

Item No. E-11

Placed on Agenda by: City Manager

Total Amount of Project: None

Staff Review: Yes

Attorney Review: Yes

Recommended Motion(s): Approval

Background:

For your consideration is Resolution 14-08.

For the first time in more than 15 years, the City is able to pass a fire assessment rate reduction of 15% across the board for all improved property.

Staff recommends approval. This is part of our budgetary process.

E-11



CITY OF AVON PARK, FLORIDA



PRELIMINARY RATE RESOLUTION



ADOPTED JULY 14, 2014



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RESOLUTION NO. 14-08

A RESOLUTION OF THE CITY OF AVON PARK, FLORIDA, RELATING TO THE PROVISION OF FIRE RESCUE SERVICES, FACILITIES AND PROGRAMS IN THE CITY OF AVON PARK, FLORIDA; ESTABLISHING THE ESTIMATED ASSESSMENT RATE FOR FIRE RESCUE ASSESSED COSTS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2014; DIRECTING THE PREPARATION OF AN ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AVON PARK, FLORIDA:

SECTION 1. AUTHORITY. This resolution is adopted pursuant to the provisions of City Ordinance No. 01-00 (the "Assessment Ordinance"), City Resolution No. 00-08 (the "Initial Assessment Resolution"), City Resolution No. 00-09 (the "Final Assessment Resolution"), sections 166.021 and 166.041, Florida Statutes, and other applicable provisions of law.

SECTION 2. PURPOSE AND DEFINITIONS. This resolution initiates the annual process for updating the Assessment Roll and directs the reimposition of Fire Rescue Assessments for the Fiscal Year beginning October 1, 2014 (hereinafter the "Preliminary Rate Resolution"). All capitalized words and terms not otherwise defined herein shall have the meanings set forth in the Assessment Ordinance, the Initial Assessment Resolution, and the Final Assessment Resolution. Unless the context indicates otherwise, words imparting the singular number include the plural number, and vice versa.

"Building Area" means the actual area of a Building expressed in square feet and reflected on the Tax Roll or, in the event such information is not reflected or determined to be accurately reflected on the Tax Roll, that area determined by the City.

"Commercial Property" means, collectively, those Tax Parcels with a Code Description designated as "Commercial" in the Improvement Codes together with those Tax Parcels that meet the definition of Recreational Vehicle Park.

"Recreational Vehicle Park" means (1) a place set aside and offered by a person, for either direct or indirect remuneration of the owner, lessor, or operator of such place, for the parking, accommodation, or rental of five or more recreational vehicles or tents; and (2) licensed by the Department of Health of the State of Florida, or its successor in function as a "recreational vehicle park" under Chapter 513, Florida Statutes, as may be amended from time-to-time.

"Residential Property" means those Tax Parcels with a condominium use under the DOR Codes together with those Tax Parcels with a Code Description designated as "Residential" in the Improvement Codes, excluding those Tax Parcels that meet the definition of Recreational Vehicle Park.

SECTION 3. PROVISION AND FUNDING OF FIRE RESCUE SERVICES.

(A) Upon the imposition of a Fire Rescue Assessment for fire rescue services, facilities, or programs against Assessed Property located within the City, the City shall provide fire rescue services to such Assessed Property. A portion of the cost to provide such fire rescue services, facilities, or programs shall be funded from proceeds of the Fire Rescue Assessments. The remaining cost required to provide fire rescue services, facilities, and programs shall be funded by available City revenues other than Fire Rescue Assessment proceeds.

(B) It is hereby ascertained, determined, and declared that each parcel of Assessed Property located within the City will be benefitted by the City's provision of fire rescue services, facilities, and programs in an amount not less than the Fire Rescue

Assessment imposed against such parcel, computed in the manner set forth in this Preliminary Rate Resolution.

SECTION 4. IMPOSITION AND COMPUTATION OF FIRE RESCUE ASSESSMENTS. Fire Rescue Assessments shall be imposed against all Tax Parcels within the Property Use Categories, including Institutional Property that may be wholly exempt from ad valorem taxation. Fire Rescue Assessments shall be computed in the manner set forth in this Preliminary Rate Resolution.

SECTION 5. LEGISLATIVE DETERMINATIONS OF SPECIAL BENEFIT AND FAIR APPORTIONMENT.

(A) The legislative determinations of special benefit and fair apportionment embodied in the Assessment Ordinance, the Initial Assessment Resolution, and the Final Assessment Resolution are affirmed and incorporated herein by reference.

(B) In accordance with section 166.223, Florida Statutes, which mandates that the City treat Recreational Vehicle Park property as Commercial Property for non-ad valorem special assessments levied by the City such as the proposed Fire Rescue Assessment, it is fair and reasonable to treat each space within the Recreational Vehicle Parks as a Building of Commercial Property and assign the minimum square footage of 1,200 square feet that is mandated by the Department of Health under Chapter 64E-15.002(3), Florida Administrative Code for Recreational Vehicle Park spaces, the minimum square footage of 2,400 square feet that is mandated by the Department of Health under Chapter 64E-15.002(2), Florida Administrative Code, for mobile home spaces inside Recreational Vehicle Parks, and a square footage of 500 square feet for tent spaces inside Recreational Vehicle Parks, also as mandated by Chapter 64E-15.002(3), Florida Administrative Code.

(C) Government Property provides facilities and uses to the community, local constituents and the public in general that serve a legitimate public purpose and provide a public benefit. Therefore, it is fair and reasonable not to impose the Fire Rescue Assessments upon such parcels of Government Property. However, Government Property that is owned by federal government mortgage entities, such as the VA and HUD, due to foreclosures are not serving a governmental purpose nor providing a public benefit but are instead being held by these federal government mortgage entities in a proprietary capacity. Accordingly, these properties shall not be exempted from the Fire Rescue Assessment.

SECTION 6. COST APPORTIONMENT METHODOLOGY. The Cost Apportionment embodied in Section 6 of the Initial Assessment Resolution is affirmed and incorporated herein by reference.

SECTION 7. PARCEL APPORTIONMENT METHODOLOGY.

(A) The apportionment among Tax Parcels of that portion of the Fire Rescue Assessed Cost apportioned to each Property Use Category under the Cost Apportionment shall be consistent with the Parcel Apportionment methodology described and determined in Appendix A, which Parcel Apportionment methodology is hereby approved, adopted, and incorporated into this Preliminary Rate Resolution by reference.

(B) It is hereby acknowledged that the Parcel Apportionment methodology described and determined in Appendix A is to be applied in the calculation of the estimated Fire Rescue Assessment rates established in Section 8 of this Preliminary Rate Resolution.

**SECTION 8. DETERMINATION OF FIRE RESCUE ASSESSED COSTS;
ESTABLISHMENT OF ANNUAL FIRE RESCUE ASSESSMENTS.**

(A) The Fire Rescue Assessed Costs to be assessed and apportioned among benefitted parcels pursuant to the Cost Apportionment and the Parcel Apportionment for the Fiscal Year commencing October 1, 2014, is the amount determined in the Estimated Fire Rescue Assessment Rate Schedule attached hereto as Appendix B which is incorporated herein by reference. The approval of the Estimated Fire Rescue Assessment Rate Schedule by the adoption of this Preliminary Rate Resolution determines the amount of the Fire Rescue Assessed Costs. The remainder of such Fiscal Year budget for fire rescue services, facilities, and programs shall be funded from available City revenue other than Fire Rescue Assessment proceeds.

(B) The estimated Fire Rescue Assessments specified in the Estimated Fire Rescue Assessment Rate Schedule are hereby established to fund the specified Fire Rescue Assessed Costs determined to be assessed in the Fiscal Year commencing October 1, 2014.

(C) The estimated Fire Rescue Assessments established in this Preliminary Rate Resolution shall be the estimated assessment rates applied by the City Manager in the preparation of the updated Assessment Roll for the Fiscal Year commencing October 1, 2014, as provided in Section 9 of this Preliminary Rate Resolution.

SECTION 9. ASSESSMENT ROLL.

(A) The City Manager is hereby directed to prepare, or cause to be prepared, an updated Assessment Roll for the Fiscal Year commencing October 1, 2014, in the manner provided in the Assessment Ordinance. The updated Assessment Roll shall include all Tax Parcels within the Property Use Categories. The City Manager shall apportion the

estimated Fire Rescue Assessed Cost to be recovered through Fire Rescue Assessments in the manner set forth in this Preliminary Rate Resolution.

(B) A copy of this Preliminary Rate Resolution, the Assessment Ordinance, the Initial Assessment Resolution, the Final Assessment Resolution, documentation related to the estimated amount of the Fire Rescue Assessed Cost to be recovered through the imposition of Fire Rescue Assessments, and the updated Assessment Roll for the Fiscal Year commencing October 1, 2014 shall be maintained on file in the office of the City Manager and open to public inspection. The foregoing shall not be construed to require that the updated Assessment Roll proposed for the Fiscal Year beginning October 1, 2014, be in printed form if the amount of the Fire Rescue Assessment for each parcel of property can be determined by the use of a computer terminal available to the public.

(C) It is hereby ascertained, determined, and declared that the method of determining the Fire Rescue Assessments for fire rescue services as set forth in the Initial Assessment Resolution, the Final Assessment Resolution and this Preliminary Rate Resolution is a fair and reasonable method of apportioning the Fire Rescue Assessed Cost among parcels of Assessed Property located within the City.

SECTION 10. AUTHORIZATION OF PUBLIC HEARING. There is hereby established a public hearing to be held at 6:00 p.m. on August 25, 2014, in the Council Chambers, 123 East Pine Street, Avon Park, Florida, at which time the City Council will receive and consider any comments on the Fire Rescue Assessments from the public and affected property owners and consider imposing Fire Rescue Assessments for the Fiscal Year commencing October 1, 2014 and collecting such assessments on the same bill as ad valorem taxes.

SECTION 11. NOTICE BY PUBLICATION. The City Manager shall publish a notice of the public hearing authorized by Section 10 hereof in the manner and time provided in Section 2.04 of the Assessment Ordinance. The notice shall be published no later than August 1, 2014, in substantially the form attached hereto as Appendix C.

SECTION 12. NOTICE BY MAIL. The City Manager shall also provide notice by first class mail to the Owner of each parcel of Assessed Property in the event circumstances described in Section 2.08(F) of the Assessment Ordinance so require, in substantially the form attached hereto as Appendix D. Such notices shall be mailed no later than August 1, 2014.

SECTION 13. APPLICATION OF ASSESSMENT PROCEEDS. Proceeds derived by the City from the Fire Rescue Assessments will be utilized for the provision of fire rescue services, facilities, and programs. In the event there is any fund balance remaining at the end of the Fiscal Year, such balance shall be carried forward and used only to fund fire rescue services, facilities, and programs.

SECTION 14. EFFECTIVE DATE. This Preliminary Rate Resolution shall take effect immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED THIS 14th DAY OF JULY, 2014.

ATTEST:

Mayor

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

Gerald Buhr
City Attorney

APPENDIX A

PARCEL APPORTIONMENT METHODOLOGY

The Cost Apportionment to each Property Use Category and to Mixed Use Property shall be apportioned among the Tax Parcels within each Property Use Category and to Mixed Use Property Tax Parcels as follows.

SECTION A-1. RESIDENTIAL PROPERTY. The Fire Rescue Assessment for each Tax Parcel of Residential Property shall be computed by multiplying the Demand Percentage attributable to Residential Property by the Fire Rescue Assessed Costs, dividing such product by the total number of Dwelling Units shown on the Tax Roll within the City, and then multiplying such quotient by the number of Dwelling Units located on such Tax Parcel.

SECTION A-2. NON-RESIDENTIAL PROPERTY. The Fire Rescue Assessments for each Building of Non-Residential Property, except Recreational Vehicle Parks, shall be computed as follows:

(A) Respectively, multiply the Fire Rescue Assessed Costs by the Demand Percentage attributable to each of the non-residential Property Use Categories. The resulting dollar amounts reflect the portions of the City's fire rescue budget to be respectively funded from Fire Rescue Assessment revenue derived from each of the nonresidential Property Use Categories.

(B) Separate each Building in each of the non-residential Property Use Categories into one of the following square footage categories:

(1) Buildings with a Building Area of less than 1,999 square feet;

(2) Buildings with a Building Area between 2,000 square feet and 3,499 square feet;

(3) Buildings with a Building Area between 3,500 square feet and 4,999 square feet;

(4) Buildings with a Building Area between 5,000 square feet and 9,999 square feet;

(5) Buildings with a Building Area between 10,000 square feet and 19,999 square feet;

(6) Buildings with a Building Area between 20,000 square feet and 29,999 square feet;

(7) Buildings with a Building Area between 30,000 square feet and 39,999 square feet;

(8) Buildings with a Building Area between 40,000 square feet and 49,999 square feet; and

(9) Buildings with a Building Area of 50,000 square feet or greater.

(C) As to each non-residential Property Use Category multiply the number of Buildings categorized in:

(1) Subsection (B)(1) of this Section by 1,000 square feet;

(2) Subsection (B)(2) of this Section by 2,000 square feet;

(3) Subsection (B)(3) of this Section by 3,500 square feet;

(4) Subsection (B)(4) of this Section by 5,000 square feet;

(5) Subsection (B)(5) of this Section by 10,000 square feet;

- (6) Subsection (B)(6) of this Section by 20,000 square feet;
- (7) Subsection (B)(7) of this Section by 30,000 square feet;
- (8) Subsection (B)(8) of this Section by 40,000 square feet; and
- (9) Subsection (B)(9) of this Section by 50,000 square feet.

(D) For each non-residential Property Use Category, add the products of subsections (C)(1) through (C)(9) of this Section. The sum of these products reflects an aggregate square footage area for each non-residential Property Use Category to be used by the City in the computation of Fire Rescue Assessments.

(E) Divide the product of subsection (A) of this Section relative to each of the non-residential Property Use Categories by the sum of the products for each non-residential Property Use Category described in subsection (D) of this Section. The resulting quotient expresses a dollar amount adjusted or weighted per square foot of improved area to be used in computing Fire Rescue Assessments on each of the respective non-residential Property Use Categories.

(F) For each of the non-residential Property Use Categories, multiply the resulting quotients from subsection (E) of this Section by each of the respective products in subsections (C)(1) through (C)(9) of this Section. The resulting products for each non-residential Property Use Category expresses a series of gross dollar amounts expected to be funded by all Buildings in the respective non-residential Property Use Categories in each of the square footage categories described in subsection (B) of this Section.

(G) For each of the non-residential Property Use Categories, divide each of the respective products of subsection (F) of this Section by the number of Buildings determined to be in each of the square footage categories identified in subsection (B) of this Section. The result expresses the respective dollar amounts of the Fire Rescue Assessments to be imposed upon each Building in each of the non-residential Property Use Categories.

SECTION A-3. RECREATIONAL VEHICLE PARKS. Notwithstanding the procedure in Section A-2 for Non-Residential Property, the Fire Rescue Assessments for each Tax Parcel of Recreational Vehicle Park property shall be computed as follows:

(A) Aggregate the amount of square footage for each Tax Parcel of Recreational Vehicle Park, with recreational vehicle parks spaces, as reported to the Department of Health, at 1,200 square feet each, mobile home spaces, as reported to the Department of Health, at 2,400 square feet each, and tent spaces, as reported to the Department of Health, at 500 square feet each.

(B) Assign the respective dollar amount of the Fire Rescue Assessments determined in Section A-2 of this Appendix for Commercial Property to the comparable aggregated square footage category ranges of Recreational Vehicle Park property as calculated in paragraph (A) above. Any aggregated square footage that exceeds 50,000 square feet on a Tax Parcel shall be assigned the Commercial dollar amount for 50,000 square feet.

SECTION A-4. MIXED USE PROPERTY. The Fire Rescue Assessments for each Tax Parcel classified in two or more Property Use Categories shall be the sum of the Fire Rescue Assessments computed for each Property Use Category.

APPENDIX B

ESTIMATED FIRE RESCUE ASSESSMENT RATE SCHEDULE

SECTION B-1. DETERMINATION OF FIRE RESCUE ASSESSED COSTS. The estimated Fire Rescue Assessed Costs to be assessed for the Fiscal Year commencing October 1, 2014, is \$878,285.

SECTION B-2. ESTIMATED FIRE RESCUE ASSESSMENTS.

(A) The estimated Fire Rescue Assessments to be assessed and apportioned among benefitted parcels pursuant to the Cost Apportionment and Parcel Apportionment to generate the estimated Fire Rescue Assessed Cost for the Fiscal Year commencing October 1, 2014, are hereby established as follows for the purpose of this Preliminary Rate Resolution:

RESIDENTIAL PROPERTY USE CATEGORIES	Rate Per Dwelling Unit				
Residential	\$140				
NON-RESIDENTIAL PROPERTY USE CATEGORIES	Building Classification (in square foot ranges)	Commercial	Industrial/ Warehouse	Institutional	Nursing Homes
	< 1,999	\$113	\$43	\$152	\$1,104
	2,000 - 3,499	\$226	\$85	\$304	\$2,209
	3,500 - 4,999	\$396	\$148	\$532	\$3,866
	5,000 - 9,999	\$565	\$212	\$760	\$5,522
	10,000 - 19,999	\$1,131	\$423	\$1,521	\$11,044
	20,000 - 29,999	\$2,262	\$847	\$3,040	\$22,089
	30,000 - 39,999	\$3,392	\$1,269	\$4,561	\$33,133
	40,000 - 49,999	\$4,524	\$1,692	\$6,081	\$44,177
	> 50,000	\$5,654	\$2,116	\$7,602	\$55,221

(B) Any shortfall in the expected Fire Rescue Assessment proceeds due to any reduction or exemption from payment of the Fire Rescue Assessments required by law or

authorized by the City Council shall be supplemented by any legally available funds, or combination of such funds, and shall not be paid for by proceeds or funds derived from the Fire Rescue Assessments. In the event a court of competent jurisdiction determines any exemption or reduction by the City Council is improper or otherwise adversely affects the validity of the Fire Rescue Assessment imposed for this Fiscal Year, the sole and exclusive remedy shall be the imposition of a Fire Rescue Assessment upon each affected Tax Parcel in the amount of the Fire Rescue Assessment that would have been otherwise imposed save for such reduction or exemption afforded to such Tax Parcel by the City Council.

APPENDIX C

FORM OF NOTICE TO BE PUBLISHED To Be Published by August 1, 2014

NOTICE OF HEARING TO IMPOSE AND PROVIDE FOR COLLECTION OF FIRE RESCUE SPECIAL ASSESSMENTS

Notice is hereby given that the City Council of the City of Avon Park will conduct a public hearing to consider the imposition of annual fire rescue special assessments for the provision of fire rescue services within the municipal boundaries of the City of Avon Park.

The hearing will be held at 6:00 p.m. on August 25, 2014, in the Council Chambers, 123 East Pine Street, Avon Park, Florida, for the purpose of receiving public comment on the proposed assessments. All affected property owners have a right to appear at the hearing and to file written objections with the City Council within 20 days of this notice. If a person decides to appeal any decision made by the City Council with respect to any matter considered at the hearing, such person will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made. In accordance with the Americans with Disabilities Act, persons needing a special accommodation or an interpreter to participate in this proceeding should contact the City Manager's Office at (863) 452-4400, at least three days prior to the date of the hearing.

The assessment for each parcel of property will be based upon each parcel's classification and the total number of billing units attributed to that parcel. The following table reflects the proposed fire rescue assessment schedules.

FIRE RESCUE ASSESSMENTS

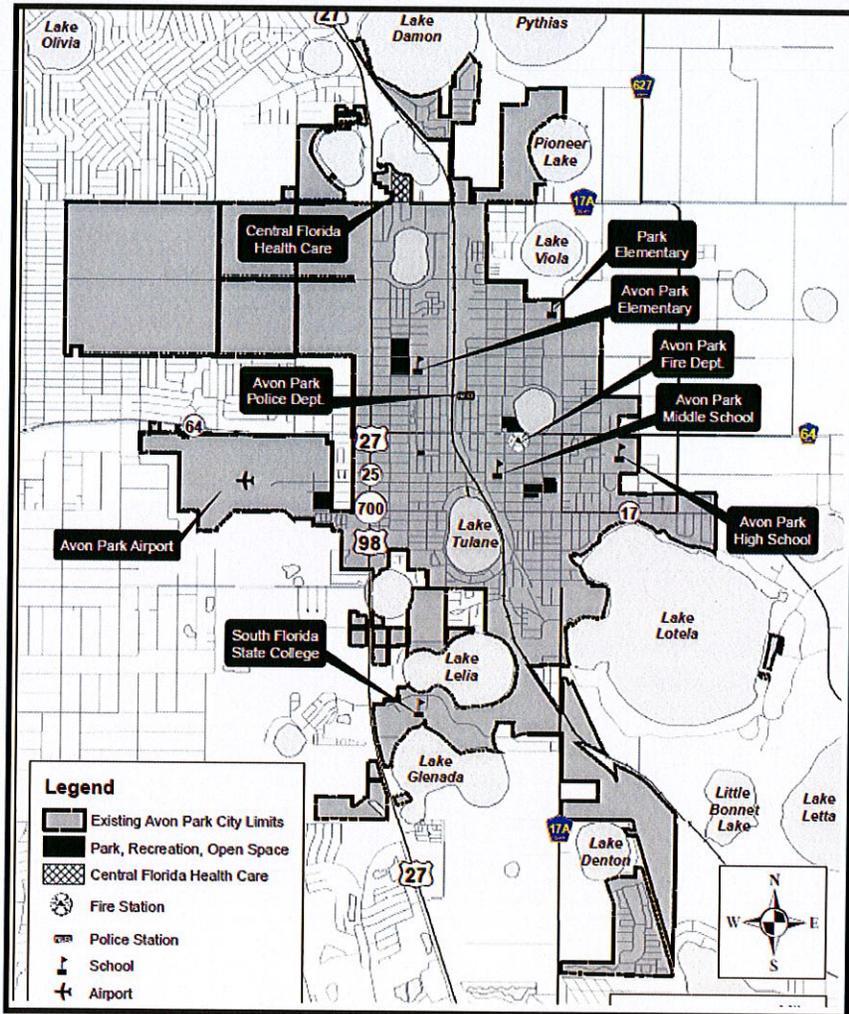
RESIDENTIAL PROPERTY USE CATEGORIES	Rate Per Dwelling Unit				
Residential	\$140				
NON-RESIDENTIAL PROPERTY USE CATEGORIES	Building Classification (in square foot ranges)	Commercial	Industrial/ Warehouse	Institutional	Nursing Homes
	< 1,999	\$113	\$43	\$152	\$1,104
	2,000 - 3,499	\$226	\$85	\$304	\$2,209
	3,500 - 4,999	\$396	\$148	\$532	\$3,866
	5,000 - 9,999	\$565	\$212	\$760	\$5,522
	10,000 - 19,999	\$1,131	\$423	\$1,521	\$11,044
	20,000 - 29,999	\$2,262	\$847	\$3,040	\$22,089
	30,000 - 39,999	\$3,392	\$1,269	\$4,561	\$33,133
	40,000 - 49,999	\$4,524	\$1,692	\$6,081	\$44,177
	> 50,000	\$5,654	\$2,116	\$7,602	\$55,221

Copies of the Assessment Ordinance, the Initial Assessment Resolution, the Final Assessment Resolution, the Preliminary Rate Resolution for Fiscal Year 2014-15, and the updated Assessment Roll are available for inspection at City Hall, located at 110 East Main Street, Avon Park, Florida.

The assessments will be collected on the ad valorem tax bill to be mailed in November 2014, as authorized by section 197.3632, Florida Statutes. Failure to pay the assessments will cause a tax certificate to be issued against the property which may result in a loss of title.

If you have any questions, please contact the City Manager at (863) 452-4400,
Monday through Friday between 9:00 a.m. and 5:00 p.m.

CITY COUNCIL CITY OF AVON PARK, FLORIDA



APPENDIX D

FORM OF NOTICE TO BE MAILED

To be mailed by August 1, 2014

City of Avon Park
110 East Main Street
Avon Park, FL 33825

Owner's Name
Address
City, State Zip

Tax Parcel #: _____
Parcel Address: _____

*******NOTICE TO PROPERTY OWNER*******

As required by Section 197.3632, Florida Statutes, notice is given by the City of Avon Park that an annual assessment for fire rescue services using the tax bill collection method may be levied on your property. The purpose of this assessment is to fund fire rescue services benefiting improved property located within the City of Avon Park. The total annual fire rescue assessment revenue to be collected within the City of Avon Park is estimated to be \$878,285 for Fiscal Year October 1, 2014 – September 30, 2015. The annual fire rescue assessment is based on the classification of each parcel of property and number of billing units contained therein. The above parcel has the following units:

Category	Type and Number of Billing Units	Fiscal Year 14-15 Assessment
Total Assessment		

The annual fire rescue assessment for the above parcel is \$ _____ for Fiscal Year 2014-15 and future fiscal years.

A public hearing will be held at 6:00 p.m. on August 25, 2014, in the City Council Chambers, 123 East Pine Street, Avon Park, Florida for the purpose of receiving public comment on the proposed assessments. You and all other affected property owners have a right to appear at the hearing and to file written objections with the City Council within 20 days of this notice. If you decide to appeal any decision made by the City Council with respect to any matter considered at the hearing, you will need a record of the proceedings and may need to ensure that a verbatim record is made, including the testimony and evidence upon which the appeal is to be made. In accordance with the Americans with Disabilities Act, persons needing special accommodation or an interpreter to participate in this proceeding should contact the City Manager's office at (863) 452-4400, at least three days prior to the date of the hearing.

Unless proper steps are initiated in a court of competent jurisdiction to secure relief within 20 days from the date of City Council action at the above hearing (including the method of apportionment, the rate of assessment and the imposition of assessments), such action shall be the final adjudication of the issues presented.

Copies of the Assessment Ordinance, the Initial Assessment Resolution, the Final Assessment Resolution, the Preliminary Rate Resolution for Fiscal Year 2014-15, and the updated assessment roll are available for inspection at the City Manager's Office, City Hall, located at 110 E. Main Street, Avon Park, Florida.

Both the fire rescue service non-ad valorem assessment amount shown on this notice and the ad valorem taxes for the above parcel will be collected on the ad valorem tax bill mailed in November of each year that the assessment is imposed. Failure to pay the assessments will cause a tax certificate to be issued against the property which may result in a loss of title.

If there is a mistake on this notice, it will be corrected. If you have any questions regarding your fire rescue assessment, please contact the City Manager at (863) 452-4400, Monday through Friday between 9:00 a.m. and 5:00 p.m.

******* THIS IS NOT A BILL *******

Agenda Item Summary

Subject: Land Purchase for treated effluent Ponds, and other municipal purposes

Item No. E-13

Placed on Agenda by: City Manager

Total Amount of Project: Discussion

Staff Review:

Attorney Review: \$1,120,000

Recommended Motion(s):

Motion to authorize the land purchase contract as referenced in Exhibit-A.

Background:

The City's wastewater treatment plant is mechanically and structurally rated at 1.5 million gallon per day in treatment capacity. The plant is currently operating at only 50% of its mechanical capacity.

Although, the plant is operated at 50% mechanically, the treated effluent (water) ponds have been down rated in capacity by the Department of Environmental protection operating permit. As a result of this, we constructed two new ponds on our property.

The existing effluent disposal ponds were down rated from 1.5 million gallons per day to 800,000 gallons per day. We are currently processing about 700,000 gpd.

The City currently has 7 disposal ponds on-site at the facility. We performed recent "test holes" on the back ponds, and found a hard pan-clay layer which prevents downward vertical permeability into the soil. We believe that the soil composition for the plant site likely has this hard pan which makes the vertical permeability of the soil a concern.

For a historical perspective on this issue, we offer Figures A, B, C and D. As can be noted, depending on the time of year for the aerial photograph, meaning the wet-season versus the dry-season, the effluent disposal ponds have usually remained full of water despite the treatment plant operating at less than 50% of the rated capacity. This is an old problem dating back to the original plant design and construction in 1986. As can be noted, back in 1994, the ponds were full back then. When reviewing the aerials which follow, please take note that the ponds are full of water. This is not a desired condition which is the reason that our permit was down-rated.

Figure A, 1994 Aerial of ponds showing that 6-ponds full with one pond empty.

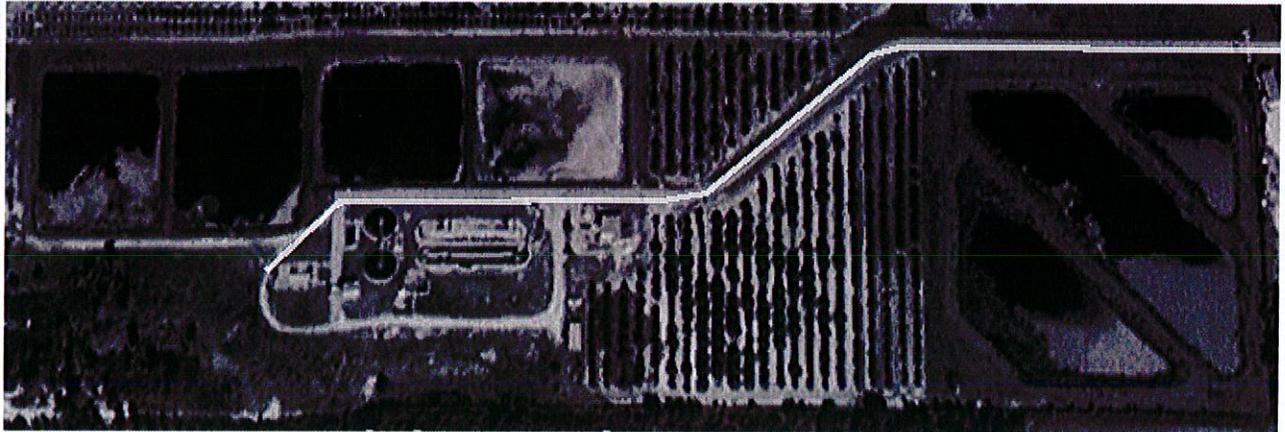


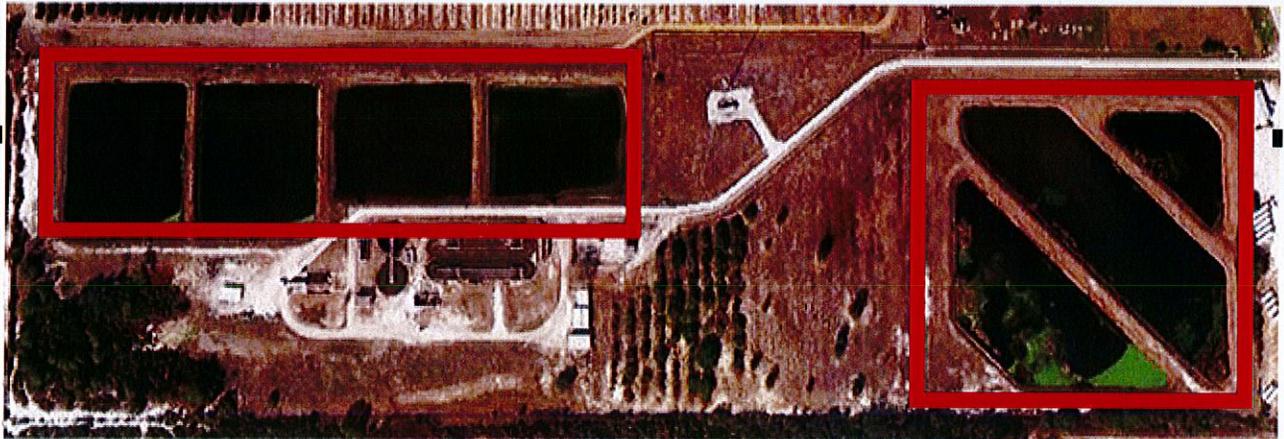
Figure B, 2004 Aerial of ponds showing that 7-ponds are full.



Figure C, 2007 Aerial of ponds showing that 6-ponds full, with one empty pond.



Figure D, 2013 Aerial of ponds showing that 7-ponds are full



Alternatives Researched

City staff has researched the following alternatives with brief narrative provided and associated estimated costs to remedy and re-establish plant capacity.

Option-1, acquiring more land and adding more ponds: City staff has secured a contract with the Boston Mining Company to purchase 70 acres of land at \$16,000 per acre. We recommend this alternative.



Option-2, Building a deep well injection system, City staff inquired about drilling a 12” deep well injection on our property. The well depth is estimated at 3,500 ft. At this depth, the effluent (treated wastewater) would be pumped into a saline confined section of the aquifer. This method has been commonly used on Florida’s south east coast, but there are few records for deep wells in our area. We would be this first. There are no such wells in Highlands County. Our consultants recommend a test bore hole to ensure that the project can be accomplished. The test bore hole would cost \$800,000 and the actual project would cost another \$3 Million.

Option-3, Upgrading the City’s Facility to produce Reclaimed water for Golf Course irrigation, this option is estimated to cost \$4.1 Million in improvements needed at the City’s plant. We would need to add filtration, clarifiers, pump stations, and transmission.

For the interested reader, this alternative was investigated on a jointly funded project between the City and the SWFWMD. This alternative would increase the operation and maintenance costs at the City’s Wastewater Plant. Additional staffing would likely be needed to monitor and control the operation of our facility. The selling of the reclaimed effluent would not cover the costs of the additional staffing and added equipment maintenance.

Option-4, Construction of an irrigation field at the City’s Airport, this option would utilize the vacant land at the Airport for irrigation using treated effluent currently produced at the plant. The Airport had about 190 acres. DEP rules allows up to 2” of water per week to be irrigated. This amounts to 0.30” per day to be sprayed on the land. Due to the Airport being 14,000 ft away from our wastewater facility, the transmission costs are estimated at \$700,000. If we perform much of the construction work in-house, the actual cost would be closer to \$450,000. This option would provide an immediate fix, and could be completed in 20-months.

Option-5, Leave it alone and do nothing, this option revolves around not taking any action. The plant is currently permitted for 1.5 million gallons per day, but the effluent disposal is limited to 800,000 gallons per day. We are processing an estimated 700,000 gallons per day. We are not in violation of our permit, but failure to increase capacity could hinder large future development where wastewater capacity would be needed. At some point FDEP will require for the City to develop expansion plans.

Staff recommendation and summary, the issues with the facility’s effluent disposal system is an old concern that dates back to the plant’s original design and permitting in 1986. As can be noted in the historical aerials, the ponds were full even back in 1994. We do not have aerials which date back to 1986. We became aware of these concerns during the most recent 5-year permit renewal for the facility.

In evaluating all of these options, City staff recommends pursuing option-1 or option-4. In option-1, we are purchasing land to build additional ponds. In option-4, we are building a spray field at the Avon Park Airport.

Please review the attached memorandum from the City Attorney which provides a summary of the contract and chronology of activities.

MEMORANDUM

To: Council, City Manager DeLeon
From: Jerry Buhr, City Attorney
Date: July 8, 2014
Subject: Timeline of Boston Mining Property Purchase Agreement Critical Events.

The following are the critical time periods under the proposed agreement to purchase the Boston Mining Effluent Disposal Site. The following dates assume the agreement is approved by the Council and signed by the mayor July 14, 2014:

July 24, 2014 -----City Payment of \$12,000 Deposit to Law Firm of "Wheeler & Travis" (§1.2(b))

July 24, 2014 -----Seller provides City with all documents and materials regarding Property (§4.1)

August 13, 2014 ----- City Payment of \$15,000 closing extension payment. (§1.1)

April 30, 2015 -----City's Deadline to Complete Feasibility Studies (environmental ,engineering, permitting, survey, etc.) and terminate agreement without penalty if property not feasible for effluent disposal. (§4.1)

April 30, 2015 -----Seller's deadline to provide Preliminary Title Report to City Attorney (§5.2)

May 30, 2015 -----Closing date if City does not terminate contract during Feasibility Period. (§6.1)

May 30, 2015 -----City pays remaining \$1,108,000 of Purchase Price at Closing. (§1.2(c))

EXHIBIT A

AGREEMENT OF PURCHASE AND SALE OF LAND

THIS AGREEMENT OF PURCHASE AND SALE of unimproved land is made as of this ^{3rd} day of July, 2014, by and between BOSTON MINING COMPANY, a Florida corporation, with principal offices at 206 Dal Hall Boulevard, Lake Placid, FL 33852 ("SELLER") and the CITY OF AVON PARK, a Florida municipal corporation, with principal offices at 110 East Main Street, Avon Park, FL 33825, ("PURCHASER").

ARTICLE I.

Sale and Purchase

Section 1.1. Purchase. For and in consideration of the Purchase Price and the mutual promises, covenants, representations, warranties, and agreements contained in this agreement ("Agreement"), Seller shall sell and convey, and Purchaser shall purchase, in fee simple all that property and improvements thereon located in Highlands County, Florida, described in Exhibit A attached hereto and incorporated herein by reference (the "Property"). SELLER and PURCHASER have agreed to a delayed Closing as described in section 6.1 below, for which PURCHASER agrees to pay SELLER the non-refundable fee of Fifteen-Thousand Dollars (\$15,000) no later than thirty (30) days after the effective date of this Agreement.

Section 1.2. The Purchase Price and the Deposit.

(a) The Purchase Price to be paid by Purchaser to Seller for the Property shall be One Million One Hundred and Twenty Thousand Dollars (\$1,120,000).

(b) A deposit (the "Deposit") in the amount of Twelve Thousand Dollars (\$12,000.00) shall be paid to the trust account of the law firm of Wheeler and Traviss (the "Escrow Agent") within ten (10) calendar days after the execution of this Agreement by the parties and receipt of an executed copy by Purchaser. Such Deposit shall be returned to Purchaser, if on or before the expiration of the Feasibility Period (hereinafter defined), Purchaser provides written notice to Seller that the Purchaser has determined, in its sole unfettered discretion, not to go forward with the purchase of the Property, and in such case, this Agreement shall terminate, and be of no further force and effect.

(c) The remaining One Million One Hundred and Eight Thousand Dollars (\$1,108,000) of the total purchase price will be paid at Closing (defined below).

ARTICLE II.

Representations and Warranties of Seller

Seller, based upon the due inquiry of individuals familiar with the Property and/or beneficiaries of Seller as to matters addressed in this Article, represents and warrants to Purchaser:

Section 2.1. Legal Status. (i) Seller is a duly formed and validly existing corporation, existing under the laws of the State of Florida; and (ii) Seller and the signatory on behalf of Seller have all legal right

and power to execute this Agreement and to carry out its terms and conditions and Seller has taken all requisite actions for the execution of this Agreement and the consummation of Seller's transactions contemplated by this Agreement.

Section 2.2. No Withholding Requirement. Seller is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"), the transaction contemplated hereby does not constitute a disposition of a U.S. real property interest by a foreign person, and at Closing, no person, including without limitation Purchaser and its counsel and the Title Company (hereinafter defined), shall be subject to the withholding requirements of section 1445 of the Code. At Closing, Seller shall deliver to Purchaser and the Title Company an affidavit stating, under the penalties of perjury, Seller's U.S. taxpayer identification number and that Seller is not a foreign person, it being understood and agreed by Seller that Purchaser may be required to file said affidavit with the Secretary of the Treasury pursuant to applicable regulations.

Section 2.3. No Contemporaneous Agreements. Seller has not and will not after the execution of this Agreement and during the term and pendency of this Agreement, contract with others for the sale, lease, grant any easement or in any way encumber the Property or title thereto. Seller retains all rights to contract for the management, harvesting, and sale of all citrus crops prior to Closing.

Section 2.4. Compliance with Other Instruments, etc. Neither the entering into this Agreement, nor the consummation of the transaction contemplated in this Agreement, shall constitute, or result in, a violation or breach by Seller of any contract or other instrument to which it is a party, or to which it is subject, or by which it or any of its assets may be bound. Seller retains all rights to contract for the management, harvesting, and sale of the 2014-2015 citrus crops completed no later than the Closing, and such agreements will not be prohibited by this clause.

Section 2.5. No Default. Seller has received no written notice or other record of any default or breach by Seller under any of the covenants, conditions, restrictions, rights-of-way, or easements affecting the Property and no such default or breach now exists.

Section 2.6. Mechanics' Liens. No work has been performed or is in progress at, and no materials have been furnished to, the Property which though not presently the subject of a lien might give rise to mechanics', materialmen's or other liens against Seller's interest in the Property or any improvements later erected on the Property.

Section 2.7. Compliance with Laws, etc. Neither the entering into this Agreement nor the consummation of the transaction contemplated shall constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it, or shall result in a violation of any applicable law, order, rule or regulation of any governmental authority. There is no action, suit, proceeding or investigation pending against Seller or the Property which would: (i) prevent the transaction contemplated by this Agreement, (ii) adversely affect the title to the Property, (iii) question the validity or enforceability of the transaction contemplated by this Agreement, or (iv) question the validity or enforceability of any action taken pursuant to this Agreement in any court, or before, or by, any federal, district, county, or municipal department, commission, board, bureau, agency

or other governmental instrumentality. No approval, consent, order or authorization of, or designation, registration or filing (other than for recording purposes) with any governmental authority is required in connection with the due and valid execution and delivery of this Agreement and compliance with the provisions and the consummation of the transaction contemplated in this Agreement.

Section 2.8. Violations. To the best of Seller's knowledge, information and belief, there are no violations of, and Seller has received no notice or other record of any violations of, any federal, state or local laws, ordinances, orders, regulations and requirements affecting the Property.

Section 2.9. Binding Commitments. Seller has not made and shall not make any commitments or representations to any governmental authorities, any adjoining or surrounding property owners, any civic association, any utility, or any other person or entity that would in any manner be binding upon Purchaser or the Property. Seller retains all rights to contract for the management, harvesting, and sale of the 2014-2015 citrus crops, and such agreements will not be prohibited by this clause.

Section 2.10. Condition of Property. The Property is currently unimproved, free of any and all leases, tenancies or claims of occupancy of any kind, and is zoned by Purchaser as multifamily. To the best of Seller's knowledge, information, and belief, no cemeteries, graveyards or other facilities for the interment of human or animal remains are located on any part of the Property.

Section 2.11. Special Assessments. No portion of the Property is subject to or is affected by any special assessment for improvements completed prior to the effective date, whether or not there is presently a lien on the Property, and to the best of Seller's knowledge, information, and belief, no such assessment has been proposed.

Section 2.12. Condemnation. Both parties acknowledge that Purchaser has the authority to condemn the Property should Seller elect not to sell the same through this Agreement for sale and purchase. At this time, Seller has received no notice nor has any knowledge that any such proceeding is contemplated.

Section 2.13. Hazardous Materials and Endangered Species. To the best of Seller's knowledge, information, and belief, there is no asbestos, radon, PCB's, fluorocarbons, oil and other petroleum products, flammable explosives, radioactive materials, or other Hazardous Substances (hereinafter defined) on, in, under or about the Property. Seller has not used, generated, stored, transported, manufactured, treated, released or disposed of any Hazardous Substances on, in, under, or about the Property.

To the best of Seller's knowledge, information, and belief, there are not presently, and there have never been, any storage tanks on, in or about the Property. Seller has no actual knowledge that the Property is in violation of any Environmental Laws as defined herein, and to the best of Seller's knowledge, information, and belief, the Property is not currently under investigation by any such agency.

To the best of Seller's knowledge, information, and belief, there are no Endangered Species (hereinafter defined) on the Property, and to the best of Seller's knowledge, information, and belief, there are no man-made conditions on or affecting the Property for which a valid building permit could not be applied for and obtained by the necessary governmental authorities.

With respect to the terms "Hazardous Substances," "Environmental Laws," and "Endangered Species," they shall have the following meanings and definitions:

(i) Endangered Species: means those species of flora and fauna and their critical habitats defined as endangered or threatened by the Endangered Species Act of 1973 (16 U.S.C. Section 1531. et seq.), as amended or by any other federal, state or local law, ordinance, rule or regulation.

(ii) Environmental Laws: shall mean the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601, et seq. in the Superfund Amendments and Reauthorization Act, 42 U.S.C. 9601, et seq. and in the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. and in the Clean air Act, 42 U.S.C. 7401, et seq., as any of the preceding may be amended from time to time, and any other substances considered hazardous, toxic or otherwise harmful pursuant to any other applicable laws or regulations relating to pollution or protection of human health or the environment.

(iii) Hazardous Substances: means substances defined as a "hazardous substance" or "toxic substance" in the Environmental Laws in effect on the date any representation or warranty is made pursuant to this Agreement.

All statements made "as to the best of Seller's knowledge" are not a guarantee or warranty as to the statements being made. Purchaser will conduct its own environmental study and will rely upon that analysis in deciding whether to purchase the Property.

The use of approved chemicals as directed on the instructions for farming purposes and in accordance with best management practices shall not be considered hazardous substances.

Section 2.14. Historic Status. To the best of Seller's knowledge, information, and belief, there are no threatened or pending designations or applications for designation or other proceedings with any federal, state, or local governmental institution whereby the Property would be declared a historic district that would in any way restrict, impede or subject the construction of new improvements to additional review or regulation by any federal, state or local governmental institution.

Section 2.15. Operation until Closing. Between the effective date and Closing, Seller shall operate the Property only in accordance with law. This Agreement will in no way affect or restrict any and all uses that Seller may currently lawfully operate on the Property.

Section 2.16. Full Disclosure. Seller knows of no materially adverse fact affecting or threatening to affect the Property which has not been disclosed to Purchaser in this Agreement.

Section 2.17. Litigation. There are no actions, suits, proceedings or investigations pending or threatened against Seller or the Property affecting any portion of the Property, including, but not limited to, condemnation actions.

Section 2.18. Parties in Possession. There are no tenants or parties other than Seller in possession or with a right to possession of any portion of the Property.

Section 2.19. Completeness of Representations. No representation or warranty made by Seller in this Agreement intentionally contains any untrue statement of a material fact or intentionally omits to state any material fact necessary to make the statements contained not false or misleading.

Upon knowledge by Seller of any untruth or inaccuracy in any representation or warranty made by Seller or of any change in facts which are the subject of any representation or warranty made by Seller, Seller shall send Notice to Purchaser of the nature of any such matter promptly.

If Purchaser discovers during the course of its study of the Property that any representation or warranty of Seller was untrue or inaccurate when made by Seller, Purchaser shall send Seller notice of any such matter promptly. Seller shall have the opportunity to cure the cause of such untruth or inaccuracy within thirty (30) days after either (i) Seller's knowledge of such untruth or inaccuracy; or (ii) Seller's receipt of notice from Purchaser describing such untruth or inaccuracy, during which time Seller shall exercise due diligence and good faith in endeavoring to cure the cause of such untruth or inaccuracy or to determine the validity of Purchaser's discovery.

ARTICLE III.

Survival of Representations and Warranties

Section 3.1. Survival and Merger. The representations and warranties set forth in Article II of this Agreement shall be deemed to have been made again on and as of the date of Closing and the execution, delivery, and recordation of the instrument of conveyance as described in Section 5.1 hereof, shall not be merged, for a period of three (3) years following Closing. Seller agrees to indemnify and hold Purchaser harmless from any claims, liabilities, damages or expenses, including without limitation, reasonable attorneys' fees and costs, through appeals, which Purchaser may incur by reason of any material breach of Seller's representations and warranties. Further, Purchaser shall have the right to exercise any and all legal and equitable rights and remedies, to recover for any losses, damages, costs or expenses (including, without limitation, reasonable attorneys' fees and costs, through appeals), for any breach of Seller's representations and warranties. Notwithstanding anything herein to the contrary, Purchaser shall not be entitled to recover monetary damages, costs and expenses, (including, without limitation, reasonable attorney's fees and costs, through appeals) for more than the amount of the Purchase Price. Purchaser's remedies under this Section are limited to only those alleged material breaches that could not have reasonably been determined by Purchaser's due diligence studies and title search of the Property.

ARTICLE IV.

Conditions Precedent

In addition to any other provisions of this Agreement relating to covenants and conditions of Closing, the obligations of Purchaser are expressly conditioned upon the following:

Section 4.1. Documents and Feasibility Period. Within no later than ten (10) days after the effective date, Seller shall deliver to Purchaser's attorney copies of all documents or materials in Seller's possession or control regarding the Property including, without limitation, soil tests, environmental assessments, any previous survey of the Property, analyses and engineering studies and data, and title documents (except for documents containing confidential or proprietary information relating to Seller) which documents and materials are hereinafter collectively referred to as the "Seller's Submission".

Purchaser will have until **April 30, 2015** (the "Feasibility Period") to conduct such due diligence reviews and inspections of the Property, including without limitation, economic, feasibility, environmental and engineering studies, physical inspections and tests, community research, and any other studies, tests or inspections that Purchaser deems necessary or prudent in Purchaser's sole, unfettered discretion, to determine the suitability of the Property for the Intended Use. During the Feasibility Period, Purchaser may also apply for all zoning changes and regulatory permits required for Purchaser's Intended Use. If during the Feasibility Period, Purchaser determines in its sole, unfettered discretion, that the transaction contemplated hereby would not be in the best interest of Purchaser, Purchaser may terminate this Agreement by written notice to Seller and receive a refund of Purchaser's Deposit.

INTENDED USE. A wastewater spray irrigation field or other wastewater disposal facilities such as rapid infiltration basins, subsurface percolation, or any combination of these facilities and any related appurtenances.

a) Purchaser shall, at its expense, proceed with such necessary applications to obtain permission for the Intended Use, and Purchaser agrees to commence and pursue such endeavors with reasonable diligence following the execution and delivery of this Agreement and reasonable inspections, engineering and hydrogeological analyses, and studies.

b) Seller shall cooperate with and assist Purchaser by permitting applications and other documents to be filed, and by executing such applications, plats, permits, easements, covenants, restrictions, approvals, consents and other instruments and documents as are necessary or desirable in the pursuit of the Intended Use. Seller shall not be responsible for any fees, including, without limitation, any legal or consulting fees, nor for any other expenses incurred by Purchaser relating to Seller's cooperation with Purchaser.

Seller authorizes Purchaser and Purchaser's agents to enter the Property at any time during the term of this Agreement to perform Purchaser's due diligence and other reviews, surveys, etc., and to make all inquiries of appropriate governmental authorities with respect to the Property, as Purchaser, in its good faith, reasonable judgment, deems necessary.

Section 4.2. Seller's Use During Feasibility Period.

Seller may use the Property as it has used it in the past for all agricultural purposes in accordance with all appropriate best management practices under federal and state laws and rules.

Section 4.3 PURCHASER'S Notice of Acceptance or Restoration of Comprehensive Plan Designation if Contract Terminated.

Upon obtaining the necessary and suitable governmental approvals, Purchaser will notify Seller in writing of such approvals and will commence to Closing unless Purchaser has elected to terminate this Agreement as permitted in this Agreement herein. If Purchaser elects to terminate this Agreement prior to governmental approvals, it agrees to cease all attempts to obtain them and to withdraw all permit and zoning applications then currently existing. If Purchaser elects to terminate this Agreement after governmental approvals have been granted, Purchaser agrees, at no expense to Seller, to restore the land use zoning that existed for the Property at the time that this Agreement was executed. Such restoration will be granted in a timely manner, not to exceed six (6) months from the date of the termination of this Agreement.

ARTICLE V.

Covenants and Conditions of Closing

The obligations of Purchaser shall be subject to the fulfillment of the following covenants and conditions on or prior to Closing, and Seller agrees to fulfill such covenants and conditions:

Section 5.1. Instrument of Conveyance. Seller shall execute and deliver to Purchaser a special warranty deed, as shall be required to convey to Purchaser, its assigns, designee or nominee, good and marketable title to the Property, free from all liens and encumbrances except as stated. The instrument of conveyance shall be in form and substance satisfactory to Purchaser, in proper form for recording. Purchaser's satisfaction of the form and substance of the instrument of conveyance shall not be unreasonably withheld.

Recording fees and other filing or similar fees shall be paid by Purchaser. All notary fees and other Closing costs shall be paid by Purchaser. If imposed upon the transaction, Seller and Purchaser shall share equally the State recordation tax, the State transfer tax, and the County transfer tax.

Drafts of the instrument of conveyance and any other documentation to be delivered by Seller at Closing shall be delivered to Purchaser for review not later than fifteen (15) calendar days prior to the date of Closing.

Section 5.2. Title, Survey. Title to the Property shall be good of record and in fact, fully marketable, insurable at standard title company insurance rates, and conveyed to Purchaser subject only to the Permitted Exceptions. The term "Permitted Exceptions" shall include all matters revealed in the Preliminary Title Report and approved by Purchaser. Within thirty (30) days prior to the expiration of the Feasibility Period, Seller shall obtain at its own cost, from the title company of its selection duly licensed in Florida, (the "Title Company") a commitment to issue a title policy covering the Property (the

"Preliminary Title Report") and provide such Preliminary Title Report to Purchaser. Purchaser shall have the right to object to any exceptions listed in the Preliminary Title Report by giving notice to Seller within fourteen (14) calendar days after Seller delivers the Preliminary Title Report to Purchaser.

If Purchaser disapproves of any matter affecting title, Seller, in Seller's sole and absolute discretion, shall elect, within five (5) business days after receipt of such written notice by Purchaser, either to (i) endeavor to cure or remove any one or more of such title objections, or (ii) terminate this Agreement by providing notice to Purchaser to that effect within such five (5) day period.

If Seller elects to cure or remove any exception, it shall have a reasonable time, not to exceed one hundred and eighty (180) days, to cure or remove the exception as an exception to title.

Failure to provide notice to Purchaser of Seller's election, as described above, shall be deemed to constitute Seller's election to cure such title objection.

For three (3) business days following written notice to Purchaser of Seller's actual or deemed election to terminate this Agreement, Purchaser shall have the right to waive any one or more of such title exceptions that Seller has not elected to cure or remove, thereby rescinding Seller's election to terminate this Agreement on such grounds and agreeing to take title to the Property subject to such title exceptions.

In the event that Seller fails to cure or remove any exception that it has agreed to cure or remove within the one hundred eighty (180) day period, Purchaser shall have the option, in Purchaser's sole and absolute discretion, either to (a) terminate this Agreement, in which case, the Deposit shall be returned to Purchaser, or (b) proceed to Closing without reduction in Purchaser Price (except that any unpaid and unsatisfied mechanics' liens, judgments and unsatisfied mortgages, together with any interest and penalties, existing at Closing may be paid by Purchaser at Closing out of Seller's sales proceeds).

From and after the effective date, Seller shall not (i) grant any mortgage, deed of trust, or other financial lien secured by the Property, unless it will be discharged at the Closing; or (ii) place any easement, covenant, lease, restriction or other encumbrance upon the Property, without Purchaser's prior written consent, which consent shall not be unreasonably withheld or delayed.

At Closing, a standard current form of American Land Title Association owner's policy of title insurance or irrevocable commitment to issue the same will be delivered to Purchaser, with liability in the amount of the Purchase Price issued by the Title Company, at Seller's cost, insuring that fee title to the Property vests in Purchaser subject to the Permitted Exceptions.

Purchaser may, at its expense, obtain a survey (the "Survey") of the Property. Purchaser shall have until the end of the Feasibility Period to examine the Survey. If the Survey shows any encroachment on the Property, or if the Survey shows any other defect which would affect either the marketability of title to any portion of the Property or Purchaser's Intended Use, Purchaser shall notify Seller of such encroachment or defect prior to the end of the Feasibility Period, and such encroachment or defect shall be treated in the same manner as title objections are treated under this Agreement.

Section 5.3. Risk of Loss. The risk of loss or damage to the Property is assumed by Seller until the date the instrument of conveyance is executed.

Section 5.4. Original Documents. At Closing, Seller shall deliver to Purchaser all original documents pertaining to the Property which Seller has in its possession or control, if any exist. If none exist, then Seller shall deliver to Purchaser a statement to that effect.

Section 5.5. Satisfaction of Liens. Prior to Closing, any and all mortgages, deeds of trust, or liens, of any type whatsoever, with respect to the Property, or as to which it may be subject, and any lis pendens that may have been filed, shall have been satisfied or otherwise released of record by Seller, or provision satisfactory to Purchaser shall have been made by Seller for its full and complete release.

ARTICLE VI.

Closing

Section 6.1. Closing. The Closing Date will be **MAY 30, 2015**, unless either party has previously notified the other of termination as permitted by the terms of this Agreement.

The Deposit with the Title Company of the Purchase Price, the instrument of conveyance, and such other documents as are required by the terms of this Agreement shall be deemed and construed as a good and sufficient tender of performance of the terms of this Agreement.

Section 6.2. Apportionment. All ad valorem real property taxes and other items customarily adjusted shall be apportioned between Seller and Purchaser as of midnight of the day immediately preceding the date of Closing. Seller shall pay its pro rata share of the real estate taxes for the Property; however, Purchaser shall be responsible for its portion of the taxes, but is exempt from payment thereof.

Any special assessments applicable to the Property, whether payable in a lump sum, in installments or otherwise, and any rollback or similar taxes, shall be paid by Seller, provided such assessments or taxes are due and payable for the period prior to Closing, even if not actually payable until after Closing.

Section 6.3. Waiver. Purchaser reserves the right to waive, in whole or in part, any provision which is for the benefit of Purchaser.

ARTICLE VII.

Default and Termination

Section 7.1. Purchaser's Default.

If Purchaser fails to consummate the transaction as required by this Agreement and Seller is ready, willing, and able to perform, or if Purchaser materially breaches any of its obligations under this Agreement, then Seller shall have the right:

- (i) to waive any such breach and proceed to Closing, or
- (ii) to terminate this Agreement and retain the Deposit paid under Paragraph 1.2 (b), herein, or
- (iii) to seek specific performance of this Agreement, or
- (iv) to exercise any other legal and equitable rights or remedies available to it to recover costs and expenses associated with the performance of this Agreement.

Section 7.2. Seller's Default. If Seller fails to consummate the transaction as required by this Agreement and Purchaser is ready, willing, and able to perform, or if Seller materially breaches any of its other obligations, representations or warranties under this Agreement, then Purchaser shall have the right:

- (i) to waive any such breach and proceed to Closing, or
- (ii) to terminate this Agreement and receive a refund of the Deposit, or
- (iii) to seek specific performance of this Agreement, except with respect to the clearance of title exceptions where Seller elects not to do so, as provided in Section 5.2, or
- (iv) to exercise any other legal and equitable rights or remedies available to it to recover costs and expenses associated with the performance of this Agreement.

Section 7.3. Notice of Default. No default or failure by Purchaser or Seller with regard to any act required by either party shall result in the termination or limitation of any right of, or availability of any remedy in favor of, Purchaser or Seller unless or until the other party shall have notified, by written notice, the defaulting party of such failure or default and the defaulting party shall have failed to remedy such failure or cure such default within fifteen (15) days after receipt of such notice.

If a dispute arises between the parties to the transaction as to the disposition of the Deposit, the party holding the Deposit shall (i) hold these funds until the party receives a disposition of Deposit agreement signed by Seller and Purchaser authorizing the disposition of the funds, or (ii) hold these funds until such time as one of the parties to this Agreement files suit and the court in which the suit is filed orders the disbursement of these funds, or (iii) may pay such monies into the court by filing an action of interpleader.

ARTICLE VIII.

Broker's Fees & Attorneys' Fees

Section 8.1. Broker's Fees & Attorneys' Fees. Each party warrants to the other that any broker fee or commission due to the broker which it employs shall be that party's own sole responsibility, and the

party not retaining that broker shall not be responsible for any portion of the other party's broker fee or commission and shall be indemnified and held harmless by the other party from any such broker fee or commission. Notwithstanding the foregoing, Purchaser shall not be deemed or construed to waive any privilege, immunity or other protection available to Purchaser under the doctrine of sovereign immunity or the limitations of liability contained in Section 768.28, Florida Statutes. Likewise, any claim for indemnity brought under this section shall comply with the procedural requirements and pre-suit conditions contained in Section 768.28, Florida Statutes. Each party shall pay its own attorneys' fees in connection with the transaction and Closing.

ARTICLE IX.

General Provisions

Section 9.1. Modifications and Waivers. No modification, waiver, amendment, discharge or change of this Agreement, except as otherwise provided, shall be valid unless the same is in writing and signed by the party against whom the enforcement of such modification, waiver, amendment, discharge or change is sought. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged.

Section 9.2. Litigation Expenses. If either party is required or elects to take legal or equitable action against the other to enforce the non-defaulting party's rights under this Agreement, or to require performance by the defaulting party of its obligations under this Agreement, then the losing party shall immediately pay to the prevailing party all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the prevailing party in such action, including such fees and costs through appeals. A party is deemed to have prevailed if it obtains a judgment in its favor which substantially provides for the relief contemplated either in its complaint or responsive pleading.

Section 9.3. Successors and Assigns. All terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective legal representatives, successors and assigns.

Section 9.4. Governing Law. This Agreement will be performed in the State of Florida and will be construed and enforced in accordance with the governing laws of Florida.

Section 9.5. Notices. Any notice, request, demand, consent, approval, or other communication required or permitted under this Agreement:

A. shall be in writing to the respective addresses of each party stated in the preface of this Agreement, and

B. shall be deemed to have been provided on the earlier of:

(1) forty-eight (48) hours after having been sent as certified or registered mail in the United States mail, postage prepaid, return receipt requested;

(2) the next business day after having been deposited (in time for delivery by such service on such business day) with Federal Express or another courier service; or

(3) if such party's receipt is acknowledged in writing as having been given by hand or other actual delivery, including delivery by electronic mail message, to such party.

C. in each case to the address of the party provided in this Agreement or to such other address as the party may designate to the other party.

Section 9.6. Exhibits. All exhibits and schedules attached are incorporated by reference into this Agreement.

Section 9.7. Survival. For a period of three (3) years following Closing, all of the covenants, agreements, indemnities, representations, and warranties to the extent not performed at Closing shall survive, and shall not be deemed to merge upon the acceptance of delivery or recordation of the instrument of conveyance by Purchaser. Purchaser's remedies are limited to only those alleged material breaches that could not have reasonably been determined by Purchaser's due diligence and title review of the Property.

Section 9.8. Severability. If any provision of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions and any other application thereof shall not in any way be affected or impaired, and such remaining provisions shall continue in full force and effect.

Section 9.9. Construction. Each party and its counsel has reviewed and revised (or requested revisions of) this Agreement, and the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not be applicable in the construction and interpretation of this Agreement. The parties acknowledge that all of the terms of this Agreement were negotiated at arms' length, and that each party, being represented by counsel, is acting to protect its own interest.

Section 9.10. Time Periods. Any time period which expires on, or any date which occurs on, a Saturday, Sunday or legal United States holiday, shall be deemed to be postponed to the next business day. The first day of any time period which runs "from" or "after" a given day shall be deemed to occur on the day after that given day. All days unless otherwise so stated, are to be calendar days.

Section 9.11. Captions. The captions of this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any term.

Section 9.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 9.13. Offer and Acceptance; Effective Date. This Agreement has been executed first by Purchaser and shall be deemed a continuing offer of Purchaser to purchase the Property from Seller for

fifteen (15) business days after the date of Purchaser's execution. The date that Seller executes this Agreement and so notifies Purchaser shall be the effective date.

Section 9.14. Authority to Execute this Agreement. Each individual executing this Agreement on behalf of the party for whom he or she is executing this Agreement hereby warrants and represents that he or she has full, actual, and apparent authority to bind the party to the terms and conditions of this Agreement.

Section 9.15. Venue. Purchaser and Seller agree that any suit, action, or other legal proceeding arising out of or relating to this Agreement may be brought in a court of record of the State of Florida in Highlands County, in the relevant United States District Court, or in any other court of competent jurisdiction.

Section 9.16 1031 Exchange

Seller may elect to enter into a 1031 Exchange with a Qualified Intermediary for this sale and subsequent reinvestment of the sale proceeds. Purchaser agrees to sign any documents reasonably required by the Qualified Intermediary to effect the exchange if Seller elects to enter into such an Exchange, provided, however, that Purchaser shall incur no additional expense arising from or related to the 1031 Exchange, and Seller shall indemnify and hold Purchaser harmless from any such additional expense, cost or claim, including reasonable attorneys' fees. Further, there shall be no delay of the Closing due to the 1031 Exchange. By agreeing to reasonably assist Seller in effectuating the 1031 Exchange, Purchaser specifically does not assume any liability or make any representation or warranty whatsoever regarding the qualification or efficacy of the 1031 Exchange.

Section 9.17 Real Property Purchase Intent.

Purchaser is purchasing the Property for the purposes of constructing a municipal wastewater effluent sprayfield and city park(s), and places no value on the trees or improvements thereon.

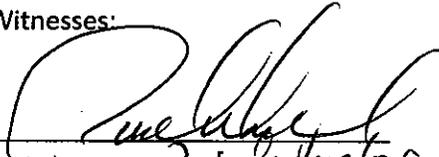
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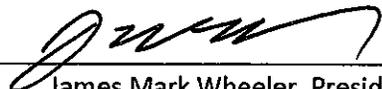
IN WITNESS WHEREOF, each party listed below has executed this Agreement on the day and year written below his/her signature.

SELLER:

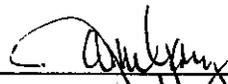
BOSTON MINING COMPANY, a Florida corporation

Witnesses:


Printed name: James Mark Wheeler

By: 
James Mark Wheeler, President

7/3/14

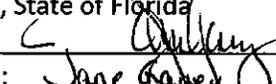

Printed name: Jane Ganey

STATE OF FLORIDA
COUNTY OF HIGHLANDS

I HEREBY CERTIFY that on this 3 day of July, 2014, before me, an officer duly qualified to take acknowledgments, personally appeared James Mark Wheeler, as President of Boston Mining Company, a Florida corporation, to me known or who produced _____ as identification and who executed the foregoing instrument and acknowledged before me that he executed the same.

WITNESSETH my hand and official seal in the state and county named above.



Notary Public, State of Florida
Signature: 
Printed name: Jane Ganey
Commission No.: EE 144529
My Commission Expires: 12/7/15

PURCHASER:

**CITY OF AVON PARK, FLORIDA a Florida municipal
corporation**

Attested by: _____
Maria Sutherland, Interim City Clerk

By: _____
Sharon Schuler, Mayor

APPROVED AS TO FORM AND CONTENT

Gerald T. Buhr, City Attorney

EXHIBIT A

Legal Description

Highlands County Property Appraiser Parcels

A-27-33-28-A00-1090-0000

A-27-33-28-A00-1091-0000

As more fully described at OR Book 2198, Pages 1845 - 1847:

The East one-half of the Southwest Quarter of Section 27, Township 33 South, Range 28 East; AND a portion of the Southeast Quarter of Section 27, Township 33 South, Range 28 East, in Highlands County, Florida, said portion of the Southeast quarter of said Section 27 being more particularly described as follows: Starting at a point 20 feet East of the center of said Section 27; thence South 1,200 feet to the Point of Beginning; thence run East 938.80 feet; thence run South 243 feet to the North shore line of Lake Lelia; thence run along the North Shore of Lake Lelia in a Westerly direction to where a line, running South from the Point of Beginning, if produced, would strike the North shore line of Lake Lelia; thence run North along said line to the Point of Beginning

LESS AND EXCEPT a 40 foot strip deeded by H.L. Mead, sometimes known as Harry L. Mead, to the City of Avon Park and Florida Public Service Company (by deed dated February 20, 1928, and recorded in Deed Book 41, Page 430, public records of Highlands County, Florida), described as follows: Beginning 20 feet North of the Northwest corner of the Southeast 1/4 of the Southwest 1/4 of Section 27, Township 33 South, Range 28 East, Highlands County, Florida; thence run East 2256.8 feet to a point; thence South 40 feet to a point; thence West 2256.8 feet to a point 20 feet South of the Northwest corner of the Southeast 1/4 of the Southwest 1/4 of said Section 27; thence 40 feet North through the Northwest corner to the beginning; and

LESS AND EXCEPT the following described parcel (being the parcels deeded to Arnold A. Gobourne and Willie May Gobourne, his wife, by Warranty Deed recorded in O.R. Book 205, Page 270, and Warranty Deed recorded in O.R. Book 393, Page 857, and Quitclaim Deed recorded in O.R. Book 562, Page 779, all of the public records of Highlands County, Florida); said parcel being described as follows: Starting at a point 20 feet East of the center of Section 27, Township 33 South, Range 28 East, Highlands County, Florida; thence South 1200 feet to the Point of Beginning; thence East 938 feet; thence South 97.02 feet, more or less, to a point on the North boundary of an existing 40 foot road described in Deed Book 41, Page 430, public records of Highlands County, Florida; thence West a distance of 938 feet, more or less, along the North boundary of said road; thence North 97.02 feet, more or less, to the Point of Beginning.

Subject to the maintained right of way for South Lake Blvd. and Garrett Road

Agenda Item Summary

Subject: Permitting and Environmental Assessment of Land Purchase

Item No. E-14

Placed on Agenda by: City Manager

Total Amount of Project: \$52,590

Staff Review: Yes

Attorney Review:

Recommended Motion(s): Approval

Background:

If the City moves forward with the land purchase, we need to ensure that the soil and property is suitable to provide the needed permeability. The firm of Polston Engineering is under contract with the City. The permitting of the treated effluent ponds is within their specialty.

For your consideration, please find their proposal to perform this work for \$52,590.

Please realize that a good portion of this work needs to be subcontracted to other design professionals with the capability and needed laboratory facilities, along with drilling rigs with "test" equipment to quantify soil properties to analyze and model the system performance.

This work is highly necessary as part of our diligence and permitting process.



LAND PLANNING
SITE DESIGN
SOIL SCIENCE
ROAD DESIGN
WATER SYSTEM DESIGN
WASTE WATER DESIGN

P.O. BOX 588, SEBRING, FLORIDA 33871-0588 * (863) 385-5564 * FAX (863) 385-2462

May 2, 2014

Mr. Julian Deleon, City Administrator
City of Avon Park
110 E. Main Street
Avon Park, FL 33825

Re: Engineering Proposal for Designing WWTP Ponds
Parcel A-27-33-28-A00-1090-0000
1500 S Lake Blvd., Avon Park, 33825

Dear Julian,

Following is a proposed scope of work and proposal for designing WWTP percolation ponds on the present grove site at 1500 S. Lake Blvd. in Avon Park, Parcel # A-27-33-28-A00-1090-0000.

We will provide a Phase 1 Environmental Site Assessment for the property for \$2,500.00

We have obtained a proposal for \$11,290.00 from Universal Engineering Sciences, Inc. to provide the required groundwater and soil exploration services to satisfy the DEP requirements for determining a loading rate for the percolation ponds. Subcontractor fee \$11,290.00

We have LIDAR data for the site which we believe to be sufficiently accurate for the design and permitting through the Florida Department of Environmental Protection. We will need to budget for some spot elevation checking of the LIDAR data and misc surveying such as obtaining the elevation of the tops of the soil borings. Subcontractor fee \$1,800.00

Designing/Modeling the ponds and permitting through the Florida Department of Environmental Protection. This work would include the design of the onsite distribution system, however it does not include the design and permitting of the transmission line from the plant to the pond site. Polston fee \$24,500.00

Final bid documents, assistance with the bidding process. Polston fee \$3,500.00

Construction inspections, pay request review and approvals plus any other supervision would be dependent on your preferences. We think that 3 or so hours per week over a estimated 4 month time table would be sufficient. Polston fee \$4,800.00

Final inspection and approval of the construction, asbuilt topo by the surveyor and then our preparation of asbuilts based on the surveyors topo at the completion of construction.

Polston & Subcontractor fee \$4,200.00

The cost of any applications fees are not included in our proposal, we assume the City of Avon Park is still exempt from the normal DEP application fees. The design of the transmission line from the plant to the site is not included.

Thank you for considering Polston Engineering, Inc. If you need additional information or there are any questions, please let me know.

Sincerely,

Roger Dale Polston 5/2/14

Roger Dale Polston, P.E. #33222
Polston Engineering, Inc. BPE CA#5684

Agenda Item Summary

Subject: Council authorization to pre-order Rear loading garbage truck

Item No. E-15

Placed on Agenda by: City Manager

Total Amount of Project: \$186,324 budgeted for FY 2014/2015

Staff Review: Yes

Attorney Review:

Recommended Motion(s): Motion authorizing the pre-ordering of a new rear loading garbage truck as provided under Exhibit-A, from Waste Equip. by piggybacking using the City of Tallahassee procurement contract.

Background:

On January 2015, the City will add another 600 residential accounts. The City's sanitation fleet has standardized the fleet-line by using Freightliner and EZ-Pack for our garbage trucks. This simplifies the knowledge base for the mechanic and drivers. The stocked spare parts serve multiple vehicles. The totality behind standardization of the fleet is less down time.

For next budget year, we allocated to purchase another garbage truck. The process of ordering, assembling and manufacturing the new truck and packer takes about 4-months to complete. With our current growth, we need redundancy in the fleet.

Staff is requesting authorization from Council to pre-order the truck, so it will be ready for the beginning of FY 2014/2015, and available for when we take on the added 600 residential sanitation accounts.

Attachments: Exhibit-A Proposal
Exhibit-B Tallahassee Contract

Waste Equipment & Parts LLC



Waste Equipment & Parts LLC
 4902 South 16th Avenue, Suite E
 Tampa, FL 33619
 (813)241-1900

Quote

Date	Quote No.
06/26/2014	2021
Exp. Date	

Address

City of Avon Park
 2301 US 27 South
 Avon Park, FL 33825

Sales Rep	Project
Dave Lance	31 C/Y REL

Part Number	Description	Quantity	Price	Amount
EZ-G400-31	• E-Z Pack Goliath G400 - 31 Cubic Yard High Compaction Commercial Rear Loader	1	61,305.00	61,305.00T
EZ-B10REL	• Telescopic Side Door Ladder	1	636.00	636.00T
EZ-B19CFL	• 18" x 18" x 24" Steel Toolbox, Chassis Mounted	1	614.00	614.00T
EZ-B35REL	• Side Door - Street Side Only (29" x 34")	1	721.00	721.00T
EZ-E08REL	• Dual Hopper Flood Lights	1	424.00	424.00T
EZ-P04CFL	• Constant Mesh PTO & Remote Mount Vane Pump	1	2,600.00	2,600.00T
EZ-T06REL	• Load Sill with Dual Cart Tipper Cut-out (required when combined with a Container Attachment)	1	1,082.00	1,082.00T
EZ-T08REL	• Hard Lines for Dual Cart Tipper	1	636.00	636.00T
BY-1999-0180	• MBTL 180 BAYNE PREMIUM LIFT SYSTEMS	2	2,917.00	5,834.00T
EZ-H01REL	• Powder Coat - Single Color - RED	1	1,506.00	1,506.00T
EZ-M01REL	• Full Mount	1	2,659.00	2,659.00T
WEProtect-CS02	• Camera System with: (1) Monitor, () Cameras, and () Set of Cables (Approximately 10 hours on install)	1	1,200.00	1,200.00T
WEP-MMTB-24	• 24" Minimizer Tool Box	1	579.00	579.00T
2014 Freightliner RO Auto	• 2014 Freightliner model 112SD Roll off Chassis	1	112,000.00	112,000.00T

Thank you for giving us the opportunity to quote for your waste equipment and parts needs.

SubTotal	\$191,796.00
Discount (5%)	\$ -9,589.80
Tax (1%)	\$1,917.96
Shipping	\$2,200.00
Total	\$186,324.16

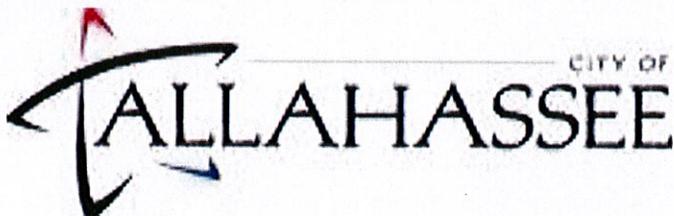
Accepted By _____

Accepted Date _____

City of Tallahassee, Florida

RFP Contract No. 2490

**Refuse Bodies, Refuse Vehicles
&
Refuse Equipment Partnership**



Awarded to:

Waste Equipment & Parts LLC

4902 South 16th Avenue, Suite E

Tampa, Florida 33619

(813) 241-1900 or (866) 228-2411



October 14, 2011

VENDOR: Dave Lance
Waste Equipment & Parts LLC
4902 S. 16th Avenue, Suite E
Tampa, FL 33619

Contract documents have now been executed by all parties and we are enclosing a copy for your files.

PROJECT: Refuse Bodies, Refuse Vehicles & Refuse Equipment Partnership
Contract No. 2490

If you have any questions, please contact Helen Jackson of our office at (850) 891-8130.

CITY HALL
300 South Adams Street
Tallahassee, FL 32301-3231
850 891-0000
1100 111 • talgov.com

JOHN R. MARKS III
Mayor

ASHLEY THOMPSON
City Manager

ANDREW GILLEN
Commissioner

JAMES R. ENGLISH
City Attorney

NANCY MILLER
Commissioner

GARY HERNON
City Treasurer-Clerk

MARK MUSTIAN
Commissioner

SAM M. SUGALI
City Auditor

GUD ZITLER
Commissioner

CONTRACT

No. 2490

THIS CONTRACT is executed this 14th day of October, 2011 by and between the CITY OF TALLAHASSEE, a Florida municipal corporation, hereinafter called the "City", and WASTE EQUIPMENT & PARTS LLC, hereinafter called the "Contractor",

WITNESSETH:

WHEREAS, the City issued RFP No. 0021-11-KR-RC (such document and all addenda thereto, if any, being hereafter referred to as "RFP") seeking proposals for certain refuse bodies and equipment including cab and chassis, and associated accessories; and,

WHEREAS, on March 1, 2011, the Contractor submitted a certain proposal ("Proposal") in response to that RFP; and,

WHEREAS, the City and the Contractor desire to enter into a contract for the purchase of certain refuse bodies and equipment installed or mounted on either City-furnished or Contractor-furnished cabs and chassis, all as more particularly set forth in this Contract;

NOW, THEREFORE, in consideration of the mutual promises and covenants, obligations, and terms hereinafter set forth, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City and Contractor hereby agree as follows:

SECTION 1.0 Purchase of Refuse Bodies or Refuse Vehicles.

1.1 Contractor shall provide such refuse bodies and associated equipment mounted or installed on City-furnished cab and chassis ("Refuse Bodies") or mounted or installed on Contractor-furnished cab and chassis ("Refuse Vehicles"), as the City may order from time to time. All Refuse Bodies and Refuse Vehicles shall be priced, designed, manufactured, and equipped in accordance with the specifications set forth in the Proposal and applicable Change Orders executed by the parties unless otherwise stated in this Contract. All Refuse Bodies and Refuse Vehicles shall conform and comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations.

1.1.1 The Contractor and the City Fleet Management Division ("FMD") shall schedule the following meetings with respect to each order received from the City.

- (i) A pre-production meeting to completely review the specifications and the drawings prior to commencing assembly or production. This meeting shall include the cab and chassis manufacturer if appropriate. The Contractor shall be represented by qualified technicians/engineers to properly facilitate the design and construction requirements. This meeting is normally held at FMD facilities.
- (ii) A second meeting, if required by the City; will be held at FMD facilities or at such other location as the City may decide.
- (iii) A final review and inspection when each Refuse Body or Refuse Vehicle is considered by the Contractor to be complete. In addition to a complete inspection, City representatives will conduct a full performance test of each Refuse Body and each Refuse Vehicle, including all integral systems. The Contractor shall provide all technical information and representatives reasonably required to assist the City in these inspections and shall make available to the City all reasonably required third-party certifications. A technician shall be available to complete any needed repairs or to replace items not meeting specifications. At the option of the City, this meeting will be held either at FMD facilities or at the facilities of the body manufacturer.

The Contractor shall coordinate arrangements for these meetings with all attendees at least three weeks prior to the scheduled meeting. The Contractor shall bear all costs related to participation of its representatives or personnel in these meetings and activities.

1.1.2 The City or the Contractor, at any time, may request changes in the specifications or requirements related to particular Refuse Bodies or Refuse Vehicles. No changes shall become effective until reduced to writing and signed by duly authorized representatives of each party ("Change Order"). All such Change Orders shall include, as a minimum, the following information:

- (i) The specific changes to be made;
- (ii) Changes, if any, in the time for delivery of each completed vehicle; and,
- (iii) Changes in the price of each completed vehicle and associated accessories.

SECTION 2.0 PURCHASE OF PARTS.

- 2.1 The Contractor shall provide such parts for all Refuse Bodies and Refuse Vehicles as the City may order from time to time. The Contractor shall provide on-line parts ordering capability, if available, for the City and, upon request, will provide original manufacturer part numbers. All parts ordered by the City shall be delivered FOB to the FMD facilities within 48 hours from placement of the order. Delays in shipment beyond the reasonable control of the Contractor shall be subject to Section 10.1; provided, however, the Contractor, in such event, shall promptly provide Notice to the City regarding the details of any such delay so the City can make a final determination regarding responsibility. Long lead time parts or components not reasonable to inventory or fabricated components not reasonable to inventory are examples of orders that may require a longer delivery time. The Contractor shall expedite all such orders as reasonably timely as is possible.

SECTION 3.0 TERM.

The Term of this Contract shall be a period of five (5) years, commencing on the date executed by the City unless earlier terminated in accordance with its terms. Such term may be extended for an additional five (5) year period, subject to mutual agreement of the parties.

SECTION 4.0 CONTRACT PRICING AND PAYMENT.

4.1 Refuse Bodies and Refuse Vehicles.

- 4.1.1 During the Term, the City shall pay the Contractor for each Refuse Body and Refuse Vehicle ordered and accepted by the City based upon the Contractor's current pricing at the time a particular order is placed, provided, however, that such price shall not exceed the following:

- (i) for the current model year, the initial prices as set forth in the Proposal; or
- (ii) for subsequent model years, the purchase price paid for such model during the preceding model year plus any price increases from the manufacturer, but the City reserves the right to purchase from any other manufacturer/dealer at its option if in the opinion of the City the manufacturer raised prices above industrial standards.

- 4.1.2 All prices shall be F.O.B. City of Tallahassee, FMD facilities (400 Dupree Street, Tallahassee, Florida). In addition to the limitations set forth in Section 4.1.1 above, the prices offered to the City during the term of this

Contract shall be no greater than the lowest price offered by the Contractor to any governmental agency customer. The City shall have the right to annually review and audit all Contractor contracts and sales records to verify that the Contractor is in compliance with this most favored pricing requirement. If the Contractor is found not to be in compliance, the City will notify the Contractor, in writing, of such fact, and the Contractor, within 30 days of its receipt of such notice, shall pay to the City the applicable price differential for each affected Refuse Body and Refuse Vehicle purchased by the City, plus interest thereon at the rate of six percent (6%), for the period from the date of final acceptance of each Refuse Body or Refuse Vehicle through the date of such notice from the City.

4.2 Parts and Accessories. The Contractor shall sell to the City all parts and accessories, including OEM parts, at Contractor's cost plus 35% for the first \$25,000 annually and 25% thereafter. The City shall also pay applicable freight charges. The City will maintain a stock of parts and accessories at its FMD facilities to support repair and maintenance of the Vehicles. The Contractor agrees to furnish all parts and accessories ordered by the City under consignment. Not later than the tenth day of each month, FMD staff will submit a monthly report to the Contractor identifying the parts and accessories used during the preceding month, and the Contractor shall render an invoice for such parts and accessories to the City. The pricing offered to the City during the term of this Contract shall be no greater than the lowest price offered by the Contractor to any other municipal customer. The City shall have the right to annually review and audit all Contractor records to verify that the Contractor is in compliance with this pricing requirement. If the Contractor is found not to be in compliance, the City will notify the Contractor, in writing, of such fact, and the Contractor, within 30 days of its receipt of such notice, shall pay to the City the applicable price differential for all affected parts and accessories purchased by the City, plus interest thereon at the rate of six percent (6%), for the period from the date of delivery of the affected parts or accessories through the date of such notice from the City. Upon expiration or earlier termination of the Contract, the City shall either pay for or return to the Contractor all such parts and accessories remaining in stock. The Contractor shall not charge a restocking fee or assess any other charge associated with the returned parts.

4.3 Payment.

4.3.1 Refuse Bodies and Refuse Vehicles prices shall be F.O.B. FMD facilities.

4.3.2 All proper invoices shall be paid by the City in accordance with the Florida Local Government Prompt Payment Act, Section 218.70, Florida Statutes.

4.3.3 In addition to other remedies available under this Contract, the City shall have the right to deduct, offset against, or withhold from sums or

payments otherwise due the Contractor any sums or amounts which the Contractor may owe to the City pursuant to provisions of this Contract, as a result of breach or termination of this Contract, or otherwise.

SECTION 5.0 DELIVERY AND ACCEPTANCE

- 5.1 The Contractor shall deliver, or shall cause the manufacturer to deliver, all Refuse Bodies and Refuse Vehicles in accordance with the schedule set forth in the Proposal or such other time period as may be agreed by the parties. The Contractor and the City agree that timely delivery of all each Refuse Body and Refuse Vehicle is of the essence of this Contract, that the City will suffer damages in the event of a failure to so perform, and that such damages may be difficult to precisely calculate or prove. As a result, the Contractor shall pay to the City, as liquidated damages and not as a penalty, the amount of \$100 per day, or portion thereof, for each day of delay in delivery of each Refuse Body or Refuse Vehicle ordered by the City. Such liquidated damages shall be paid in addition to any other recourse that may be available to City in the event that there is an adjustment to the delivery schedule the City will be notified in writing. The Contractor shall not be responsible for delays caused by late delivery of a City-furnished cab and chassis for mounting or installation of a Refuse Body.
- 5.2 The Contractor shall, or shall cause the manufacturer to, fully assemble, service, and adjust each Refuse Body and Refuse Vehicle prior to delivery and shall demonstrate, to the satisfaction of the City, that each delivered Refuse Body and Refuse Vehicle meets all applicable specifications and requirements, as set forth in this Contract and as agreed upon by the parties, and all representations of the manufacturer. The delivery schedules shall be agreed upon at the first pre-construction meeting, but is subject to change and the City will be notified as of why the adjustment is necessary. If the change is not agreeable to the City, it can cancel the order without penalty or liability of any kind to the Contractor. The inspection and acceptance of each City-furnished cab and chassis shall be performed at the manufacturer's facility under the direction and assistance of the Contractor. An inspection form approved by the City shall be completed by the Contractor at his facility to establish receipt date and condition of each City-furnished cab and chassis. Upon delivery to the Contractor or manufacturer's facility, the Contractor shall be responsible for, and shall bear all risk of loss and damage to, each City-furnished cab and chassis until the completed vehicle is delivered to the City at its specified location. The Contractor shall be responsible for, and shall bear all risk of loss and damage to each Refuse Body and Refuse Vehicle until delivery to the City at its specified location.
- 5.3 Delivery of a Refuse Body or Refuse Vehicle to the City does not constitute acceptance for the purpose of payment or warranty start time. The City shall inspect and test each delivered Refuse Body and Refuse Vehicle to determine whether it meets all specifications and requirements set forth in this Contract and

within seven (7) days following delivery, the City shall notify the Contractor, in writing or by verifiable email, of either its final acceptance of each Refuse body or Refuse Vehicle or of the failure of such Refuse Body or Refuse Vehicle to meet such specifications and requirements. In the latter case, the Contractor, within ten (10) days following its receipt of written notice from the City, shall deliver to the City a detailed proposal and schedule for corrective action. If the proposed corrective action is acceptable to the City, the Contractor will be given a written notice to proceed, and a new inspection, testing, and notice process shall commence upon completion of corrective action. If the proposed corrective action or schedule is not acceptable, or if approved corrective action is not timely completed, the City may refuse the affected Refuse Body or Refuse Vehicle. If the Refuse Body mounted on a City-furnished cab and chassis, the Contractor shall pay to the City an amount equal to all costs incurred by the City relating to such cab and chassis. All adjustments associated with placing a unit in-service will continue to be the responsibility of the Contractor.

- 5.4 With each Refuse Body and Refuse Vehicle, the Contractor shall deliver to the City, in an electronic format acceptable to the City, the following:
- (i) one (1) copy of the associated technical and service manuals, per model; DVE preferred; and
 - (ii) a copy of the manufacturer's preventive maintenance schedule; and,
 - (iii) the manufacturer's statement of origin, title application, and all warranty documents.
- 5.5 All Refuse Bodies and Refuse Vehicles delivered to the City shall be owned by the Contractor and shall be delivered free and clear of all liens and security interests of any kind.

SECTION 6.0 INDEMNIFICATION.

- 6.1 The Contractor shall indemnify and save harmless the City, its officials and employees, from all losses, damages, costs, expenses, liability, claims, actions, and judgments of any kind whatsoever, including reasonable attorney's fees and costs of litigation, to the extent arising out of or caused by any act or omission of the Contractor, its subcontractors, or their respective employees, officers, directors, or agents, in the performance under this Contract. The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under any Workers' Compensation Act, Disability Benefit Act, or other Employee Benefit Act.

- 6.2 The Contractor shall, at its sole expense, defend any claim, suit or proceeding brought against the City, its officials or employees, to the extent such claim, suit or proceeding is based on a claim that any refuse body and equipment or as completed vehicles mounted or installed on Contractor-furnished cabs and chassis and associated accessories, or any process involved in manufacture of the same, or any parts, or equipment, furnished under this Contract (collectively, "Infringing Work") constitutes infringement of any registered patent of the United States of America or county of manufacture, provided that City shall give the Contractor prompt written notice of any such claim, suit or proceeding and shall give the Contractor authority, information and assistance in a timely manner for the defense of the same. The Contractor shall indemnify and hold the City, its officials or employees, harmless from and against all costs and damages awarded, and all attorneys' fees incurred or awarded, in any suit or proceeding so defended. The Contractor will not be responsible for any settlement or proceeding made without its prior written approval. In case said Infringing Work is held to constitute an infringement and the use of said Infringing Work is enjoined, the Contractor shall, at its own expense and at its option, either (a) procure for City the right to continue using said Infringing work, (b) replace said Infringing Work with substantially equivalent, equally functional, non-infringing Work, parts or combination thereof, or (c) modify such Infringing Work so that it becomes non-infringing, while maintaining the same functionality.

SECTION 7.0 INSURANCE.

- 7.1 Within thirty (30) days following the commencement of the term of this Contract, Contractor shall procure and maintain at Contractor's own cost and expense for the duration of the Contract, the following insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the Scope of Services hereunder by Contractor, its agents, representatives, employees or sub-consultants. The cost of such insurance shall be borne by Contractor.

- 7.1.1 Contractor shall maintain the following coverage with limits no less than the indicated amounts:

- (a) *Commercial General/Umbrella Liability Insurance* - \$1,000,000 limit per occurrence for property damage and bodily injury. The certificate of insurance shall state whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:

- (i) Premise/Operations
- (ii) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
- (iii) Products/Completed Operations

- (iv) Contractual
 - (v) Independent Contractors
 - (vi) Broad Form Property Damage
 - (vii) Personal Injury
- (b) *Business Automobile/Umbrella Liability Insurance* - \$1,000,000 limit per accident for property damage and personal injury.
- (i) Owned/Leased Autos
 - (ii) Non-owned Autos
 - (iii) Hired Autos
- (c) *Workers' Compensation and Employers' Umbrella Liability Insurance* - Workers' Compensation statutory limits as required by Chapter 440, Florida Statutes. This policy should include Employers' Umbrella Liability Coverage for \$1,000,000 per accident.

7.1.2 Other Insurance Provisions

- (a) *Commercial General Liability and Automobile Liability Coverage*
- (i) City, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor or premises on which Contractor is performing Services on behalf of City. The coverage shall contain no special limitations on the scope of protection afforded to City, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers.
 - (ii). The Contractor insurance coverage shall be primary insurance as respects City, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by City, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers shall be excess of Contractor insurance and shall not contribute with it.
 - (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, members of its

City Commission, boards, commissions and committees, officers, agents, employees and volunteers.

(iv) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) *Workers' Compensation and Employers' Liability and Property Coverage*

The insurer shall agree to waive all rights of subrogation against City, member of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers for losses arising from activities and operations of Contractor in the performance of Services under this Contract.

(c) *All Coverage*

(i) Each insurance policy required by this Article shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to City in accordance with this Contract.

(ii) If Contractor, for any reason, fails to maintain any insurance coverage that is required pursuant to this Contract, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Contract and obtain damages from Contractor resulting from said breach.

(iii) Alternatively, City may purchase such required insurance coverage (but has no special obligation to do so), and without further notice to Contractor, City may deduct from sums due to Contractor any premium costs advanced by City for such insurance.

7.1.3 *Deductibles and Self-Insured Retention's*

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers; or Contractor shall procure a bond guaranteeing payment of losses, related investigation, claim administration and defense expenses.

7.1.4. **Acceptability of Insurers**

Insurance is to be placed with Florida admitted insurers rated B+X or better by *A.M. Best's* rating service.

7.1.5. **Verification of Coverage**

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon execution of the contract documents, the certificates and endorsements are to be received and approved by City before work commences.

SECTION 8.0 TERMINATION.

- 8.1 In addition to other such rights set forth in this Agreement, the City or the Contractor can terminate this Contract if the other party fails to comply with any of the terms or conditions of this Contract or defaults in performance of any of its obligations under this Contract and fails, within thirty (30) calendar days after written notice from the non-defaulting party, to correct such default or noncompliance.
- 8.2 Provided there are no pending orders for Refuse Bodies or Refuse Vehicles that have not been either accepted or rejected by the City, the City or the Contractor may, by written notice to the other party, terminate this Contract. In the event of such termination, the City shall pay the Contractor for all Refuse Bodies and Refuse Vehicles accepted by the City as of the effective date of the termination.

SECTION 9.0 WARRANTY AND MAINTENANCE.

- 9.1 The Contractor hereby warrants all Refuse Bodies and Refuse Vehicles as set forth in its Proposal and the individual warranty documents delivered with each Refuse Body and Refuse Vehicle. The Contractor will respond for all warranty repairs within 24 hours following notice from the City for all repairs and will work with the chassis dealer for assistance as required.
- 9.2 Through the manufacturer, the Contractor will make available to the City the option to purchase an extended warranty for each Refuse Body and Refuse Vehicle at the Contractor's cost of such warranty from the manufacturer. This extended warranty will begin at the conclusion of any initial warranty or maintenance agreement. Contractor shall secure a commitment letter from the appropriate manufacturer stating that the cost to the Contractor of such extended

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warranties shall not exceed the lowest cost for such warranties charged to any other dealer or customer by the manufacturer.

- 9.3 The Contractor shall provide training as provided in the Proposal. Although the City will have the capability and expertise to repair each Refuse Body and Refuse Vehicle under warranty, the City prefers to have the Contractor complete all warranty work, and the City shall perform such work only in the event of exigent circumstances. The Contractor, within thirty (30) days of receipt of an invoice therefore, will pay the City for all such warranty work completed by the City in an amount equal to the fully-loaded costs for personnel performing such work and all required parts and materials. At the request of the Contractor, the City will provide documentation of such costs.
- 9.4 The Contractor, at the option of the City, will place at least one equipment technician, provided by the Contractor, at the FMD facilities. The technician will be approved by the City's Superintendent, Fleet Management ("Superintendent"). This technician shall facilitate and expedite both warranty-related work and general repairs, as directed by the Superintendent. The Contractor shall process all required documentation in conjunction with warranty-related work or claims. The City shall not be obligated to pay the Contractor for any warranty-related repairs or replacements; however, the Contractor shall be entitled to receive any reimbursement or payment that may be offered by the manufacturer with respect to warranty repairs, replacements, or claims performed or paid by the Contractor. Non-Warranty repairs performed by the Contractor's technician at the City's direction will be billed to the City at the Contractor's actual cost plus 20%; provided, however, that at no time shall that total cost exceed \$57.00 per hour. Warranty related activities will be the first responsibility of the technician. In cases where the amount of warranty work does not require 40 hours in a particular week, the City shall provide non-warranty assignments to the technician; however, warranty non-warranty assignments together shall not exceed 40 hours in any week. Payment by the City will not include vacation time, holidays, sickness or training to keep skills updated.

SECTION 10.0 MISCELLANEOUS PROVISIONS.

- 10.1 Time shall be of the essence in performance of this Contract; provided, however, that either party shall be excused from timely performance under this Contract to the extent that, but only to the extent that, such delay is the result of any cause beyond the reasonable control of, and not the result of negligence or the lack of diligence of, the party claiming such excuse from timely performance.
- 10.2 Failure to enforce or insist upon compliance with any of the terms or conditions of this Contract or failure to give notice or declare this Contract terminated shall not constitute a general waiver or relinquishment of the same or any other terms,

conditions, or acts; but the same shall be and remain at all times in full force and effect.

- 10.3 If written notice to a party is required under this Contract, such notice shall be given by hand delivery, recognized overnight delivery service, or by first class mail, registered and return receipt requested, to Contractor as follows: (Email notification is OK)

Waste Equipment & Parts LLC
4902 South 16th Avenue, Suite E
Tampa, Florida 33619
(Attn: David B. Lance, President)

and to the City as follows:

City of Tallahassee
Fleet Management Division
400 Dupree Street
Tallahassee, Florida 32304
Attn: Fleet Superintendent

- 10.4 Contractor shall not assign any of their rights or obligations under this Contract without prior approval by the City.
- 10.5 Contractor shall be responsible for the actions of any and all of their subcontractors and consultants. Neither subcontractors nor any consultants shall interface directly with the City.
- 10.6 This Contract and every question arising hereunder shall be construed, interpreted, or determined according to the laws of the State of Florida. Venue for any action brought in relation to this Contract shall be placed in a court of competent jurisdiction in Leon County, Florida.
- 10.7 As required by Section 287.133, (2 (a), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or a public work, may not submit proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in s.287.010 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Any person must notify the City within 30 days after a conviction of a public entity crime applicable to that person or to an affiliate of that person.

- 10.8 The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either City or Contractor. The section headings appearing herein are for the convenience of the parties and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Contract. If any provision of this Contract is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Contract and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other of which would render the provisions valid, then the provision shall have the meaning which renders it valid.
- 10.9 Contractor agrees that it will not discriminate against any employee or applicant for employment for work under this Contract because of race, color, religion, gender, age or national origin and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, creed, color, sex, marital status or national origin. The Contractor will post a copy of this pledge in a conspicuous place, available to all employees and job applicants and will place or cause to be placed a statement in all solicitations or advertisement for job applicants, including subcontracts, that the respondent is an "Equal Opportunity Employer".
- 10.10 The Contractor, if requested by the City no less than six (6) months prior to such date, shall repurchase any Refuse Body, including the City-furnished cab and chassis, or Refuse Vehicle sold to the City under this Agreement at the end of 24th, 30th, or 36th month after acceptance by the City, provided that such Refuse Body or Refuse Vehicle is in good mechanical condition. The repurchase price shall be equal to 70% of the original cost to the City at 24 months, 65% of such cost at 30 months, and 60% of such cost at 36 months, unless the Parties mutually agree on a higher price. The actual date of transfer of ownership will depend upon the delivery of new vehicles to take the place of the vehicles being repurchased by the Contractor; however, the repurchases price will not be subject to change regardless of the actual transfer date. For purposes of this section, the term "good mechanical condition" shall mean that the subject vehicles have at least 50% tread on the tires and 50% surface area on the brake pads, and that there are no mechanical problems or body damage that would cost more than \$1,000 to repair. The Contractor's obligation to repurchase Refuse Bodies and Refuse Vehicles shall not be contingent on the City's purchasing a replacement Refuse Body or Refuse Vehicle from the Contractor.
- 10.11 The Contractor shall make Refuse Bodies and Refuse Vehicles available to other governmental entities on the same terms and conditions as set forth in this Contract; provided, however, that such terms and conditions shall not include either Section 4.2, Section 9.4, or Section 10.10. Should any such entity purchase a Refuse Body or Refuse Vehicle on such basis, the Contractor shall

report such purchases to the City and, within thirty (30) days following final payment for each such purchase, shall provide a credit to the City in the amount of 1.0% of the purchase price of such Refuse Body or Refuse Vehicle. If such credit is not used within 6 months after being credited to the City, the City shall have the option of receiving payment from the Contractor, as opposed to a credit, in the same amount. This provision shall apply to all purchases initiated during the term of this Agreement, even if such purchase continues and payment is received after the expiration of such term.

- 10.12 It is understood and agreed that this Contract, including exhibits and references (if any), is the entire Contract between the parties and supersedes all prior oral agreements and negotiations between the parties relating to the subject matter hereof. City and Contractor, by mutual agreement, may change or amend the terms and conditions of this Contract. All such changes or amendments shall be set forth in a written amendment to this Contract.
- 10.13 If any portion of this Contract, or any Exhibit or portion thereof, is held to be invalid by a court of law, such provision shall be considered severable, and the remainder of this Contract shall be construed and enforced in a manner consistent with the intent of the Parties. Should any provision of this Agreement directly conflict with a provision of the RFP or the Proposal, the provision of this Agreement shall control.
- 10.14 It is the intent of the Parties that any provision of this Agreement that, by its terms or by any reasonable interpretation thereof, is intended to survive termination (whether by expiration, default, extinguishment or otherwise) of this Agreement, including indemnity obligations, will do so.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized representatives, effective the date first above written.

[Remainder of page intentionally left blank]

Attest:

By: James O. Cooke, IV
James O. Cooke, IV
Interim City Treasurer-Clerk

Approved as to form:

By: [Signature]
City Attorney

CITY OF TALLAHASSEE

By: [Signature]
Cathy Davis
Manager for Procurement Services

WASTE EQUIPMENT & PARTS, LLC

[Signature]
Witness as to the Contractor

By: David B. Lance
DAVID B. LANCE, President
(Type or print name and title of signatory)

[Signature]
Witness as to the Contractor

APPROVED BY CITY COMMISSION
May 25, 2011

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