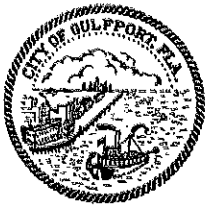


**City Council Meeting
Agenda Packet
Tuesday, January 17, 2012
7:00 pm**



City of Gulfport Florida
Regular City Council Meeting
Tuesday, January 17, 2012

City Hall – 2401 53rd Street South, Gulfport, FL 33707

7:00 p.m.

AGENDA

Call to Order

Invocation given by Councilmember Barbara Banno

Pledge of Allegiance

Roll Call:

1. Public Session.
2. City Manager Report.
3. City Attorney Report.
4. City Clerk Report.
5. Consent: None
6. Ordinances:
 - a. 2012-03, First Reading: An ordinance of the City of Gulfport, Florida providing for amendment of Paragraph (9) of Subsection (b) of Section 11-21 of the Code of Ordinances, pertaining to solid waste service charges; providing for bulk container rates; providing for the repeal of ordinances, or parts of ordinances, in conflict herewith, to the extent of such conflict; providing for severability; and providing for an effective date.
 - b. 2012-04, First Reading: An ordinance amending Chapter 12 of the Code of Ordinances of the City of Gulfport; providing for amendment of Subsection (a) of Section 12-2, pertaining to specific nuisances relating to weeds, grasses or other vegetation; defining weeds; providing for the repeal of ordinances, or parts of ordinances, in conflict herewith, to the extent of such conflict; providing for severability; and providing for an effective date.
 - c. 2012-05, First Reading: An ordinance of the City of Gulfport, Florida, amending Chapter 11, Garbage, Trash, Sewers and Water, Article I, Garbage, Section 11-23, amending fees and special pick-up by limiting the period of accumulation; providing for the repeal of ordinances, or parts of ordinances, in conflict herewith, to the extent of such conflict; providing for severability; and providing for an effective date.

7. Resolutions:

- a. 2012-05, A resolution of the City of Gulfport, Florida, authorizing the city manager to enter into a Site Agreement with Progress Energy Services Company, LLC; and providing for an effective date.
- b. 2012-06, A resolution of the City of Gulfport, Florida, authorizing the city manager to submit an Elderly and Persons with Disabilities Program Grant application to the Florida Department of Transportation; and providing for an effective date.
- c. 2012-07, A resolution of the City of Gulfport, Florida, authorizing the city manager to enter into an agreement with District Management Services; and providing for an effective date.

8. Old Business.

9. New Business.

10. Council Reports.

11. Adjournment.

Any person who decides to appeal any decision of the City Council with respect to any matter considered at this meeting will need a record of the proceedings and for such purposes may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The law does not require the City Clerk to transcribe verbatim minutes; therefore, the applicant must make the necessary arrangements with a private reporter or private reporting firm and bear the resulting expense. Any person with a disability requiring reasonable accommodation in order to participate in this meeting should call (727) 893-1000 or fax a written request to (727) 893-1008. Posted: January 13, 2012

**Agenda Item No. 1
Public Session**

**Agenda Item No. 2
City Manager Report**

**Agenda Item No. 3
City Attorney Report**

**Agenda Item No. 4
City Clerk Report**

**Agenda Item No. 5
Consent - None**

Agenda Item No. 6-a
Ordinance No. 2012-03



GULFPORT CITY COUNCIL AGENDA MEMORANDUM

FROM: James E. O'Reilly, City Manager

DATE: January 17, 2012

AGENDA ITEM: 6-a

ORDINANCE NO: 2012-03

SUBJECT: Sanitation Ordinance revision.

RECOMMENDATION: Staff requests City Council consider and approve Ordinance 2012-03 amending Chapter 11 Garbage, Trash, Sewers and Water, Article 1, Garbage, Section 11-21, Service Charges of the City of Gulfport Code of Ordinances on 1st reading, an ordinance that would establish a charge for an additional automated container(s).

BACKGROUND:

As part of the ongoing effort of City staff to review the City of Gulfport's Code of Ordinances, staff discovered an issue related to the City's Sanitation Ordinance dating back to September 2008. In reviewing Chapter 11, Garbage, Trash, Sewers and Water, it was found that appropriate legislative action was not taken or language omitted in regards to the automated pick-up process and the related cost for an additional automated container.

ANALYSIS:

In September 2008, the necessary language or text amendment necessary to create a sanitation service charge for an additional automated container was never completed or adopted. The accompanying ordinance amendment is presented for City Council's consideration. Ordinance 2012-03 amends Chapter 11 Garbage, Trash, Sewers and Water, Article 1, Garbage, Section 11-21, Service Charges to provide a cost for additional automated containers.

Where mechanical loading is required the City provides one (1) or two (2) forty (40)-gallon containers or one 90-gallon or container at no cost to the occupant. This Ordinance provides that an additional 40 or 90-gallon containers can be requested for an additional \$9.20 per month, with a six (6)-month minimum.

FINANCIAL IMPACT:

No financial impact at this time, as there is only three (3) customers utilizing this service. The only additional revenue would come from added dwelling units requesting an additional forty (40) or ninety (90)-gallon bulk container.

MOTION:

Move to approve/deny Ordinance 2012-03 amending Chapter 11 Section 11-21, Service Charges of the City of Gulfport Code of Ordinances.

ORDINANCE NO. 2012-03

AN ORDINANCE OF THE CITY OF GULFPORT, FLORIDA PROVIDING FOR AMENDMENT OF PARAGRAPH (9) OF SUBSECTION (b) OF SECTION 11-21 OF THE CODE OF ORDINANCES, PERTAINING TO SOLID WASTE SERVICE CHARGES; PROVIDING FOR BULK CONTAINER RATES; PROVIDING FOR THE REPEAL OF ORDINANCES, OR PARTS OF ORDINANCES, IN CONFLICT HERewith, TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council wishes to provide rates for bulk containers for solid waste; and

WHEREAS, the City Council has found this ordinance to be in the best interest, safety and welfare of the citizens of the city; and

WHEREAS, notice of this ordinance has been provided in accordance with applicable law;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF GULFPORT HEREBY ORDAINS:

Section 1. Paragraph (9) of Subsection (b) of Section 11-21 of the Code of Ordinances, pertaining to solid waste service charges, is hereby amended as follows:

(9) For a single residential dwelling unit the monthly charge shall be eighteen dollars and thirty-nine cents (\$18.39). Where bulk containers for mechanical loading are required for a single residential dwelling unit, the city will provide one or two 40 gallon containers or one 90 gallon container at the monthly charge of eighteen dollars and thirty nine cents (\$18.39). Additional 40 or 90 gallon containers may be made available for an additional nine dollars and twenty cents (\$9.20) per month each, with a six-month minimum.

Section 2. All ordinances or parts of ordinances, in conflict herewith, are hereby repealed to the extent of any conflict with this Ordinance.

Section 3. If any portion or part of this ordinance is declared invalid by a court of competent jurisdiction, the valid remainder hereof shall remain in full force and effect.

Section 4. This Ordinance shall become effective immediately upon final passage.

Michael J. Yakes, Mayor

FIRST READING : _____

PUBLISHED : _____

SECOND READING/
PUBLIC HEARING : _____

I, Lesley DeMuth, City Clerk of the City of Gulfport, Florida, do hereby certify that the foregoing Ordinance was duly adopted in accordance with the provisions of law and the City Charter this ____ day of _____, 2012.

Lesley DeMuth, City Clerk

Agenda Item No. 6-b
Ordinance No. 2012-04



GULFPORT CITY COUNCIL AGENDA MEMORANDUM

FROM: James E. O'Reilly, City Manager

DATE: January 17, 2012

AGENDA ITEM: 6-b

ORDINANCE NO: 2012 - 04

SUBJECT: Curb maintenance.

RECOMMENDATION: Staff requests City Council consider and approve Ordinance 2012-04 - amending Chapter 12 Section 12-2 subsection (a) Nuisances; relating to weeds, grasses or other vegetation of the City of Gulfport Code of Ordinances on 1st reading. The ordinance amendment would clarify the issue of vegetation growing from the pavement adjacent to a curb within the City of Gulfport.

BACKGROUND:

City Council has been discussing issues generated by public concerns in regards to more strident Code Enforcement within the community.

In response to community concerns expressed to City Council, staff has articulated to City Council of the need to enact specific ordinances targeting unwanted violations. Without doing this, other options are unlikely to address some of the issues with code enforcement. Often time's complaints cannot be addressed or prosecuted because there is no violation of an existing local ordinance. Staff advised that some changes will require minimal changes to the City Code of Ordinances, where as others will require extensive changes or the creation of specific new ordinances.

As outlined by staff on September 22, 2011, with public input garnered at the City Council workshop of October 18, 2011 and the City Council's "Town Hall" meeting of November 14, 2011, staff is bringing forth for consideration, the first of a series of City Code of Ordinance amendments. The initial proposed ordinances address issues that appear to staff to be some of the most common complaints that are now limited in means of enforcement.

A common thread being addressed and subsequently brought forward for consideration is that many concerns identified are not ordinance violations – but nuisance or quality of life issues, where no regulatory authority presently exists.

ANALYSIS:

In response to the discussions, the City Attorney has prepared the accompanying ordinance amendment for consideration. Ordinance 2012-04 amends Chapter 12 Section 12-2 subsection (a) Nuisances of the City of Code of Ordinances. Currently, the ordinance only regulates weeds, grasses or other vegetation when it exceeds a height of 12 inches. The code does not provide for weeds that grow over or next to the edge of the pavement.

Section 12-2 of Chapter 12 identifies specific nuisances including weeds, grasses or other vegetation. The proposed ordinance adds language that further identifies nuisance vegetation as that which grows over, in or onto the curbing or paved area of any sidewalk, road, street, avenue or highway within the city's limits. This amendment is consistent with neighboring community's nuisance ordinances as they pertain to weeds and will allow for enforcement of this issue.

Ideally, this change would increase the aesthetic appearance and curb appeal of the property.

In short, the property owner would be required to maintain the area adjacent to the curb, removing grass/weeds growing over it.

FINANCIAL IMPACT:

No financial impact at this time.

MOTION:

Move to approve/deny Ordinance 2012-04 amending Chapter 12 Section 12-2 subsection (a) of the City of Gulfport Code of Ordinances.

CITY OF GULFPORT

ORDINANCE NO. 2012 - 04

AN ORDINANCE AMENDING CHAPTER 12 OF THE CODE OF ORDINANCES OF THE CITY OF GULFPORT; PROVIDING FOR AMENDMENT OF SUBSECTION (a) OF SECTION 12-2, PERTAINING TO SPECIFIC NUISANCES RELATING TO WEEDS, GRASSES OR OTHER VEGETATION; DEFINING WEEDS; PROVIDING FOR THE REPEAL OF ORDINANCES, OR PARTS OF ORDINANCES, IN CONFLICT HERewith, TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council wishes to clarify nuisances as they relate to weeds, grasses or other vegetation; and

WHEREAS, the City Council wishes to provide regulations for the maintenance of the city's curbs or edges of pavement; and

WHEREAS, the City Council has found this ordinance to be in the best interest, safety and welfare of the citizens of the city; and

WHEREAS, notice of this ordinance has been provided in accordance with applicable law;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF GULFPORT HEREBY ORDAINS:

Section 1. Subsection (a) of section 12-2 of the Code of Ordinances, pertaining to specific nuisances, is hereby amended, as follows:

- (a) Any weeds, grasses or other vegetation, which are not cultivated, landscaped and regularly tended, or which are growing over, in or onto the curbing or paved area of any sidewalk, road, street, avenue or highway within the city, or any weeds or grasses exceeding twelve (12) inches in height of a height exceeding twelve (12) inches, including without limitation, broom grass, jimson, burdock, ragweed or sandspur and not including trees, flowers and ornamental bushes or plants; Weeds shall be defined as all grasses, annual plants and vegetation, other than trees and shrubs, provided, however, this term shall not include cultivated flowers and individual community gardens.

Section 2. All Ordinances, or parts of Ordinances in conflict herewith are hereby repealed to the extent of any conflict with this Ordinance.

Section 3. If any portion or part of this ordinance is declared invalid by a court of competent jurisdiction, the valid remainder hereof shall remain in full force and effect.

Section 4. This Ordinance shall become effective immediately upon final passage.

Michael J. Yakes, Mayor

FIRST READING : _____

PUBLISHED : _____

SECOND READING/
PUBLIC HEARING : _____

I, Lesley DeMuth, City Clerk of the City of Gulfport, Florida, do hereby certify that the foregoing Ordinance was duly adopted in accordance with the provisions of law and the City Charter this _____ day of _____, 2012.

Lesley DeMuth, City Clerk

Agenda Item No. 6-c
Ordinance No. 2012-05



GULFPORT CITY COUNCIL AGENDA MEMORANDUM

FROM: James E. O'Reilly, City Manager

DATE: January 17, 2012

AGENDA ITEM: 6-c

ORDINANCE NO: 2012 - 05

SUBJECT: **Period of Trash Accumulation.**

RECOMMENDATION: Staff requests City Council consider and approve Ordinance 2012-05 amending Chapter 11 Garbage, Trash, Sewers and Water, Article 1, Garbage, Section 11-23, Special Pick-Up of the City of Gulfport Code of Ordinances on 1st reading, an ordinance that would reduce the length of time presently provided for the accumulation of trash that cannot be placed in approved containers or their equivalent for normal trash for pick-up.

BACKGROUND:

City Council has been discussing issues generated by public concerns in regards to more strident Code Enforcement within the community. The facilitation of certain aesthetic criteria or nuisance abatement appears at the genesis of these concerns.

In response to community concerns expressed to City Council, staff has articulated to City Council of the need to enact specific ordinances targeting unwanted violations. Without doing this, other options are unlikely to address some of the issues with code enforcement. Often time's complaints cannot be addressed or prosecuted because there is no violation of an existing local ordinance. Staff advised that some changes will require minimal changes to the City Code of Ordinances, where as others will require extensive changes or the creation of specific new ordinances.

As outlined by staff on September 22, 2011, with public input garnered at the City Council workshop of October 18, 2011 and the City Council's "Town Hall" meeting of November 14, 2011, staff is bringing forth for consideration, the first of a series of City Code of Ordinance amendments. The initial proposed ordinances address issues that appear to staff to be some of the most common complaints that are now limited in means of enforcement.

A common thread being addressed and subsequently brought forward for consideration is that many concerns identified are not ordinance violations – but nuisance or quality of life issues, where no regulatory authority presently exists.

ANALYSIS:

In response to the discussions, the City Attorney has prepared the accompanying ordinance amendment for consideration. Ordinance 2012-05 amends Chapter 11 Garbage, Trash, Sewers and Water, Article 1, Garbage, Section 11-23, Special Pick-Up to reduce the time period that trash may accumulate from one (1) week to seventy-two (72) hours or three (3) days.

Presently, Chapter 11 Section 11-23 of the City's Code of Ordinances provides that trash not in containers can accumulate for a period of one (10 week, before the City can pick it up with or without notifying the homeowner or the homeowner needs to order a special pick-up.

In short, the property owner would be required to remove trash or order a special pick-up in an appropriate manner concurrent to regular sanitation service.

Ideally this change would increase the aesthetic appearance and curb appeal of the property by fostering the timely removal of accumulated trash.

FINANCIAL IMPACT:

Financial impact unknown at this time. The ordinance may increase the number of special pick-ups called in by residents.

MOTION:

Move to approve/deny Ordinance 2012-05 amending Chapter 11 Section 11-23, Special Pick-Up of the City of Gulfport Code of Ordinances.

CITY OF GULFPORT

ORDINANCE NO. 2012 - 05

AN ORDINANCE OF THE CITY OF GULFPORT, FLORIDA, AMENDING CHAPTER 11, GARBAGE, TRASH, SEWERS AND WATER, ARTICLE I, GARBAGE, SECTION 11-23, AMENDING FEES AND SPECIAL PICK-UP BY LIMITING THE PERIOD OF ACCUMULATION; PROVIDING FOR THE REPEAL OF ORDINANCES, OR PARTS OF ORDINANCES, IN CONFLICT HEREWITH, TO THE EXTENT OF SUCH CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Gulfport desires to eliminate the accumulation of trash and debris subject to special pick-up within the city limits of the City of Gulfport.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF GULFPORT, FLORIDA AS FOLLOWS:

Section 1. The Code of Ordinances of the City of Gulfport is hereby amended as follows:

Section 11-23. Special pick-up

- (a) Any accumulation of trash that cannot be placed in three (3) thirty-two-gallon containers twice a week, or equivalent, in accordance with this article, shall be picked up by the city, with or without notification by the owner or occupant of each living unit. An additional fee shall be charged according to the size of the load, which shall be billed as an additional charge on the utility bill. A single pick-up item shall be eleven dollars and twenty-five cents (\$11.25) and a white goods pick-up shall be twenty-two dollars and fifty cents (\$22.50). All white goods doors shall be removed before being set out for collection. Other larger loads, including yard waste exceeding six (6) feet by three (3) feet by three (3) feet (two (2) cubic yards) shall be based on the size and type of equipment required to load and haul the trash. ~~No trash shall be allowed to accumulate for a period of longer than one (1) week.~~ Vehicle tires shall be eleven dollars and twenty-five cents (\$11.25) per tire; car batteries shall be five dollars and sixty-two cents (\$5.62) per battery. Twenty pound bottled gas cylinders shall be eleven dollars and twenty-five cents (\$11.25) and shall not be picked up unless they are empty. Televisions and home computer components shall be sixteen dollars and eighty-seven cents (\$16.87) per item. No trash shall be allowed to accumulate for a period of longer than seventy-two (72) hours.

Section 2. This Ordinance shall be published in accordance with the law.

Section 3. All Ordinances, or parts of Ordinances in conflict herewith are hereby repealed to the extent of any conflict with this Ordinance.

Section 4. If any portion or part of this ordinance is declared invalid by a court of competent jurisdiction, the valid remainder hereof shall remain in full force and effect.

Section 5. This Ordinance shall become effective immediately upon final passage.

Michael J. Yakes, Mayor

FIRST READING : _____

PUBLISHED : _____

SECOND READING/
PUBLIC HEARING : _____

I, Lesley DeMuth, City Clerk of the City of Gulfport, Florida, do hereby certify that the foregoing Ordinance was duly adopted in accordance with the provisions of law and the City Charter this _____ day of _____, 2012.

Lesley DeMuth, City Clerk

Agenda Item No. 7-a
Resolution No. 2012-05



GULFPORT CITY COUNCIL

AGENDA MEMORANDUM

FROM: Don Sopak, Public Works Director

DATE: January 17, 2012

AGENDA ITEM: 7-a

RESOLUTION NO: 2012-05

SUBJECT: Electric Vehicle Supply Equipment Site Agreement

RECOMMENDATION: That the City Council authorize the City Manager to enter into a Site Agreement with Progress Energy Service Company, LLC for the installation and maintenance of a electric vehicle charging station in Gulfport.

BACKGROUND:

In August 2010 Public Works began discussions with Progress Energy who is party to an Assistance Agreement with the United States Department of Energy which among other things partially funds Electric Vehicle Supply Equipment ("EVSE") locations in designated locations throughout Progress Energy's regulated service territory in Florida. Progress Energy has submitted a site agreement to the City for the installation and maintenance of an EVSE to be located in Gulfport.

Plug in electric vehicles offer fuel economy, lower emissions and strong acceleration with a quiet operation, all from a domestic energy source. EVSE's supply the connection to the grid where vehicles park street-side, garage or parking lot and provide the car's onboard charger with electricity it needs to refill the battery.

ANALYSIS:

The site agreement includes the installation of the equipment by Progress Energy with the City being responsible for the monthly electric bill only, allows Progress Energy to collect data from the EVSE, requires the ESVE to be available twenty-four hours each day and the City will be responsible to maintain the area surrounding the ESVE.

The term of the agreement shall commence on the date of installation of the EVSE and shall continue until April 27, 2013. At the end of the Term, should Progress Energy, in Progress Energy's sole discretion, opt to transfer ownership, at no cost to the City except the payment of transfer taxes if applicable.

Unless or until Progress Energy transfers title to the EVSE to the City, at all times under this Agreement, Progress Energy shall own and maintain title to the EVSE.

The City Attorney, the City's insurance carrier and City staff have reviewed the agreement and have approved it to be executed.

FINANCIAL IMPACT:

The City will be responsible to pay the electric bill estimated to be \$600 annually. If the City requests termination of the agreement prior to the expiration of the term, then following notification from City to Progress Energy, Progress Energy shall remove and take possession of the EVSE within sixty (60) days of City's request and the City shall pay Progress Energy the cost of removing the EVSE, which shall not exceed six hundred dollars (\$600.00).

MOTION:

That the City Council authorize the City Manager to enter into a Site Agreement with Progress Energy Service Company, LLC for the installation and maintenance of a electric vehicle charging station in Gulfport.

RESOLUTION NO. 2012-05

A RESOLUTION OF THE CITY OF GULFPORT, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A SITE AGREEMENT WITH PROGRESS ENERGY SERVICES COMPANY, LLC; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, In August 2010, Public Works began discussions with Progress Energy who is party to an Assistance Agreement with the United States Department of Energy which among other things partially funds Electric Vehicle Supply Equipment ("EVSE") locations in designated locations throughout Progress Energy's regulated service territory in Florida, and

WHEREAS, Progress Energy has submitted a site agreement to the City for the installation and maintenance of an EVSE to be located in Gulfport.

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

Section 1. The City Council hereby authorizes the city manager to enter into a Site Agreement with Progress Energy Services Company, LLC for the installation and maintenance of an electric vehicle charging station.

Section 2. Said agreement shall commence on the date of installation of the EVSE and continue until April 27, 2013.

Section 3. This resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 17th day of January, 2012 by the Council of the City of Gulfport, Florida.

Michael J. Yakes, Mayor

ATTEST:

Lesley DeMuth, City Clerk



Imagery Date: 4/5/2019

27°42'19.72" N 82°42'27.18" W Elev: 2 ft

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Google earth

Eye Alt: 6527 ft

ELECTRIC VEHICLE SUPPLY EQUIPMENT SITE AGREEMENT

THIS ELECTRIC VEHICLE SUPPLY EQUIPMENT SITE AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2012 (“Effective Date”) between Progress Energy Service Company, LLC as agent for Florida Power Corporation d/b/a Progress Energy Florida, Inc., whose address is 410 South Wilmington Street, Raleigh, NC 27601, (hereinafter referred to as “PGN”), and the City of Gulfport a Municipal corporation (hereinafter referred to as “Host”).

WHEREAS, PGN is party to a certain Assistance Agreement with the United States Department of Energy (the “Grant”) which among other things partially funds Electric Vehicle Supply Equipment (“EVSE”) locations in designated locations throughout PGN’s regulated service territory; and

WHEREAS, PGN and Host agree to work together to establish EVSE locations on Host’s property described in Exhibit A to this Agreement, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, conditions and agreements set forth herein, PGN and Host agree as follows:

SECTION 1. EVSE INSTALLATION, MAINTENANCE AND TITLE

- a. PGN, through PGN’s network of authorized third party independent contractors and at PGN’s expense, shall provide, install, maintain, repair or replace (collectively the “Work”) the EVSE on property owned by Host. The Site is depicted on Exhibit “A” attached hereto and incorporated into this Agreement. The EVSE shall include a vehicle charging station and associated cords, electrical lines, wires, conduit, cables and equipment. PGN shall provide electric utility services to Host, and Host shall pay for such service consistent with the applicable electric utility tariff in force and effect. PGN, in PGN’s sole discretion, shall have the right to repair, modify or replace the EVSE at any time during the Term of this Agreement.
- b. Upon completion of installation and at all times during the Term of this Agreement, ownership of and title to the EVSE shall remain with PGN. Host shall ensure that any EVSE shall not be subject to any lien, security interest or other claim asserted by any creditor of Host, and any sale of the Site by Host shall not include the EVSE.

SECTION 2. HOST’S EVSE OBLIGATIONS

Throughout the Term of this Agreement:

- a. Host shall grant to PGN such reasonable access to the Site and sufficient space for locating the EVSE at the Site as may be deemed necessary or desirable by PGN and agreeable by the Host for the Work. Host shall also ensure that the Site is zoned to allow the EVSE’s availability to the general public. If the Work requires any improvements to the Site that exceed PGN’s pre-determined maximum Site costs, Host will be notified in writing and if Host approves, Host shall be responsible for such improvement at Host’s sole expenses.
- b. Plus for a period of time until the EVSE (in PGN’s sole discretion) is deemed non-functional but not to exceed 12 months after the term of the agreement, Host hereby consents to and shall permit both PGN and any underlying EVSE manufacturer, vendor or subcontractor to the underlying manufacturer or vendor to access, collect and share with their respective parent,

affiliates, subsidiaries and third parties all data from the EVSE with respect to vehicle charging activity, vehicle usage and technical performance (the "Data") of the vehicle and EVSE. If at any time prior to the expiration or termination of the Grant the EVSE fails to operate or otherwise requires repair, Host shall promptly notify PGN and PGN will repair the EVSE. Host agrees that PGN shall have no EVSE repair or maintenance obligations or responsibilities following expiration or termination of the Grant.

- c. The EVSE shall be open twenty-four (24) hours each day and made available to the general public, during the term of this agreement. Host shall not charge any person or entity to use the EVSE, during the term of this agreement. At Host's sole cost and expense, Host shall reserve suitable peripheral parking space or other space required for the general public to utilize the EVSE and mark and reserve such space with a sign stating that the space shall be "For Electric Vehicle Use Only".
- d. Host shall comply with all applicable rules and regulations of federal, state or city regulatory agencies relating to the Work and operation of the EVSE, including environmental requirements associated therewith.
- e. With respect to any marketing efforts including but not limited to logos, stickers, decals or signage made a part of equipment purchased or infrastructure established; or any printed materials or other marketing and/or outreach materials, activities, or web sites created under this Agreement, Host agrees: i) to consider erecting qualifying signage identifying the EVSE as "being funded by the American Recovery and Reinvestment Act;" and ii) to submit any such marketing effort and required signage for prior review and approval by PGN.
- f. Host should maintain the area surrounding the EVSE and will promptly notify PGN of any problems related to the EVSE. Such maintenance includes, but is not limited to, pavement maintenance and the repair or replacement of security lighting and security monitoring cameras.
- g. Host agrees to cooperate with PGN in fulfilling PGN's reporting requirements to the United States Department of Energy and/or other federal, state or local regulatory or governing entities. Such cooperation may include, but not be limited to, periodic inspection of the EVSE and the addition of monitoring hardware or software at PGN's expense. If Host fails to meet any of its obligations under this Agreement, PGN may remove the EVSE and redeploy it at another site and if the redeployed site is with the Host, such site will be mutually agreeable.

SECTION 3. TERM AND TERMINATION

This Agreement shall be effective as of the date of execution by both parties. The term shall commence on the date of installation of the EVSE and (unless terminated sooner) shall continue until April 27, 2013 (unless extended by the company but not to exceed 12 months after the term of the agreement), but at all times shall be subject to the minimum EVSE Data collection period as set forth in Section 2 (Host's EVSE Obligations) to allow PGN and PGN's authorized third party contractors to collect necessary Data (the "Term"), unless sooner terminated or extended as provided herein.

SECTION 4. END OF TERM OPTIONS; TAXES

At the end of the Term, should PGN, in PGN's sole discretion, opt to transfer ownership, at no cost to the Host except as outlined below concerning the payment of transfer taxes, of the EVSE to Host at the then current EVSE fair market value and Host agrees to accept such transfer of ownership, then PGN will deliver to Host a Bill of Sale for the current EVSE fair market value. Host further agrees that in accordance with federal and state laws in effect at the time of the transfer of the EVSEs from PGN to Host, that: i) Host shall be responsible for and shall pay transfer taxes related to the fair market value of the EVSE as stated on the Bill of Sale ; ii) PGN may thereafter invoice and collect sales tax from Host on the fair market value of the transfer; and iii) Host agrees to complete Form W-9, "Request for Taxpayer Identification Number and Certification" upon execution of these terms and conditions. Following notification from Host to PGN of Host's decision to forego acceptance of the EVSE, PGN will remove the EVSE within sixty (60) days of Host's request and take possession of the EVSE, all at no cost to Host.

SECTION 5. TERMINATION

- a. If due to a physical relocation of the Site within PGN's regulated service territory, Host requests to relocate the EVSE (but not to terminate the Agreement before the end of the Term), then following at least a thirty (30) days notification from Host to PGN advising PGN of Host's relocation request, Host shall thereafter select its own independent contractor to remove and relocate the EVSE, all at Host's sole cost and expense. Following the removal and relocation of the EVSE by Host's independent contractor, this Agreement shall remain in effect for the remainder of the Term.
- b. If either due to a physical relocation of the Site outside of PGN's regulated service territory or due to Host's convenience, Host thereafter requests termination of the Agreement prior to the expiration of the Term, then following notification from Host to PGN advising PGN of Host's termination, PGN or a PGN authorized independent contractor shall remove and take possession of the EVSE within sixty (60) days of Host's request and Host shall pay PGN the cost of removing the EVSE, which shall not exceed six hundred dollars (\$600.00). PGN's or PGN's authorized independent contractor's removal and possession of the EVSE shall not include any removal or possession of any associated cords, wires, cables, equipment, electrical lines, conduit or other ancillary hardware associated with the EVSE. All such ancillary hardware will be disconnected by PGN or PGN's authorized independent contractor and left in place at the Site.

SECTION 6. TITLE TO EQUIPMENT AND DATA

Unless or until PGN transfers title to the EVSE to Host, at all times under this Agreement, PGN shall own and maintain title to the EVSE. The Host shall not make any alterations, changes or modifications to the EVSE without first securing prior written permission from PGN and/or any applicable underlying manufacturer. All rights, title and interest in the EVSE Data and related information collected from the EVSE shall also immediately vest in PGN. PGN shall therefore have the right to use, copy, distribute and create derivative works from such Data and information as necessary and helpful to evaluate electric vehicles and electric vehicle support equipment and for any other PGN business purpose.

SECTION 7. INSURANCE COVERAGE.

- a. Host shall provide and maintain in full force and effect at no additional cost to PGN for the duration of the Agreement: i) Commercial general liability insurance or comprehensive general liability insurance with a minimum limit of \$2,000,000 per occurrence for bodily injury and damage to property including contractual liability, premises/operations, products/completed operations, independent contractors, broad form property damage, and personal injury coverage and a minimum aggregate amount of \$3,000,000 or commercial/comprehensive general liability insurance plus additional excess umbrella liability insurance to meet these limits; ii) Comprehensive automobile liability insurance with a minimum combined single limit of \$1,000,000 per accident for bodily injury and damage to property, or covering bodily injuries or death in a sum not less than \$500,000 per person and \$1,000,000 per accident and covering damages to property in a sum of at least \$250,000 per accident or comprehensive automobile liability insurance plus additional excess umbrella liability insurance to meet these limits. This insurance shall apply to any auto, whether owned or non-owned; and iii) Workers' compensation insurance as specified by state law in each state where the Host maintains the EVSE. All such coverages shall be primary.
- b. Notwithstanding the above, Host shall have the right to satisfy its insurance obligations under this Agreement by means of self-insurance to the extent of all or part of the insurance required hereunder but only so long as such self-insurance is permitted under all laws applicable to Host at the time in question. "Self-insure" shall mean that Host is itself acting as though it were the third-party insurer providing the insurance required under the provisions of this Agreement, and Host shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Agreement. To the extent Host chooses to provide any insurance required by this Agreement by "self-insurance," then Host shall have all of the obligations and liabilities of an insurer, and the protection afforded PGN shall be the same as if provided by a third-party insurer under the coverage required under this Agreement. Without limiting the generality of the foregoing, all amounts which Host pays or is required to pay and all losses or damages resulting from risks for which Host insures or has elected to self-insure shall be subject to the waiver of subrogation provisions of this Agreement, and shall not limit Host's indemnification obligations pursuant to this Agreement. In the event that Host elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from a third-party insurer, Host shall undertake the defense of any such claim, including a defense of PGN, at Host's sole cost and expense, and use its own funds to pay any claim or replace any property or otherwise provide the funding which would have been available from insurance proceeds but for such election by Host to self-insure. Any such self-insurance shall be required to provide "first dollar" coverage.
- c. Host shall require its insurance carrier or agent to certify that this requirement has been satisfied on all Insurance Certificates issued under this Agreement.
- d. Before any Work is initiated under this Agreement, Host shall provide written proof of compliance with the above insurance requirements and a copy of certificate of insurance completed by his insurance carrier or agent certifying that minimum insurance coverages as required above are in effect and that the coverage will not be canceled or changed until thirty (30) days after written notice is given PGN. Host shall maintain, update, and renew the Certificate for the duration of the Agreement. In the event an acceptable Certificate of Insurance becomes outdated, PGN may elect to suspend Work or take other appropriate action until an acceptable and properly dated Certificate is received by PGN.

SECTION 8. INDEMNIFICATION

To the maximum extent permitted by applicable law, Host shall indemnify and defend PGN (including PGN's parent, subsidiary and affiliate companies), PGN's officers, employees and agents from and against all repairs, liability, loss, costs, claims, damages, expenses, judgments and awards, whether or not covered by Host's insurance, arising or claimed to have arisen wholly or in part from Host's or Host's agents' acts or omissions or negligence at or arising from the Site which resulted in:

- a. injury to (including mental or emotional) or death of any person, including employees of PGN (including PGN's parent, subsidiary and affiliate companies) and including any PGN agents or authorized, independent contractors; or
- b. damage to or destruction of any property (real, personal, tangible or intangible) including without limitation real or personal property of any third party, the EVSE and any associated EVSE hardware (including but not limited to any cords, wires, cables, equipment, electrical lines, conduit or other ancillary hardware associated with the EVSE), property of PGN (including PGN's parent, subsidiary and affiliate companies), PGN's employees and PGN's authorized, independent contractors; or
- c. Any allegation or violation of any third party intellectual property right, including but not limited to violations of patents, copyrights, trademarks or trade secrets.
- d. Any violation of applicable federal, state and local laws (and the rules and regulations of any lawful regulatory body acting thereunder in connection with the Work).
- e. The foregoing indemnification by Host shall not apply to the extent such claims are the result of PGN's negligence.

Indemnification shall include all costs including attorney's fees reasonably incurred in pursuing indemnity claims under or enforcement of this Agreement; provided, however, this Section 8 shall in no way constitute a waiver of Host's Sovereign Immunity limits under Florida law as set forth in Florida Statutes, Chapter 768.

SECTION 9. WARRANTY

- a. PGN WARRANTS THAT EVSE WORK PERFORMED BY PGN'S NETWORK OF AUTHORIZED THIRD PARTY INDEPENDENT CONTRACTORS WILL BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP DURING THE TERM OF THE AGREEMENT. IN THE EVENT THAT ANY EVSE WORK PERFORMED IS FOUND TO BE DEFECTIVE IN EITHER MATERIALS OR WORKMANSHIP, PGN MAY, IN PGN'S SOLE DISCRETION, REPAIR OR REPLACE SUCH DEFECTIVE EVSE OR WORK. THE REPAIR OR REPLACEMENT OF SUCH DEFECTIVE WORK IS HOST'S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY FOR ANY FAILURE OF PGN TO COMPLY WITH PGN'S WARRANTY OBLIGATIONS, AND PGN EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESSED OR IMPLIED. FOR AVOIDANCE OF DOUBT, REPAIR OR REPLACEMENT OF NON-CONFORMITIES IN THE MANNER AND FOR THE PERIOD

OF TIME PROVIDED ABOVE SHALL CONSTITUTE PGN'S SOLE LIABILITY AND HOST'S EXCLUSIVE REMEDY FOR FAILURE OF PGN TO MEET PGN'S WARRANTY OBLIGATIONS, WHETHER ANY CLAIMS OF HOST ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE.

- b. AT THE END OF THE TERM OF THIS AGREEMENT AND SHOULD HOST OPT TO ACCEPT TITLE TRANSFER OF THE EVSE FROM PGN, THEN FOR ALL EVSE DEVICES (INCLUDING ALL ASSOCIATED EVSE CORDS AND INTERNAL WIRING), THE TRANSFER WILL BE AS-IS WITH NO WARRANTIES AND HOST ASSUMES SOLE RISK AND RESPONSIBILITY FOR ANY REMAINING WARRANTY ACTION (IF ANY).

SECTION 10. LIMITS OF LIABILITY

- a. UNDER NO CIRCUMSTANCES OR LEGAL THEORY, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY, WARRANTY, INFRINGEMENT OR OTHERWISE, SHALL PGN BE LIABLE TO HOST OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, CONSEQUENTIAL, SECONDARY, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES, WHICH INCLUDES BUT IS NOT LIMITED TO: i) ANY PROPERTY DAMAGE (REAL, PERSONAL, TANGIBLE OR INTANGIBLE) OR PERSONAL INJURY (INCLUDING MENTAL OR EMOTIONAL DISTRESS) ARISING FROM OR ALLEGED TO HAVE ARISEN UNDER THIS AGREEMENT; ii) ANY CLAIMS OR CAUSES OF ACTION THAT ARISE OR ARE ALLEGED TO HAVE ARISEN AS A RESULT OF ANY REQUIRED SPACE VENTILATION NOT MADE KNOWN IN WRITING TO PGN OR PGN'S AUTHORIZED THIRD PARTY INDEPENDENT CONTRACTOR IN WRITING PRIOR TO ANY WORK; iii) ANY DAMAGES ARISING OR ALLEGED TO HAVE ARISEN FROM ANY ELECTRICAL MALFUNCTION OR THE REPAIR OR REPLACEMENT OF SUCH MALFUNCTIONING ITEMS; OR iv) ANY ENVIRONMENTAL CLAIMS, DAMAGE OR CAUSES OF ACTION.
- b. UNDER NO CIRCUMSTANCES WILL PGN OR ANY PGN AUTHORIZED THIRD PARTY INDEPENDENT CONTRACTOR BE HELD LIABLE TO HOST OR ANY OTHER PERSON OR ENTITY FOR MATTERS INVOLVING THE PURCHASE, LEASE, USE, NON-USE, OR DEVALUATION OF ANY ELECTRIC VEHICLE, PLUG IN HYBRID VEHICLE OR ANY VEHICLE OF ANY NATURE, ANY EVSE OR ASSOCIATED EVSE INFRASTRUCTURE WHEN APPLICABLE CODES OR STANDARDS PROHIBIT THE INSTALLATION OR USE OF SUCH VEHICLE OR EQUIPMENT. PGN WILL NOT PAY FOR ANY COSTS INCURRED OR DAMAGES SUSTAINED BY HOST FOR PURCHASING ANY VEHICLE OR EQUIPMENT OR OTHERWISE IN RELIANCE UPON PGN BEING ABLE TO PROVIDE AN EVSE TO HOST. NOTWITHSTANDING ANYTHING SET FORTH IN THIS AGREEMENT TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL PGN'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF THE EVSE PLUS INSTALLATION COSTS MADE BY PGN UNDER THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

SECTION 11. MISCELLANEOUS PROVISIONS

- a. Compliance with Laws. Performance under this Agreement is subject to all valid laws and regulations of courts or regulatory bodies having jurisdiction, including: i) compliance with the Americans With Disabilities Act, as amended; and ii) compliance with the minimum rates for wages for laborers and mechanics as determined by the United States Secretary of labor in accordance with the provisions of the Davis-Bacon Act as amended and any related provisions.
- b. Assignment. This Agreement shall not be assigned except with the prior written consent of all parties hereto. The terms and conditions of this Agreement shall bind any permitted successors and assigns of the parties.
- c. Status of Parties. This Agreement shall not be construed as creating a partnership, joint venture, agency relationship, franchise or association, nor shall this Agreement render PGN and Host liable as partners, co-venturers or principals. It is agreed that nothing shall operate to change or alter such relationship, except a further agreement in writing between them.
- d. Severability. If any term or provision of this Agreement is held illegal or unenforceable by a court with jurisdiction over the Agreement, all other terms in this Agreement will remain in full force and the illegal or unenforceable provision shall be deemed struck. In the event that the stricken provision materially affects the rights, obligations or duties of either party, PGN and Host shall substitute a provision by mutual agreement that preserves the original intent of the parties as closely as possible under applicable law.
- e. Governing Law. This Agreement shall be governed by the laws of the State of Florida, except that the Florida conflict-of-law provisions shall not be invoked in order to apply the laws of any other state or jurisdiction. Jurisdiction for any claim under this agreement shall be in Pinellas County, Florida.
- f. Public Communication. Host agrees to cooperate with PGN in maintaining good community relations. PGN will issue all public statements, press releases, and similar publicity concerning the EVSE and the Work (including its progress, completion and characteristics). Host shall not make or assist anyone to make any such statements, releases, photographs, or publicity without prior written approval of PGN.
- g. Nonwaiver. PGN's failure to insist on performance of any of the terms and conditions herein or to exercise any right or privilege or PGN's waiver of any breach hereunder shall not thereafter waive any of PGN rights or privileges under this Agreement or at law. Any waiver of any specific breach shall be effective only if given expressly by PGN in writing.
- h. Merger. This Agreement embodies the entire agreement between PGN and Host. The parties shall not be bound by or liable for any statement, writing, representation, promise, inducement or understanding not set forth above. No changes, modifications or amendments of any terms and conditions of this Agreement are valid or binding unless agreed to by the parties in writing and signed by their authorized agents.

- i. Privacy Law. Host further acknowledges and agrees that Host is knowingly consenting to and authorizing PGN to release and share Host's name, address and telephone number for the Work with PGN's authorized third party independent contractors, in order for the authorized third party independent contractors to provide the EVSE to Host.

- j. Survival. The following sections shall survive the expiration or termination of this Agreement: Section 6 (Title To Equipment And Data); Section 7 (Insurance Coverage); Section 8 (Indemnification); Section 9 (Warranty); Section 10 (Limits of Liability); Section 11(a) (Compliance With Laws) and Section 11(i) (Privacy Law).

[signature page follows]

IN WITNESS WHEREOF, the parties execute this Agreement by their signature or the signature of their authorized agents. as of the date first above written.

City of Gulfport

Florida Power Corporation d/b/a
Progress Energy Florida, Inc.

BY: _____

BY: _____

NAME (printed): _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

LESSOR (if applicable)

BY: _____

NAME (printed): _____

TITLE: _____

DATE: _____

Should the person's title who is executing this document not indicate that he/she is a corporate officer, an affidavit signed by a corporate officer shall be provided stating that the person whose name appears above is duly authorized to execute Contracts on behalf of the firm.

Indicate your Social Security Number **OR** your Federal Tax Identification Number (FTIN). This number shall correspond with the Host name indicated above and shall be the same Federal Tax Identification Number under which you report income. **COMPLETE ONLY ONE.**

Federal Tax ID #	Social Security #
_____	_____

Agenda Item No. 7-b
Resolution No. 2012-06



GULFPORT CITY COUNCIL AGENDA MEMORANDUM

FROM: James E. O'Reilly, City Manager

DATE: January 17, 2012

AGENDA ITEM: 7-b

RESOLUTION NO: 2012 - 06

SUBJECT: GEMS vehicle – FDOT Grant application

RECOMMENDATION: Staff recommends City Council authorize the City Manager to submit an Elderly and Persons with Disabilities Program grant application, supporting documents and assurances to the Florida Department of Transportation for funding of a replacement GEMS vehicle.

BACKGROUND:

The Gulfport Elderly Mobility Service (GEMS) continues to support the independence and increased quality of life of its participants by providing door-to-door transportation for seniors and disabled residents unable to use conventional modes of transportation. The GEMS program provides door-to-door transportation for medical appointments, grocery shopping, social or recreational activities, and any other need within the area that GEMS serves.

The City of Gulfport is applying for funding to replace the GEMS mini-van that is 11 years old. The seven passenger mini-van is used as a back-up vehicle when the 14 passenger GEMS mini-bus breaks down or is undergoing routine service. The replacement vehicle will have the same seating capacity as the mini-bus which will allow for a flawless transfer of riders from one vehicle to the other. Currently, whenever the mini-van replaces the mini-bus, rides need to be prioritized and some riders are required to reschedule to a different time or day due to the unavailability of adequate seating. The new vehicle will also have the capacity of providing two wheelchair rides simultaneously.

ANALYSIS:

Besides the GEMS 2001 modified Ford Van that needs replacing, the fleet currently has a 2005 Ford Bus with 14 standard seats, a lift and 2 wheelchair stations and a 2011 Ford Taurus. The City of Gulfport recently received a Notice of Grant Award to replace the 2005 Ford Bus with a new vehicle having the same seating and wheelchair capacity. This vehicle will be replaced in early 2012. The fleet also uses a 2000 Ford, Crown Victoria transferred to GEMS by another city

department which no longer needed it. The Crown Victoria is used for out of area medical appointments.

The Ford Taurus and the GEMS mini-bus are used quite extensively each day. Vehicles transport the elderly and disabled clients to their medical, banking, and legal appointments as well as various social activities. During the 2010/2011 fiscal year the sedan made 5,375 one way trips and went 17,900 miles. The mini-bus made 4,918 one way trips and went 11,296 miles. Having a second 14 seat mini-bus would allow the buses to be rotated each day thus doubling the life span of each vehicle.

The City of Gulfport General Fund sustains a large portion of the GEMS program's operating expenses and current level of service. The City of Gulfport-Garage Staff maintains the vehicles of the GEMS fleet. The GEMS operates two vehicles each day this permits one vehicle to be out of service for maintenance. The City's vehicles used for the transport of citizens are checked and maintained on regularly scheduled basis.

With this new vehicle the GEMS service area, hours, days of operation and route would remain the same but with a greater level of assurance that all GEMS clients would be assured rides without the necessity of dispatchers to prioritize rides or reschedule clients to another time or day.

FINANCIAL IMPACT:

Replacement of the 2001 vehicle with an additional bus will be budgeted in the City's FY 2012/2013 Capital Improvement Budget. Cost of the vehicle is \$76,100.

The Florida Department of Transportation Public Transit Office has provided the opportunity for funding in the present fiscal year through the Federal Government Program, Section 5310, Elderly and Persons with Disabilities Program. Under Section 5310, the Federal share of the program will be 80% of the cost, the State share will be 10% and 10% will be the City's matching cost. The City's share for the vehicle will be \$7,610.

MOTION:

A motion authorizing the City Manager to submit an Elderly and Persons with Disabilities Program grant application, appropriate supporting documents and assurances to the Florida Department of Transportation for funding of a replacement GEMS vehicle.

RESOLUTION NO. 2012 - 06

A RESOLUTION OF THE CITY OF GULFPORT, FLORIDA, AUTHORIZING THE CITY MANAGER TO SUBMIT AN ELDERLY AND PERSONS WITH DISABILITIES PROGRAM GRANT APPLICATION TO THE FLORIDA DEPARTMENT OF TRANSPORTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Gulfport, Florida, has the authority to apply for and accept grant awards made by the Florida Department of Transportation as authorized by Chapter 341, Florida Statutes and/or by the Federal Transit Administration Act of 1964, as amended; and

WHEREAS, the Council of the City of Gulfport, Florida, is desirous of authorizing the signing and submission of a grant application and supporting documents and assurances to the Florida Department of Transportation, and the acceptance of a grant award from the Department for the replacement of a GEMS vehicle.

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

Section 1. This resolution applies to a Federal Program under the U.S.C. Section 5310, Elderly and Persons with Disabilities Program.

Section 2. The City Council hereby approves the submission of a grant application, supporting documents, and assurances to the Florida Department of Transportation.

Section 3. The City Council here by authorizes the City Manager to sign the application and accept a grant award, unless specifically rescinded.

Section 4. This resolution shall become effective upon its adoption.

PASSED AND ADOPTED this 17th day of January 2012, by the City Council of the City of Gulfport, Florida.

Michael J. Yakes, Mayor

ATTEST:

Lesley DeMuth, City Clerk

Agenda Item No. 7-c
Resolution No. 2012-07



GULFPORT CITY COUNCIL AGENDA MEMORANDUM

FROM: James E. O'Reilly, City Manager

DATE: January 17, 2012

AGENDA ITEM: 7-c

RESOLUTION NO: 2012 - 07

SUBJECT: PACE Administrator

RECOMMENDATION: City Council to provide authorization for the City Manager to enter into an agreement with the respondent District Management Services to the City's "Request For Proposal" to provide Third Party Administrator Services to the City of Gulfport for a Commercial Property Assessment Clean Energy (PACE) program.

BACKGROUND:

Initially, City Council approved Ordinance 2011-01 on second (2nd) reading in February 2011; amending Chapter 2 – Administration; Creating ARTICLE IV, Section 2-45, titled Voluntary Energy Efficiency and Renewable Energy Program. At that time staff recommended and City Council concurred; that Ordinance 2011-01 reflect the programs applicability to only those commercial properties not deemed affected by the Federal Housing Finance Agency's position statement of July 6, 2010.

On May 17, 2011, pursuant to Section 163.08, Florida Statutes, the City published a request for proposals for the purpose of selecting and retaining one (1) firm to provide Third Party Administrator Services to the City of Gulfport for a Commercial Property Assessment Clean Energy (PACE) program.

The submission period for responses closed on July 14, 2011. The City received two (2) responses:

- District Management Services
- Ygrene Energy Fund (EcoAssets Solutions)

On September 6, 2011, staff requested from City Council authorization to begin negotiations with the highest ranked firm - Ygrene Energy Fund (EcoAssets Solutions). Following discussion of the process, City Council respectively requested staff entertain contract proposals from each of the two (2) respective firms that had submitted proposals.

On September 15, 2011, the City Manager and City Attorney met jointly with representatives of District Management Services and Ygrene Energy Fund (EcoAssets Solutions). Following discussion of City Council's direction, both firms were asked to submit formal contract proposals by November 1, 2011 to provide Third Party Administrator Services to the City of Gulfport for a Commercial Property Assessment Clean Energy (PACE) program as forth in the City's request for proposals.

ANALYSIS:

Per direction provide at the joint meeting of September 15, 2011; on November 1, 2011 the City Manager formally received the included contract proposal from District Management Services.

On November 2, 2011, Ygrene Energy Fund (EcoAssets Solutions) notified the City via email (attached) that it was declining the opportunity to deliver a contract for consideration.

The City Attorney has reviewed the agreement provided by District Management Services and found it legally sufficient to execute.

FINANCIAL IMPACT:

No financial impacts to the City, as all costs associated with program are the responsibility of District Management Services as outlined in the initial request for proposals.

MOTION:

Move to approve/deny a Resolution authorizing the City Manager to enter into an agreement with District Management Services, to provide Third Party Administrator Services to the City of Gulfport for a Commercial Property Assessment Clean Energy (PACE) program.

RESOLUTION NO. 2012-07

A RESOLUTION OF THE CITY OF GULFPORT, FLORIDA, AUTHORIZING THE CITY MANGER TO ENTER INTO AN AGREEMENT WITH DISTRICT MANAGEMENT SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, On May 17, 2011, pursuant to Section 163.08, Florida Statutes, the City published a request for proposals for the purpose of selecting and retaining one (1) firm to provide Third Party Administrator Services to the City of Gulfport for a Commercial Property Assessment Clean Energy (PACE) program, and

WHEREAS, On September 6, 2011, staff requested from City Council authorization to begin negotiations with the highest ranked firm; and

WHEREAS, Following discussion of the process, City Council respectively requested staff entertain contract proposals from each of the two (2) respective firms that had submitted proposals, and

WHEREAS, On September 15, 2011, the City Manager and City Attorney met jointly with representatives of District Management Services and Ygrene Energy Fund (EcoAssets Solutions); and

WHEREAS, Both firms were asked to submit formal contract proposals by November 1, 2011 to provide Third Party Administrator Services to the City of Gulfport for a Commercial Property Assessment Clean Energy (PACE) program as forth in the City's request for proposals; and

WHEREAS, On November 1, 2011 the City Manager formally received a contract proposal from District Management Services.

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

Section 1. The City Council hereby authorizes the city manager to enter into an agreement with District Management Services to provide Third Party Administrator Services to the city for a Commercial Property Assessment Clean Energy (PACE) Program.

Section 2. This resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 17th day of January, 2012 by the Council of the City of Gulfport, Florida.

Michael J. Yakes, Mayor

ATTEST:

Lesley DeMuth, City Clerk



November 1, 2011

Dear Mr. O'Reilly

We are pleased to transmit our proposed contract on behalf of the District Management Services team to provide Third Party Administrative Services to the City of Gulfport for its Commercial Property Assessment Clean Energy program.

Our plan can best be characterized as an "open-market/open platform" approach to providing Third Party Administrative services. By design, we will not have an exclusive financial provider or energy performance provider. Instead, we will use our team's profound experience and significant connections with financial institutions to procure the most favorable financing terms for the commercial property owners in the City of Gulfport.

We bring substantial expertise in administering special assessment districts throughout Florida, assuring that the implementation and administration of such a district in the City of Gulfport will be accomplished efficiently and effectively.

Our approach encourages utilization of local vendors and local financial institutions to the extent that they are interested in participating in the program. Our proposed rate for the Administrative Services is likewise very competitive.

In responding to the Request for Proposals by the City of Gulfport, we did not include program components related to hurricane or wind resistance hardening, nor did we include a residential component. We are ready, willing and able to provide such services in the event the City of Gulfport decides to broaden the scope of its Energy Savings Program.

Finally, as you know, the City of Gulfport did not specify any particular form of contract. We understand that the final version of the contract will be brought into conformance with standard requirements of the City of Gulfport and the terms of the Request for Proposals (RFP). We are fully prepared to comply with these standards and previously provided documentation solicited in the RFP that relates to at least a few of these requirements.

In closing, our Florida-based team is excited about this opportunity and we look forward to helping the City of Gulfport lead Florida in efficiently helping its businesses become more energy efficient enterprises while helping to create local jobs and reduce pollution.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian K. Lamb", written over a white background.

Brian K. Lamb

CEO

District Management Services

Cc: Andrew Salzman, City Attorney

**AGREEMENT BETWEEN CITY OF GULFPORT, FLORIDA AND
DISTRICT MANAGEMENT SERVICES, LLC TO ADMINISTER GULFPORT'S
COMMERCIAL PROPERTY ASSESSMENT CLEAN ENERGY PROGRAM**

THIS AGREEMENT, made and entered into on this ____ day of _____, 20__, by and between the City of Gulfport, Florida, hereinafter referred to as "GULFPORT", and "District Management Services, LLC, hereinafter referred to as "DMS", whose address is 5680 W. Cypress Ave, Tampa Florida 33607.

WITNESSETH

WHEREAS, GULFPORT desires to implement a clean energy property assessment finance program to facilitate the investment of commercial businesses in energy efficiency and renewable energy improvements pursuant to the terms of Florida Statute 163.08 and City of Gulfport Ordinance 2011-1.

WHEREAS, GULFPORT issued a Notice for Request for Proposal, RFP # CM 01-2011 for a Commercial Property Assessment Clean Energy (PACE) Administrator on or about May 20, 2011.

WHEREAS, a team led by DMS submitted a responsive proposal to provide Third-Party Administrator Services for the City of Gulfport's Energy Savings Program as authorized and defined by Ord. 2011-1.

WHEREAS, the Council for the City of Gulfport approved DMS as the Third Party Administrator on _____, 20__.

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

PARTIES

1. The parties to this agreement include the City of Gulfport, Florida, ("GULFPORT") and District Management Services, LLC ("DMS").

GULFPORT Contractual Obligations

2. GULFPORT hereby engages DMS as the Third Party Administrator ("PACE Administrator") for its Energy Savings Program, authorized by City

Ordinance 2011-1 and Fla. Stat. 163.08, Florida's Property Assessed Clean Energy ("PACE") statute.

3. GULFPORT agrees to undertake all steps necessary and reasonable to implement voluntary property assessment clean energy districts consistent with Fla. 163.08 and 197.3632 and City Ordinance 2011-1, including but not limited to, scheduling public hearings on applicable ordinances to adopt special assessment districts which will include certified voluntary assessment rolls. GULFPORT agrees to hold periodic enrollments and hearings as property owners agree to participate in the Energy Savings Program or on such other basis as the parties hereto agree. GULFPORT agrees to schedule these hearings within forty-five days, or such time as otherwise reasonably available, of submittal by DMS to the City Manager and City Attorney of all required documents and materials necessary for the adoption of a voluntary assessment district. It is expressly understood by GULFPORT that individual property owner improvements under the Energy Savings Program cannot proceed until such time that the assessment district is approved that includes their respective property.
4. GULFPORT agrees to appoint a lead staff person to serve as a liaison and point of contact with DMS. GULFPORT also agrees to provide appropriate letters or references to commercial property owners stating that DMS is the PACE Administrator for its Energy Savings Program and agrees to provide appropriate linkages to its city website to the PACE Program website.
5. GULFPORT enters this Agreement contingent upon the express understanding that no funding will be required to support this contract beyond the in-kind staff services identified herein.
6. GULFPORT agrees to exercise reasonable efforts to encourage and invite adjoining municipal jurisdictions to enter into interlocal agreements to participate in the Energy Saver Program in order to promote efficient marketing and avoid market place confusion. However, it is understood that any jurisdiction which opts to enter into an interlocal agreement with GULFPORT will be obliged to establish its own assessment district and maintain such district.

DMS Contractual Obligations

7. DMS shall also, by itself and through its subcontractors, perform the Scope of Services provided in Exhibit A to this Agreement. These subcontractors include, but are not limited to:

a. Farias Marketing Group, a Pinellas based marketing consulting firm, will be responsible for the marketing and outreach elements of the Energy Savings Program;

b. Akerman Senterfitt, a Florida-based law firm that will provide legal services and will assist in designing, implementing and securing financing for the Energy Savings Program;

c. Ameresco, one of the largest independent energy services providers in the U.S. with 850 energy professionals, in 59 offices nationwide, including a Florida office in Tampa. It has delivered over \$5 billion dollars in energy solutions and improvement projects. Ameresco shall provide technical program assistance, energy audit review and quantification, energy audit services, and assistance in securing project financing for qualified improvements as outlined in the Scope of Services.

d. RBC Capital, which has been involved in over \$4 billion in debt financings in Florida, shall provide strategic advice in designing financing programs, identifying and securing financial institutions to participate in such programs, and providing underwriting services.

DMS shall retain such other subcontractors or other contractual services as it deems necessary and appropriate to fulfill its obligations as PACE Administrator, subject to compliance with all applicable and reasonable requirements maintained by GULFPORT for entities with whom it contracts to provide services.

8. DMS, through and with participating financial institutions, shall provide the financing of qualified improvements and program costs incurred by eligible and qualified commercial property owners in GULFPORT pursuant to program financing and underwriting parameters it establishes and which are consistent with the provisions of Ordinance 2011-1. The financing shall be secured by a lien placed on the property through a voluntary assessment calculated to repay all relevant costs. For purposes of the financing agreement and voluntary assessment agreement, costs shall include:

a. The cost of qualified improvements as reflected in contracts between the property owner and authorized lessee and qualified contractors and such other costs as identified in Ordinance 2011-1;

b. The cost of any approved and qualified energy audit as per Ordinance 2011-1;

- c. Such other costs that are necessary and incidental to the Administration or implementation of the Energy Savings Program;
 - d. Applicable recording and financial transaction costs incidental to the financing agreement;
 - e. The PACE Administrator management fee;
 - f. The cost associated with maintenance of the assessment for the duration of the assessment district. The parties shall agree upon the schedule of these costs as a part of finalization of the financing plan for the Energy Savings Program. DMS agrees that these fees will be consistent with the reasonable and customary charges associated with comparable districts.
9. DMS shall be compensated by a fixed fee of 6.5% for serving as the PACE Administrator, referred to herein as the PACE Administrator management fee. This fee shall be applied to the sum total of costs identified in Paragraph 8(a-c) and shall be included in the project financing for each property owner.
10. At its option, GULFPORT may extend this contract solely for the purpose of maintaining the approved districts for the duration of such districts. In such case, DMS shall maintain and manage the special assessment roles and district established by GULFPORT including paying for all related costs of such management, contingent upon DMS being compensated from assessment revenues paid by property owners in accordance with the schedule established under Paragraph 8(f).
11. An example of the operation and application of these provisions to a hypothetical energy savings financing is included in Exhibit B.

GENERAL TERMS

12. This contract shall be for a term of one year. The contract will automatically be extended for two, one-year terms absent notice by one party to the other. Notice will be provided by the party desiring not to extend the contract by providing sixty day written notice.

- a. GULFPORT may, at its option, extend the management and maintenance of the adopted districts by DMS for a term and duration acceptable to the parties in accordance with the compensation schedule adopted by the parties pursuant to Paragraph 8-f.
13. This agreement is freely assignable by GULFPORT to the District. Further, DMS may freely assign this contract to another contractor, but in such event, GULFPORT and the District may terminate this agreement with sixty (60) days' notice and without cause.
14. DMS warrants and represents that all of its employees are treated equally during employment without regard to race, color, physical handicap, religion, sex, age or national origin.
15. DMS hereby represents and warrants that it has and will continue to conduct its business activities in a professional manner and that all services shall be performed by skilled and competent personnel to the highest professional standards.
16. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Hillsborough County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
17. In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees.
18. All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to DMS shall be mailed to:

DISTRICT MANAGEMENT SERVICES
5680 W. Cypress Street, Suite A
TAMPA, FLORIDA 33607
ATTENTION: BRIAN K. LAMB

with a copy to:

PACE Administrator's Counsel
Edwin J. Turanchik
Akerman Senterfitt
401 E. Jackson, Suite 1700
Tampa, Florida 33609

19. The foregoing terms and conditions constitute the entire Agreement between the parties hereto and any representation not contained herein shall be null and void and no force and effect. Further this Agreement may be amended only in writing upon mutual consent of the parties hereto.
20. No amendments and/or modifications of this Agreement shall be valid unless in writing and signed by each of the parties.

21-24.[These paragraphs left blank for purposes of including other terms as GULFPORT may require as part of its standard contract including insurance and other requirements.]

On Behalf of City of Gulfport

On Behalf of DMS

[Signatory lines shall be conformed to standard requirements of GULFPORT]

EXHIBIT A TO AGREEMENT

DMS Scope of Services

DMS ¹ will establish the program infrastructure and outreach plan for a commercial property assessed clean energy program ("PACE"). DMS will utilize an open-market, open-platform approach to financing, energy auditing and contracting. DMS will identify financing products and financing participants with the goal of minimizing interest rates and transaction costs while maximizing flexibility and local lender participation. This approach maximizes the opportunity for local financial institution and contractor participation. The DMS approach also is designed to take advantage of existing energy performance and audit programs. DMS' compensation is based upon a fixed percentage fee applied to each individual project cost, with such fee to be incorporated into project financing. A separate matrix is attached as Exhibit 1 identifying the DMS participant or subcontractor who will be responsible for administering or implementing specific program components or processes.

Program Mobilization Phase: Day 1 to 120

1. DMS will adopt a multi-media marketing program, including the creation and maintenance of a unique website for the GULFPORT Commercial PACE program. The website will explain the program, eligible improvements that can be financed through the program, property owner eligibility and process for qualifying for financing. DMS will provide a link to GULFPORT's website. DMS also shall develop appropriate collateral materials to support the program.
2. DMS will identify existing commercial and industrial property taxpayers in GULFPORT. Eligible commercial and industrial property owners will be identified based upon meeting threshold criteria established in Florida Statute 163.08 and GULFPORT Ordinance 2011-1.
3. DMS will complete an evaluation of alternative financing options as well as a competitive procurement process to select financial participants in the GULFPORT commercial PACE program. Financial options and institutions shall be selected based upon a combination of competitive interest rates, transaction costs and flexibility of underwriting criteria. Local banks, credit unions, investment banking firms, and national banks with local branches in GULFPORT, specifically Regions

¹ DMS refers the team of providers included in the DMS contract submitted to the City of Gulfport on November 1, 2011.

Bank and Wells Fargo Bank, will be presented with opportunities for providing financing.

- a. DMS consortium participants will utilize relations with existing financial clients to solicit competitive rates, terms and financing products. These participants include Akerman Senterfitt, Ameresco, DMS and RBC Capital. These participants have a vast array of contacts within finance sectors.
 - i. Akerman Senterfitt is one of the largest law firms in Florida and represents most major lenders that do business in Florida. These lending institutions include, but are not limited to Bank of America, SunTrust, Fifth Third, PNC, Wells Fargo.
 - ii. Ameresco is one of the largest independent energy services providers in the U.S. with 850 energy professionals, in 59 offices nationwide, including its Florida office in Tampa. It was ranked as the top energy performance contracting vendor by the State of Florida's Department of Management Services for its projects. Ameresco has delivered over \$5 billion dollars in energy solutions and improvement projects. It has strong relations with lenders such as Bank of America, SunTrust, Fifth Third, Wells Fargo and Chase which have provided financing for many of these improvements.
 - iii. DMS and its professionals have been involved in the creation, administration and public financings of assessment districts in Florida with over 150 special districts, while managing the installation and operation of over \$500 million of public capital infrastructure and operational maintenance. It has worked with a vast array of lenders, investment bankers and institutional funds within the lending market including, but not limited to Bank of America, SunTrust, Fifth Third, Wells Fargo, Regions, First Miami Securities, Raymond James, Oppenheimer Funds, Goldman Sachs, Blackrock and several others.
 - iv. RBC Capital has completed over \$4 billion in debt financings in Florida and serves as an investment banker or financial advisor for many Florida cities, counties, utilities, universities, school districts and other governmental entities.

4. DMS will adopt financial underwriting and consumer protection standards in conjunction with GULFPORT and financial institutions and underwriters who opt to participate in this program. These standards will also be based upon U.S. Department of Energy standards outlined in its May 7, 2010 Guidelines for PACE program financing where reasonable and applicable.

5. DMS will develop financing agreements, voluntary assessment agreements, all required notices and all other applicable and necessary legal documents to implement the program. The assessment agreement, financing agreement and all notices shall comply with the requirements of Fla. Stat. 163.08 and Ord. 2011-1.

6. DMS will provide direct mail and personal visits and/or phone calls to the identified, eligible commercial and industrial property owners of record and/or lessees of the commercial property to advise them about the opportunities available to them under the program. The list of eligible properties is likely to be less than one hundred, making personal outreach feasible. In some cases, outreach may be to lessees as the actual economic decision-maker given the terms and duration of a lease. However, in all cases, property owner consent to improvements will be required.

7. DMS will provide contractor and subcontractor education and training sessions about GULFPORT's commercial PACE program including the qualification process, eligible improvements, and financing terms and conditions.

8. DMS will maintain a registry of energy efficiency and renewable energy contractors and subcontractors who have received training in the GULFPORT commercial PACE program, who are licensed and registered to do business in GULFPORT and/or Pinellas County, and who are otherwise in good standing with the Better Business Bureau. All vendors on Progress Energy's approved vendor list will be invited to become part of the DMS registry.

9. DMS also will maintain a list of certified energy performance auditors or companies, including those on the State of Florida's Department of Management Services list of energy performance companies.

Program Operations and Administration: Day 120 to 365, subject to extension by terms of contract.

10. As a precondition to participate in energy efficiency or renewable energy improvements, property owners must have a free Business Energy Check by Progress Energy and provide the results of the Business Energy Check to DMS. The Business Energy Check is a prerequisite to qualify for rebates provided by Progress Energy, a potentially important element of project financing on particular projects. It also provides an initial, rapid and low-cost assessment of the energy conservation options available for a business. The Business Energy Check also provides a year of critical baseline electric use data. A sample Business Energy Check report provided on the Progress Energy website is attached as Exhibit 2. In the event Progress Energy is unable to perform this audit, DMS shall select a qualified third-party energy auditor or auditor(s) to perform this initial assessment.

11. DMS will review and provide an initial cost assessment of the energy efficiency or renewable energy improvements recommended by the Business Energy Check or other audit. The operative approach is to avoid over-engineering and over-analyzing potentially simple cost-effective improvements, such as upgrading HVAC systems, installing solar hot water systems, upgrading the energy efficiency of a building envelop or installation of a wind-resistant "cool roof." This cost assessment will be based on average industry costs associated with specific improvements and building specifications as the latter are indicated from public property records. In the event that the property owner proceeds with financing, actual costs will be determined by vendor bids for the specific improvements undertaken and financed through this program. DMS will also provide an estimate of the amount of financing a commercial property can undertake under the terms of Fla. Statute 163.08 either based upon percent of just valuation or based upon the Business Energy Check report. This analysis and estimate will be provided to the property owner within 10 business days of submittal for all relevant reports and data from the Business Energy Check.

12. DMS will verify whether an applicant meets all statutory and legal eligibility requirements for undertaking assessment-backed financing. The property owner will be required to provide such documentation as necessary for this verification.

13. Subject to a property owner's decision to participate in the program, DMS and/or participating third party financiers will determine whether an applicant meets financial

underwriting requirements. Applicants may be required to submit financial documents to DMS or participating financial institutions to establish that they meet minimum financial underwriting criteria.

14. In the event that a property owner or lessee, with the property owner's consent, opts to secure financing in excess of twenty percent of the just market value of their property, a more detailed energy audit will be required by the property owner. DMS may provide such audits to property owners in accordance with an approved fee schedule or will provide property owners with a list of qualified energy auditors. Manual J calculations or similar professionally recognized and verifiable estimates of energy savings may be considered as valid audits to the extent that the improvements sought by the property owner are covered within the scope of such a calculation. The cost of energy performance audit shall be the responsibility of the property owner, but it will be deemed an allowable expense that may be included in project financing at the option of the owner and otherwise subject to all other program underwriting standards.

- a. DMS may also present one or more preferred contractors to property owners to perform either energy performance audit work or guaranteed energy savings contract work. However, in no case shall any preferred contractor be presented as an exclusive contractor to provide such services.

Project Activation, Certification of Assessment District, Project Management and Disbursements

15. It shall be the responsibility of the property owner to secure bids from qualified contractors to perform the improvements identified by the Business Energy Check or other qualified energy audit.

16. DMS shall verify that all contractors or subcontractors for which PACE financing is used to pay for the property improvements have submitted proper proof that they are duly licensed under appropriate and applicable state, county and local laws and regulations.

17. DMS shall secure an executed financing agreement, assessment agreement, vendor contracts and such other documents it deems necessary for each property. DMS shall record the assessment agreement within five days of execution.

18. DMS shall provide the statutory thirty day notice to any and all lien holders on each property that comports with the requirements of Fla. Stat. 163.08 and Ordinance 2011-1.

19. DMS shall provide a certified roll of properties which have entered into assessment agreements to the GULFPORT City Council for approval of a special assessment covering such properties. These rolls shall be provided on a monthly, bi-monthly or quarterly basis as volume and demand warrant. DMS shall be responsible for providing all documents, advertisements and notices required for the public hearings required for implementation of a special assessment for such properties in accordance with Fla. Stat. 197.

20. DMS shall provide a notice to proceed to the property owner and vendors contracted to perform the qualified improvements at such time that all legal and procedural steps have been completed and the assessment district is in place.

21. Project funds will be disbursed to the property owner and/or vendor as per the terms of the financing and project agreement. No more than 50% of project funds shall be disbursed prior to commence of construction. DMS or the project lender will disburse funds as per the terms of the finance agreement and requirements of law.

22. DMS shall verify completion of all contracted work prior to the final disbursement.

23. Upon conclusion of the Energy Savings Program for commercial business owners, and subject to election by GULFPORT, DMS shall continue to maintain and administer the special assessment rolls for the duration of the assessment district based upon the fee schedule agreed upon with GULFPORT.

24. The terms and procedures outlined herein are subject to change and modification by DMS in order to more efficiently administer GULFPORT's commercial PACE program.

Exhibit B

Hypothetical Energy Savings Financing Opportunity

A Gulfport commercial property owner, ABC Corporation, runs and owns a small business with a just market value (JMV) of \$150,000. The Business Energy Check and review by DMS indicates that the recommended improvements would reduce annual energy use by 35%. ABC's current electric bills cost \$600 per month.ⁱ ABC decides to undertake the recommended energy efficiency improvements. ABC receives bids and enters contracts to perform the recommended improvements with a total amount financed of \$20,000. The amount of improvement financed is less than 20% of JMV so a detailed energy audit is not required.

The DMS financial program can offer this property owner three financial options with rates of 3.8%, 4.0%, and 5.0%. Based upon underwriting criteria of these lenders, assume for this example that ABC qualifies only for 5.0% rate amortized over 15 years. The PACE Administrative fee (of 6.75%) is added to the amount financed, so the final principal amount would be \$21,350. Monthly principal and interest costs result in monthly payments of approximately \$168.83.ⁱⁱ However, the monthly electric bill has been reduced by \$210 per month, resulting in a net savings of \$41.70 per month.

As the chart herein reflects, adding the 6.75% PACE Administrative fee to the financed project cost and encouraging a competitive market for financing may result in significant savings to property owners compared to a standard, fixed fee arrangement.

Amount Financed	\$21,350	\$21,350	\$ 20,000
Interest Rate	4%	5%	7%
Months Financed	180	180	180
Monthly P&I	\$157.93	\$168.83	\$179.77
Loan Costs	\$28,427.40	\$30,389.40	\$32,358.60
Lifetime Savings Vs. Fixed 7%	\$3,931.20	\$1,969.20	0

Having met all applicable requirements, ABC is ready to be included in an assessment role. Work can commence on the property only after such time that the assessment attaches to the property, notice of the assessment is provided to any existing lien holders and the property owner and contractors receive a notice to proceed from DMS.

ⁱ These are hypothetical energy costs and savings and construction costs. They are provided here solely to help illustrate the operation of various aspects of the proposed program.

ⁱⁱ This does not include any potential annual, long term maintenance costs that would need to be included in any ongoing assessment district management contract. However, such costs would be roughly equal in any scenario and thus are not applied for purposes of this example.

EXHIBIT 1 to Scope of Services		
Task	Parties	Description
Section 1	Farias Marketing Group	Establish website and collateral materials
Section 2	DMS	Identification of commercial property owners meeting threshold criteria of Fla. Stat. 163.08 and Gulfport Ordinance 2011-1, specifically section (1), (2), (3), (6), (7).
Section 3	DMS, Akerman and RBC Capital	Complete an evaluation of alternative financing options as well as a competitive procurement process to select financial participants in the Gulfport commercial PACE program.
Section 3(a)	DMS, Akerman, Ameresco, and RBC Capital	Solicit local banks, credit unions, investment banking firms, and national banks with local branches in the City of Gulfport, specifically, Regions Bank and Wells Fargo Bank, to provide financing for the program.
Section 4	DMS and Akerman	Adopt financial underwriting and consumer protection standards for program.
Section 5	Akerman	Drafting required financing and disclosure documents, notices, recording instruments etc.
Section 6	Farias Marketing Group	Direct solicitation of eligible commercial property owners.
Section 7	Farias Marketing Group and DMS	Outreach to contracting community and conduct PACE seminars for vendors
Section 8	Farias Marketing Group and DMS	Create and maintain registry of PACE trained and otherwise qualified contractors.
Section 9	Farias Marketing Group	Create and maintain list of certified energy performance auditors and energy savings companies.
Section 10	Progress Energy	Free program provided by Progress Energy
Section 11	Ameresco	Evaluation of Business Energy Check results and estimation of cost.
Section 12	DMS, Akerman and property owner	Completed verification of satisfaction of all qualifying criteria of 163.08 and Ord. 2011-1.
Section 13	DMS and/or lender	Determination whether property owner satisfies financial underwriting criteria
Section 14	Ameresco or third party Energy Consultant and DMS	Administration of more detailed energy audit by certified rater, Manual J calculations, or energy performance contractor.
Section 15	Property Owner/Contractor	Property Owner solicits bids from licensed contractors to perform qualified improvements.
Section 16	DMS	Furnish proof of licensing
Section 17	DMS and Akerman	All required documents are secured and reviewed for completeness.
Section 18	DMS	30 day notice sent to lien holders
Section 19	DMS	Tax rolls prepared, notices and advertisements provided and hearing set to implement voluntary special assessment district.
Section 18	DMS	DMS will review vendor contracts and proposed improvements to determine the vendors are licensed and proposed improvements are qualified.
Section 19	DMS	Transmittal of statutory notification to lien holders
Section 20	DMS	Issuance of notice to proceed.
Section 21	DMS and/or lender	Depending on program structure, project funds will be distributed either by DMS or the project lender.
Section 22	DMS	Verification that work has been performed.
Section 23	DMS	Annual administration of special assessments
Section 24	DMS and Akerman	Savings provision

EXHIBIT 2 TO SCOPE OF SERVICES

Sample Business Energy Check from Progress Energy

Electronic Link

<https://www.progress-energy.com/assets/www/docs/business/sampleaudit.pdf>

Further information regarding the comprehensiveness of the program with Progress Energy can be viewed at:

<https://www.progress-energy.com/florida/business/save-energy-money/business-energy-check.page>

O'Reilly, James E.

From: O'Reilly, James E.
Sent: Wednesday, November 02, 2011 11:54 AM
To: 'Andrew Salzman'
Subject: FW: Gulfport PACE -Ygrene contract

Importance: High

FYI

Jim O'Reilly
City Manager
City of Gulfport
2401 53rd Street South
Gulfport, Florida 33707
(727) 893-1009

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From: Wakefield, John [mailto:John.Wakefield@lykes.com]
Sent: Wednesday, November 02, 2011 11:39 AM
To: O'Reilly, James E.
Cc: dan@ygrene-energy.com; Dan Schaefer
Subject: Gulfport PACE -Ygrene contract
Importance: High

Jim,

Hope all is well with you.

I tried to call you yesterday to talk to you in person but couldn't reach you.

Ygrene Florida Energy Fund (headquartered in Tampa, FL) has decided not to deliver a contract to provide our turnkey PACE program management solution to the City of Gulfport at this time. We appreciate the recommendation of our solution that staff made to the commission and thank you for the time and energy you put forth to identify the superior PACE solution on behalf of your Gulfport business community members. However, given the commission's direction to negotiate two contracts simultaneously and the related procurement process that followed your staff's recommendation of Ygrene to the commission, we have decided to withdraw.

Good luck to all of you in Gulfport and if you would like to discuss this further, please feel free to call me at your convenience.

John Wakefield



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2011 Earth Charter US Sustainable Business Award Recipient

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Agenda Item No. 8
Old Business

Agenda Item No. 9
New Business

Agenda Item No. 10
Council Reports

Agenda Item No. 11
Adjournment