IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA

BELVEDERE TERMINALS COMPANY, LLC, a Delaware limited liability company,

Plaintiff, v.	Case No.: 2024-10007-CICI
VOLUSIA COUNTY, a political subdivision of the State of Florida,	
Defendant.	

VOLUSIA COUNTY'S MOTION TO DISQUALIFY PLAINTIFF'S COUNSEL

Defendant, Volusia County, moves to disqualify GrayRobinson, P.A. from representing Plaintiff, Belvedere Terminals Company, LLC, pursuant to Rule 4-1.7 of the Rules Regulating the Florida Bar. As grounds therefor, the County states:

1. GrayRobinson's simultaneous representation of the VGMC and Belvedere creates a conflict of interest.

GrayRobinson serves as general counsel to the Volusia Growth Management Commission (VGMC) and has since its inception in 1986. Ex. A, Affidavit of Ervin, ¶ 11. Created by voter referendum 1986, the VGMC is a countywide land use body tasked with reviewing, approving, and potentially invalidating comprehensive plan

amendments sought by the County.¹ Under the Volusia County Charter, it is the VGMC's duty to determine consistency of municipal and county comprehensive plans, including amendments, within Volusia County. The determination of the VMGC is binding on the submitting government. Section 202.3, Charter. The VGMC is authorized to perform other directly related duties as it deems necessary. *Id.* No comprehensive plan, element of a plan, or amendment to a plan is valid or effective unless it has been reviewed and certified by the VGMC.

Voting members of the VGMC are appointed by the governing bodies of each municipality and the County. Section 202.3, Charter. Rules of procedure for VGMC comprehensive plan consistency review are subject to County Council approval. Section 202.3, Charter. Those rules were adopted by ordinance by the County Council and codified in Chapter 90, article II of the Code.

The County funds the VGMC, which includes paying its legal fees.² The County last issued a master agreement to fund such legal services in October of 2023. Ex. C, GrayRobinson Master Agreement. The agreement includes a contract letter describing GrayRobinson duties including: analyzing comments on applications for

¹ Florida counties and municipalities are required by state law to adopt a comprehensive land use plan. State law outlines the required and optional elements of those plans. Land development ordinances, such as zoning, must comply with those comprehensive plans. Fla. Stat. § 163.3177.

² Notably, GrayRobinson just requested the VGMC include in the budget it proposes to the County an increase in its fee from \$25,000 to \$90,000 for the coming year, which is nearly quadruple what it has been previously. Ex. B, January 4, 2024 Correspondence from GrayRobinson to the VGMC.

consistency certification, preparing draft resolutions regarding consistency certification, consulting with VGMC staff, discussing legal issues with local governments and proponents of comprehensive plan changes, attending the VGMC committee meetings, undertaking special projects and preparing reports, and immediately addressing and responding to litigation matters.

In its contract letter, GrayRobinson acknowledges it is subject to the Rules of Professional Conduct, including Rule 4-1.7 and 4-1.9. Notably, GrayRobinson agrees it "shall not undertake any representation of other clients which may result in a conflict of interest" without first obtaining written informed consent from affected clients and the VGMC. To the County's knowledge, the VGMC did not provide written informed consent for GrayRobinson to represent Belvedere in its lawsuit against the County.

GrayRobinson's service as the VGMC general counsel precludes it from representing Belvedere in this proceeding. Belvedere's positions and allegations, asserted through GrayRobinson, directly undermine the unbiased and objective perspective that GrayRobinson's other client, the VGMC, must maintain when reviewing applications from the County. On behalf of Belvedere, GrayRobinson

made the following statement to the County's Planning and Land Development Regulation Commission (PLDRC)³:

Not only is this moratorium patently discriminatory, it directly contradicts the Volusia County Comprehensive Plan at chapter 19, which protects the rights of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights and to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

Ex. D, December 20, 2023, Correspondence from GrayRobinson to PLDRC. As the VGMC's general counsel, GrayRobinson is directly involved in reviewing the County's amendments to the comprehensive plan referenced in its letter on behalf of Belvedere.

Throughout its Complaint and Petition for Writ of Mandamus (Doc. 2), Belvedere, through GrayRobinson, repeatedly invokes the County's comprehensive plan, alleging it is entitled to have its site plan application processed under the comprehensive plan as it existed when its conceptual site plan was submitted. (*See* Doc. 2, ¶¶ 146, 147, 187, 188, 225, 228, 234, 251).

Belvedere seeks to stop the County from changing its zoning and comprehensive plan, preventing the County from applying zoning ordinance or

³ The PLDRC is a nine-member advisory board that has final action on rezoning and changes to various ordinances it recommends to County Council. At its meeting on December 21, 2023, the PLDRC reviewed and voted unanimously to recommend Ordinance 2023-47 to County Council, which includes the I-2 heavy industrial moratorium.

comprehensive plan amendments to Belvedere's site plan application. *Id.* These claims demonstrate that Belvedere and GrayRobinson anticipate the County seeking a comprehensive plan amendment to implement changes to its I-2 zoning classification. Indeed, it is foreseeable that a large or small-scale comprehensive plan amendment may be generated by the County and reviewed by the VGMC for the property over which Belvedere claims an interest. Ex. A, Affidavit of Ervin, ¶ 16.

On January 4, 2024, the County Council conducted the first reading of Ordinance No. 2023-47, which began the process of placing a temporary moratorium on the acceptance, processing, and consideration of all development orders, development permits, site plans, or building permits for any property in the I-2 Heavy Industrial Classification until August 21, 2024. Ex. E, Ordinance No. 2023-47, p. 3. The Ordinance expresses County Council's belief that it is "necessary to conduct a comprehensive review" to determine whether changes to the I-2 Heavy Industrial Classification are appropriate, and further contemplates the County will study the current code and its compatibility with surrounding areas "with the intent of reviewing, updating and/or promulgating new County land development regulations . . ." *Id.*, p. 1-2.

If passed, the moratorium would expire in August 2024 without extension, and any desired changes to the County's I-2 Heavy Industrial Zoning may culminate

in a comprehensive plan amendment. Any such proposed amendments will necessarily be submitted to GrayRobinson's client, the VGMC, for review and approval.

The County is entitled to unbiased consideration of its submissions to the VGMC. But GrayRobinson now represents a private client—Belvedere—that seeks to aggressively undermine the County's authority to review and amend its land development regulations, thereby preventing the very changes the County may seek. GrayRobinson's duty to the VGMC, which must fairly and objectively evaluate the County's comprehensive plan amendments, is directly undermined by its duty to zealously advocate Belvedere's position.

Through GrayRobinson, Belvedere repeatedly claims the County has not only acted in violation of the current comprehensive plan, but that it has done so in bad faith. When the VGMC considers substantially similar issues, it is reasonable to believe VGMC and GrayRobinson will be influenced by the charges of "patently discriminatory" conduct and bad faith levied at the County when it provides counsel to the VGMC. Given Belvedere's position, tactics, and the accusations of permeate Complaint, GrayRobinson's simultaneous misconduct that its representation of both Belvedere and the VGMC creates an unacceptable appearance of impropriety, which amounts to a conflict in violation of the Rules Regulating the Florida Bar.

2. GrayRobinson should be disqualified as Belvedere's counsel due to the appearance of impropriety created by its representation of both the VGMC and Belvedere.

Rule 4-1.7 of the Rules Regulating the Florida Bar states:

- (a) Representing Adverse Interests. Except as provided in subdivision (b), a lawyer must not represent a client if:
 - (1) the representation of 1 client will be directly adverse to another client; or
 - (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Here, although the County itself is not a current client of GrayRobinson, subsection 2 of the Rule plainly prohibits representation of Belvedere due to the "substantial risk" that its representation of its other client, the VGMC, will be materially limited by its responsibilities to Belvedere. In determining whether disqualification is appropriate, "[t]he rules, Comment and authorities demonstrate that the required analysis does not always turn on present or former representation of the party seeking disqualification." *Boca Raton Reg'l Hosp., Inc. v. Williams*, 230 So. 3d 42, 45 (Fla. 4th DCA 2017). Instead, "a party may seek disqualification of opposing counsel where the conflict of interest involves representation of someone other than the movant and where it is such 'as clearly to call in question the fair or efficient administration of justice." *Id.* (citing *State Farm Mutual Automobile Insurance Co. v. K.A.W.*, 575 So. 2d 630, 632 (Fla. 1991) and *Zarco*

Supply Co. v. Bonnell, 658 So. 2d 151, 154 (Fla. 1st DCA 1995)). And because Belvedere and the VGMC are "existing clients, Rule 4–1.7(a) does not distinguish between matters related or unrelated." Morse v. Clark, 890 So. 2d 496, 498 (Fla. 5th DCA 2004):

The existing client rule is based on the ethical-concept requirement that a lawyer should act with undivided loyalty for his client and not place himself or herself in a position where a conflicting interest may affect the obligations of an ongoing professional relationship. It is difficult to imagine how a lawyer could appear in court one day arguing vigorously for a client, and then face the same client the next day and vigorously oppose him in another matter, without seriously damaging their professional relationship. Such unseemly conduct, if permitted, would further erode the public's regard for the legal profession.

Id. (emphasis added).

Here, GrayRobinson's representation of Belvedere has placed it in a position where a conflicting interest may affect the obligation of its ongoing professional relationship with the VGMC. Although Belvedere is unlikely to directly oppose the VGMC in a matter related to this specific litigation, the inquiry is not so limited. "The concept of avoiding the appearance of impropriety is an additional basis for Rule 4–1.7." *Id.* at 498; *See Junger Util. & Paving Co. v. Myers*, 578 So. 2d 1117, 1119 n.1 (Fla. 1st DCA 1989) ("Although the new Rules do not contain the express language of Canon 9 and its explanatory ethical considerations regarding the avoidance of even the appearance of impropriety, this fact does not persuade us that

they are no longer pertinent."); *Bammac, Inc. v. Grady*, 500 So. 2d 274, 280 (Fla. 1st DCA 1986) (same).

GrayRobinson's representation of Belvedere in litigation that is directly related to land development decisions which may be reviewed by its other client, the VGMC, undermines the County's trust in a fair and objective review of applications submitted to the VGMC. And, perhaps just as important, members of the public monitoring the Belvedere litigation have already raised concerns over the unseemliness of GrayRobinson's simultaneous representation of Belvedere and the VGMC.

In requesting GrayRobinson be disqualified from representing Belvedere in this proceeding, the County does not suggest the firm or its attorneys have engaged in misconduct. *See State Farm*, 575 So. 2d at 634 ("While these facts neither indicate nor imply any departure from professional conduct or breach of any ethical canon, we cannot escape the conclusion that this is a situation rife with the possibility of discredit to the bar and the administration of justice."). Nevertheless, the VGMC is a unique body specifically tasked with reviewing and approving the County's comprehensive plan amendments, and the County's ability to make changes to its land development regulations is directly challenged in Belvedere's lawsuit. GrayRobinson serving as counsel for both these entities is the type of situation Rule 4-1.7's prohibition on even the *appearance* of impropriety is meant to prevent.

WHEREFORE, the County respectfully requests the Court disqualify GrayRobinson from acting as counsel for Belvedere in this proceeding.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been e-filed with the Clerk of Court using the Florida Courts E-filing portal which will serve notice and a copy to Nick Dancaescu, Esq., (Nick.dancaescu@gray-robinson.com) (Donna.flynn@gray-robinson.com) (Mariah.richardson@gray-robinson.com); Rachael M. Crews, Esq. (Rachael.crews@gray-robinson.com) (jamal.wilson@gray-robinson.com); and William T. Dove, Esq. (billy.dove@gray-robinson.com) on January 26, 2024.

/s/ W. Kevin Bledsoe

W. KEVIN BLEDSOE, ESQ.

Deputy County Attorney

Fla. Bar No.: 0029769

kbledsoe@volusia.org/ mefird@volusia.org

PAOLO S. SORIA, ESQ.

Senior Assistant County Attorney

Fla. Bar No.: 0085426

psoria@volusia.org / pquihuis@volusia.org

CHRISTOPHER D. RYAN, ESQ.

Assistant County Attorney

Fla. Bar No.: 0117931

cryan@volusia.org/ pquihuis@volusia.org

SARAH JONAS, ESQ.

Assistant County Attorney

Fla. Bar No.: 115989

sjonas@volusia.org/ mefird@volusia.org

123 W. Indiana Avenue

DeLand, Florida 32720

(386) 736-5950

Exhibit A

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA

BELVEDERE TERMINALS COMPANY, LLC, a Delaware limited liability company,

Plaintiff,

v.

Case No.: 2024-10007-CICI

VOLUSIA COUNTY, a political subdivision of the State of Florida,

Defend	ant.		

AFFIDAVIT OF EDWARD CLAYTON ERVIN

STATE OF FLORIDA COUNTY OF VOLUSIA

BEFORE ME, the undersigned authority, personally appeared EDWARD CLAYTON ERVIN who after being duly sworn, deposes and states the following:

- 1. My name is Edward Clayton Ervin. I am over the age of twenty-one (21) and make this affidavit based upon my personal knowledge.
- 2. I am the Director of Growth and Resource Management for the County of Volusia.
- 3. I am a professional planner who has been practicing local planning since 1989.
- 4. Florida counties and municipalities are required by state law (Florida Statutes Chapter 163.3177 et seq.) to adopt a comprehensive land use plan. State

law outlines the required and optional elements of those plans. Land development ordinances, such as zoning, must comply with those comprehensive plans.

- 5. The Volusia Growth Management Commission (VGMC) is an independent entity created by Section 202.3 of the Volusia County Charter for the purposes of determining consistency of the municipalities and the County's comprehensive plans and any amendments thereto with each other, as well as other directly related duties as the VGMC from time to time deems necessary. While the County appoints five voting members, it does not exert control over members or the Commission.
- 6. The rules of procedure for the VGMC on its comprehensive plan consistency review are subject to approval of the County Council. Those rules of procedure were adopted by the County Council by ordinance and codified in Chapter 90, article II of the Volusia County Code of Ordinances.
- 7. Per section 90-34 of the Volusia County Code, no comprehensive plan, element of a plan, or amendment to a plan is valid or effective unless it has been reviewed and certified by the VGMC in accordance with the County ordinance.
- 8. Section 90-40 of the Volusia County Code provides the review process for the VGMC, including a method for the County or municipalities to appeal a VGMC decision to circuit court. The VGMC is an indispensable party to any such appeal.

- 9. Section 90-54 of the Volusia County Code provides that the VGMC may retain attorneys only as independent contractors.
- 10. GrayRobinson is currently retained by the VGMC as legal representation.
- 11. GrayRobinson has served as general counsel for the VGMC since VGMC was created in 1986.
- 12. The County submits all amendments to it comprehensive plan for review by the VGMC.
- 13. In its contract letter, GrayRobinson recognizes it is subject to the Florida Bar's Rules of Professional Conduct, including Rule 4-1.7 and 4-1.9. Importantly, GrayRobinson states that it "shall not undertake any representation of other clients which may result in a conflict of interest" without first obtaining written informed consent from affected clients and the Commission.
 - 14. GrayRobinson also currently represents Belvedere Terminals, LLC.
- 15. Once Ordinance 2023-47 is final, the County will begin the process of reviewing the appropriateness of the zoning classifications in the I-2 Heavy Industrial district.
- 16. As a result of this review, it is foreseeable that either a large or small scale comprehensive plan amendment may be generated by the County and reviewed

by the VGMC for the property over which Belvedere Terminals, LLC claims an interest.

- 17. In the event the VGMC would review such a comprehensive plan amendment, GrayRobinson would represent both the VGMC and Belvedere Terminals, LLC in the same matter.
- 18. I have carefully read this Affidavit. I understand the contents thereof and its importance.

FURTHER AFFIANT SAYETH NAUGHT.

Edward Clayton Ervin, Director Growth and Resource Management County of Volusia

STATE OF FLORIDA COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this day of January, 2024, by EDWARD CLAYTON ERVIN. who is personally known to me for who has produced as identification.



Notary Public

My Commission Expires:

Heather Ramos | Heather.Ramos@gray-robinson.com | **D** 407.244.5670 301 East Pine Street, Suite 1400, Orlando, Florida 32801 | **T** 407.843.8880 | **F** 407.244.5690

January 2, 2024

Debbie Connors, Chair Volusia Growth Management Commission 140 S. Beach Street, Suite 305 Daytona Beach, FL 32114

Re: Legal Representation and Budget Estimate for Fiscal Year 2024/2025 GR Client-Matter No. 40080-1

Dear Chair Connors:

This letter is sent in response to the Volusia Growth Management Commission's budget estimate for the fiscal year 2024/2025 for our firm's continued legal representation of the Volusia Growth Management Commission ("Commission"). I understand that this budget estimate will be reviewed by the Budget Committee sometime in early 2024.

Over the years, it has been our experience that things go more smoothly if we have a clear understanding of your needs and the role we need to play. The purpose of this engagement letter is to confirm an agreement concerning representation and the payment of our fees and expenses. This engagement letter will govern all subsequent matters in which we may become involved on your behalf unless a separate arrangement is made.

We will do our very best to meet your needs in any matters we undertake for you, but as you know, we cannot and do not make any representations or warranties concerning the outcome. We will give you our best advice, render opinions, and seek to obtain the desired result. In this regard, it is most important that we communicate regularly.

As general counsel to the Commission, our duties will include:

- (i) Attendance at all meetings of the full Commission as directed by the Commission Chair and provide oral or written reports on legal activities;
- (ii) Analyze and comment on applications to the Commission for consistency certification when a request for comment is received from planning staff;
- (iii) Prepare draft resolutions regarding consistency certification applications for consideration by the Commission;
- (iv) Consult with the Commission Operations Manager and chairman on procedural matters and prepare procedural memorandums as so directed in the Commission's Rules of Procedure;

- (v) Upon prior approval from the chairman, meet with the local governments and proponents of a comprehensive plan change to discuss and review legal issues on particular applications to the Commission; in the event there are exigent circumstances to attend such a meeting and prior approval from the chairman is not possible, authorization to attend said meeting may be obtained from the vice chairman or the secretary to the Commission;
 - (vi) Attend the Commission's committee meetings as directed by the committee chair;
 - (vii) Undertake special projects and prepare reports as directed by the Commission; and
- (viii) Immediately address and respond to new litigation matters so as to preserve jurisdiction of the Commission and subsequently present the litigation matter to the full Commission for direction on the litigation position of the Commission and for direction as to whether general counsel shall pursue such litigation on behalf of the Commission.

GrayRobinson will begin performance of the above services on the date written authorization to proceed is received. The duration of this continuing services Agreement shall be one (1) year. The Commission shall have the option of extending this Agreement for two additional one (1) year terms; however, this Agreement will revert to a month-to-month contract under the current terms until such time as a new Agreement is reached.

In the event GrayRobinson elects to withdraw from representation, or if the Commission, by a weighted majority vote of the Commission, elects to terminate the services of GrayRobinson, a minimum of 90 days written notice will be provided to the affected party.

GrayRobinson strives to maintain the highest ethical standards. GrayRobinson is governed by the Florida Bar's Rules of Professional Conduct, including but not limited to, Rule 4-1.7, Conflict of Interest, Current Clients, and Rule 4-1.9, Conflict of Interest, Former Client, and represents that GrayRobinson will at all times perform any and all services under this Agreement in compliance with the Rules of Professional Conduct.

GrayRobinson agrees that, if changes, including additions, to the facts disclosed by it prior to execution of this Agreement, occur during performance of this Agreement, it shall make an immediate and full disclosure of such changes in writing to the Commission. GrayRobinson shall not undertake any representation of other clients which may result in a conflict of interest, without first obtaining written informed consent from each affected client(s), including the Commission, prior to commencement of such representation consistent with Rule of Professional Conduct 4-1.7(b).

I am submitting the following arrangements with our firm regarding fees and costs:

1. Our fees will be based on an hourly rate of \$250.00 for attorneys and \$130.00 for paralegals. As you are aware, this hourly attorney and paralegal rate is considerably below the hourly rates normally charged our clients. I will be primarily responsible for your work, and will be assisted by other legal staff as necessary.

Debbie Connors, Chair January 2, 2024 Page 3

2. Our statement for fees and costs will be submitted on a monthly basis and are normally to be paid within thirty days of receipt of the statement. Enclosed, please find a copy of our firm's "Additional Understanding Regarding Representation." All conditions in that document are incorporated by reference as a part of this letter. Also enclosed is a copy of our current cost recovery rates/charges. Mileage will be computed at 44.5 cents per mile for all travel related to the Commission per Section 112.061(7)(d)1, Florida Statutes.

As you are aware VGMC along with the City of Daytona Beach were named as respondents in a Petition for Writ of Certiorari filed on December 15, 2023 by the City of Ormond Beach challenging Daytona Beach's application #23-055. Because of this litigation we are estimating our fees to be higher than the past and approximately \$90,000.00 for the Commission's 2024/2025 fiscal year.

If the foregoing meets with the approval of you and the Commission, please have the Commission's authorized representative execute this letter agreement in the space provided, and return it to me. Your acceptance of our representation will include our agreement regarding fees and costs.

Our firm looks forward to continuing to work with you and all the Commissioners in the future. If you have any questions regarding this representation letter or any other matter, do not hesitate to call me.

Sincerely,

GrayRobinson, P.A.

Heather M. Ramos

HMR/jg

Enclosures

ACCEPTED BY:	
VOLUSIA GROWTH MANAGEMENT COMM	ISSION
Signature	
Print Name and Title	
Date:	

Debbie Connors, Chair January 2, 2024 Page 4

Additional Understanding Regarding Representation

Payment of Invoices

In the event that our invoices are not timely paid, or that payment terms satisfactory to us are not established, we reserve the right to renegotiate the terms of this engagement and/or to pursue our other remedies, including the right to charge you interest of $1^{1}/_{2}$ % per month for any invoice which has not been paid within 30 days of the date the invoice is mailed or emailed to you. We also reserve the right to withdraw as your counsel in the event you fail to honor your agreement with respect to our legal fees or for any just reason as permitted or required under the Florida Code of Professional Responsibility or as permitted by the rules of courts of the State of Florida. In the event of our withdrawal, you will promptly pay for all services rendered by us prior to the date of withdrawal.

Electronic Data

This will serve as our disclosure that the Firm does presently and will continue to maintain confidential and privileged information in electronic form. This practice will be followed in our work on this matter. The Firm does take measures that it understands to be reasonable and consistent with current business practices to protect that information.

Outcome or Result

We will strive to do our best to meet your needs in this and other any matter we subsequently undertake for you. Either at the commencement, or during the course of our representation, we may express opinions or beliefs concerning the litigation or various courses of action and the results that might be anticipated. Any such statement made by any attorney, consultant or employee of our Firm is intended to be an expression of opinion only, based on information available to us at the time, and should not be construed as a promise or guarantee. We cannot and do not make any representations, warranties or guarantees concerning the outcome of this or any representation we undertake. We will give you our best advice, render opinions, and seek to obtain the desired result. In this regard, it is most important that we communicate regularly.

File Retention

Following the termination of the representation/engagement, any otherwise nonpublic information you have supplied to the Firm (unless previously removed or destroyed by specific request) will be retained by us and kept confidential in accordance with applicable rules of professional conduct, and the Firm reserves the right to send such materials to off-site storage at any time. Any retrieval of material once the file is closed may incur an expense for which you will be responsible. The Firm's retention policy provides that we retain stored and closed files for a period of ten (10) years after which they may be destroyed. Thus, if there are any documents which you need from those we possess, we recommend that you obtain them at the conclusion of our work on this matter. Failure to do so will waive and indemnify the Firm from any liability for the destruction of materials.

In representing the Volusia Growth Management Commission, our firm could be deemed to be "acting on behalf" of the Commission as contemplated under section 119.0701 of the Florida Statutes. In an abundance of caution, we have always compiled in such representations with the letter and spirit of Florida's Public Records Act, Chapter 119 of the Florida Statutes including specifically subsection 119.0701(2), which requires the firm to:

- a. Keep and maintain public records required by the Commission to perform the services under this Agreement.
- b. Upon request from the Commission's custodian of public records, provide the Commission with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the firm does not transfer the records to the Commission.
- d. Upon completion of the Agreement, transfer, at no cost, to the Commission all public records in our possession or keep and maintain public records required by the Commission to perform the services under this Agreement. If the firm transfers all public records to the Commission upon the expiration or termination of this Agreement, the firm shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the firm keeps and maintains public records upon the expiration or termination of this Agreement, the firm shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Commission, upon request from the Commission's custodian of public records, in a format that is compatible with the information technology systems of the Commission.

IF GRAYROBINSON HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO GRAYROBINSON'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO GRAYROBINSON'S LEGAL REPRESENTATION OF THE VGMC, GRAYROBINSON SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT VGMC@VOLUSIA.ORG (386) 947-1875, VOLUSIA GROWTH MANAGEMENT COMMISSION, 140 S. BEACH STREET, #305, DAYTONA BEACH, FL 32114.

CLIENT CHARGES

Reproduction Costs (copier) – \$.20 per copy (Black & White)

- \$.60 per Copy (Color)

Express Mail (Federal Express) – Fed Ex discounted charges.

Express Mail (UPS) - Actual UPS Charges.

Computerized Research (Lexis/Westlaw) - Actual charges.

Courier Service - Actual charges.

Postage and Handling – Actual postage.

Long Distance Calls – Actual charges.





Master Agreement

NO. 230 2540 - 1

TERM: 2023-10-01 to 2024-10-30

Page 1 of 2

Date Issued: 10/23/2023

Vendor contact:

THOMAS A. CLOUD, ESQUIRE

Name: Phone: E-mail:

407-843-8880

Ext.:

County contact:

Name: Phone: MERRY SMITH 386-947-1875

E-mail:

mksmith@volusia.org

Ext.:

Bill To: County of Volusia

VOLUSIA GROWTH MGMT COMMISSION

140 S. Beach Street, #305

DAYTONA BEACH, FL 32114

Vendor Name:

GRAY ROBINSON

PO BOX 3068

Vendor No.

GRH29290000

Ship To:

VOLUSIA GROWTH MGMT COMMISSION

140 S. Beach Street, #305

DAYTONA BEACH, FL 32114

ORLANDO, FL 32802-3068

Solicitation Number:

Purchasing Phone:

E-mail:

TABATHA FREEDMAN

TFreedman@volusia.org

386-822-5702

15702 Ext:

Award Date:

Payment Terms:

Net 45 Days, FOB Dest, Freight allowed

Award Authorization:

Document Description:

Legal Services

Line	Commodity	- I linit i linecrintion		Unit Price or		
Item	Code			Contract Amount		
1	96149		Legal services as per attached contract and all Volusia County standard terms and conditions. Attorney - \$250.00 / hour Paralegal - \$130.00 / hour Other - in accordance with attached agreement dated 10/12/2022.	0.000000		

Pam Wilsky, CPPO, CPPB Purchasing & Contracts Director

Pom Wilsky

County of Volusia Sales Tax Exemption Number 85-8012622393C-9

Remainder of page is blank

Purchase Order (PO) or Master Agreement (MA) Terms and Conditions

Providing any good or service constitutes <u>acceptance</u> of this entire PO or MA without exception. In the event this document is issued based on a solicitation or quote, the terms and conditions of the solicitation or quote prevail.

Acceptance. Products/Services purchased as result of this PO or MA may be tested for compliance with specifications. Items delivered not in conformance with the specifications may be rejected and returned at the Provider's expense. Those items and items not delivered by the delivery date specified in the accepted offer and/or PO or MA may be purchased on the open market.

Cancellation of Order. A request by either party to the PO to cancel the order at no cost.

<u>Delivery.</u> Title and risk of loss shall pass when items have been received, inspected, and accepted by County of Volusia ("County"). All associated shipping, insurance, and other related costs shall be borne by Provider.

Discontinued. Provider shall give County 30 (thirty) days advance notice of a discontinued item(s) so that County can purchase additional quantities of discontinued item(s). County must give written approval of replacement(s) if they exceed previous price or fail to meet quality, form, fit, or function of the discontinued item. Time is of the essence regarding Performance of Services and this PO or MA can be terminated by the County for convenience, non-appropriation of funds, or non-performance.

Disputes. If such dispute arises under this PO or MA and is not resolved informally by the parties within five (5) business days, the party bringing a claim ("Disputing Party") shall deliver to the first level representative of the other party a written statement ("Dispute Notice") describing the dispute. If the respective representatives cannot resolve the dispute within ten (10) days, the dispute shall be escalated through two higher levels of management. If the dispute has not been resolved within 25 (twenty- five) calendar days after delivery of the Disputing Party's notice, either party may give written notice to the other party declaring the resolution process terminated and pursue other legal recourse or initiate formal non-binding mediation before a single mediator, which shall be completed within 30 (thirty) days of initiation, in accordance with rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700, et seq., of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction.

E-Verify. By providing any good or service to the County or accepting payment for same, Provider warrants and certifies it has registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees. Provider is subject to and agrees to abide by Sections 446.09 and 446.095, Fla. Stat. Provider shall not enter into a contract with a subcontractor without prior approval from the County; Provider will be required to comply with the provisions of Section 446.095, Fla. Stat.

Compliance with FEMA 2 CFR 200.318-326 and Appendix II Contract Provisions. This Agreement and the products/services provided may be utilized in the event of declared State/Federal Emergency and Contractors shall be prepared to comply with the requirements of the FEMA Super Circular CFR 200.318-326 and Appendix II Contract Provisions as amended. These documents can be found on the Internet at: https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-sec200-318

Governing Law/Jurisdiction/Venue. This PO or MA shall be governed by the laws of the State of Florida and venue for any litigation arising from this PO or MA shall be in the County of Volusia, Florida, and any trial shall be non-jury. Provider shall comply with all applicable laws and regulations.

Insurance. For goods and services delivered or performed by Provider on County premises, Provider certifies it maintains comprehensive general liability insurance and auto insurance in the amounts identified in the solicitation and/or contract and any amendments thereto pertaining to this PO or MA, or from an A.M. Best "A-" or better rated insurance firm authorized by the State of Florida Insurance Commissioner. The County reserves the right to require the "County of Volusia" be named as additional insured for projects when deemed necessary. For services performed off County premises and goods delivered by third party carriers, the Provider shall use such carriers that maintain such insurance coverage as set forth above.

Intellectual Property. Provider agrees to protect, defend, indemnify, and save the County, its agents, officials, including elected officials, and employees of the County harmless from and against any and all claims, demands, actions, and causes of action which may arise asserting that a copyright, trademark, trade secret, or patent ("Intellectual Property"), as provided under this PO or MA, infringes or misappropriates any third party's Intellectual Property. If Provider must pay a third party any license, royalty, or other such usage fee in order to deliver the item(s) under this PO or MA, such third party and usage fee must be specified in the Provider's offer to sell to the County.

Indemnification. The Contractor shall indemnify, defend and hold harmless the County and its employees, officers, elected and appointed officials, agents, attorneys, representatives, volunteers, divisions, departments, districts, authorities, and associated entities from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees, arising out of or resulting from the performance of this Agreement to the extent that any such claim, damage, loss and expense is caused by any negligent act or omission of the Contractor, anyone directly or indirectly employed by Contractor.

Modification & Assignment. County may unitaterally change, at no additional cost, the quantity and receiving point within the County for items not yet shipped. All other items must be mutually agreed upon in writing. County is not required to pay for defective items, back-orders, late deliveries, those quantities exceeding the PO or MA quantity, or items shipped at a higher price than stated on the PO or MA. Neither this PO or MA nor any interest herein shall be assigned, transferred, or encumbered by Provider except as authorized in writing by the County.

Notices. All notices given by one party to the other party under this PO or MA shall be delivered to the receiving party's address set forth on this PO either by hand, qualified courier, or e-mail and shall be deemed received the day after it is transmitted. For the County, it shall be addressed to the Purchasing and Contracts Department, 123 West Indiana Avenue, 3rd Floor, DeLand, Florida, 32720 or purchasing@volusia.org.

No Waiver. Except as expressly set forth herein, no failure or delay on the part of County in exercising any right, power, or remedy hereunder shall operate as or be deemed a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

Order of Precedence. In the event of conflict between this PO or a Master Agreement (MA), the originating Volusia County contract and amendments thereto shall be controlling. This control shall pertain to all specifications and scopes of work included in the originating Volusia County contract and any amendments thereto.

Payment, Except for construction services, which shall be paid pursuant to the Florida Prompt Payment Act, County shall pay Provider within 45 (forty-five) days after receipt of an accurate and undisputed invoice, unless the County accepts a prompt payment discount from Provider and the goods or services are not defective. Invoice, packing slip, delivery receipt, order acknowledgement, and correspondence shall clearly indicate the PO or MA number. Any additional or different terms and conditions on Provider's documents shall be considered null and void. The County may deduct amounts it is due from Provider's payment or not pay disputed invoices until such dispute is resolved. Nothing in this PO or MA shall create any obligation on the part of the County to pay directly to any subcontractor of Provider any monies due to such subcontractor or claims of such subcontractor for amounts owed by Provider to subcontractor for goods or services provided under this PO or MA.

Sovereign Immunity. The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of the Agreement, Master Agreement, and/ or this Purchase Order to the contrary, nothing in any such documents shall be deemed as a waiver of immunity or the limitations of liability of the County beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the County for damages regardless of the number or nature of claims in tort, equity, or contract shall not exceed the dollar amount set by the legislature for tort. Nothing in the Agreement, Master Agreement, or this Purchase Order shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

<u>Taxes.</u> County is exempt from Manufacturers' Federal Excise Tax (Exemption# 49-6000-885) and Florida sales tax (Exemption# 85-8012622393C-9). Certificates are available at www.volusia.org/purchasing. After accessing the foregoing website, select, "Doing Business with Volusia County" and "Consumer Certificate of Tax Exemption" from the available menu screens to see a copy of the certificates.

Termination for Convenience. The County may cancel the PO or MA in whole or part when it is in the best interest of the County with thirty (30) days notice.

UCC. In addition to any rights or remedies contained in this P.O., each party shall have rights, duties, and remedies available through the Uniform Commercial Code (UCC).

Warranty. Provider warrants that all Work or Services performed under this PO or MA shall be performed in a good and competent workmanlike manner to the satisfaction of the County, and materials shall be of good quality (unless otherwise stated on PO or MA), and free from defects and pursuant to specifications and requirements of the contract related to this PO or MA.

GRAYROBINSON

Heather Ramos | Heather.Ramos@gray-robinson.com | **D** 407.244.5670 301 East Pine Street, Suite 1400, Orlando, Florida 32801 | **T** 407.843.8880 | **F** 407.244.5690

June 9, 2023

Sid Vihlen, Jr., Chairman Volusia Growth Management Commission 140 S. Beach Street, Suite 305 Daytona Beach, FL 32114

Re: Legal Representation Contract for Services for Fiscal Year 2023/2024

Dear Mr. Vihlen:

This letter is sent in response to your request for a contract letter to be reviewed by the Personnel, Operations and Procedures (POP) Committee. This letter is for the fiscal year 2023/2024 for our firm's legal representation of the Volusia Growth Management Commission (the "Commission").

Over the years, it has been our experience that things go more smoothly if we have a clear understanding of your needs and the role we need to play. The purpose of this engagement letter is to confirm an agreement concerning representation and the payment of our fees and expenses. This engagement letter will govern all subsequent matters in which we may become involved on your behalf unless a separate arrangement is made.

We will do our very best to meet your needs in any matters we undertake for you, but as you know, we cannot and do not make any representations or warranties concerning the outcome. We will give you our best advice, render opinions, and seek to obtain the desired result. In this regard, it is most important that we communicate regularly.

As general counsel to the Commission, our duties will include:

- (i) Attendance at all meetings of the full Commission (unless our attendance is deemed not necessary by you or your designee) at which we will provide oral reports on legal activities, if any;
- (ii) Analysis of and comments on applications to the Commission for consistency certification when a request for comment is received from planning staff;
- (iii) Preparation of draft resolutions regarding consistency certification applications for consideration by the Commission;
- (iv) Consultations with the Commission Operations Manager and you on procedural matters and prepare procedural memorandums as so directed in the Commission's Rules of Procedure;
- (v) Upon your prior approval, meet with the local governments and proponents of a comprehensive plan change to discuss and review legal issues on particular applications to the Commission; in the event there are exigent circumstances to attend such a meeting and your prior approval is not possible,

#50614374 v1

authorization to attend said meeting may be obtained from the Vice Chairman or the Secretary to the Commission;

- (vi) Attendance at the Commission's committee meetings as directed by the committee chair;
- (vii) Undertaking special projects and preparing reports as directed by the Commission; and
- (viii) Immediately addressing and responding to new litigation matters so as to preserve jurisdiction of the Commission and subsequently present the litigation matter to the full Commission for direction on the litigation position of the Commission and for direction as to whether general counsel shall pursue such litigation on behalf of the Commission.

GrayRobinson will begin performance of the above services on the date written authorization to proceed is received. The duration of this continuing services Agreement shall be one (1) year. The Commission shall have the option of extending this Agreement for additional one (1) year terms; however, this Agreement will revert to a month-to-month contract under the current terms until such time as a new Agreement is reached.

In the event GrayRobinson elects to withdraw from representation, or if the Commission, by a weighted majority vote of the Commission, elects to terminate the services of GrayRobinson, a minimum of 90 days written notice will be provided to the affected party.

GrayRobinson strives to maintain the highest ethical standards. GrayRobinson is governed by the Florida Bar's Rules of Professional Conduct, including but not limited to, Rule 4-1.7, Conflict of Interest, Current Clients, and Rule 4-1.9, Conflict of Interest, Former Client, and represents that GrayRobinson will at all times perform any and all services under this Agreement in compliance with the Rules of Professional Conduct.

GrayRobinson agrees that, if changes, including additions, to the facts disclosed by it prior to execution of this Agreement, occur during performance of this Agreement, it shall make an immediate and full disclosure of such changes in writing to the Commission. GrayRobinson shall not undertake any representation of other clients which may result in a conflict of interest, without first obtaining written informed consent from each affected client(s), including the Commission, prior to commencement of such representation consistent with Rule of Professional Conduct 4-1.7(b).

I am submitting the following arrangements with our firm regarding fees and costs:

- 1. Our fees will be based on an hourly rate of \$250.00 for attorneys and \$130.00 for paralegals. As you are aware, this hourly attorney and paralegal rate is considerably below the hourly rates normally charged our clients. I will be primarily responsible for your work, and will be assisted by other legal staff as necessary.
- 2. Our statement for fees and costs will be submitted on a monthly basis and are normally to be paid within thirty days of receipt of the statement. Included with this letter, please find a copy of our firm's policy regarding fees and costs and document and file retention. All conditions in that document are incorporated by reference as a part of this fee letter. Please read the document carefully. Also attached is a

Sid Vihlen, Jr., Chairman June 9, 2023 Page 3

copy of our current cost recovery rates/charges. We will continue to reduce photocopying costs for the Commission and mileage will be computed at 44.5 cents per mile for all travel related to the Commission per Section 112.061(7)(d)1 of the Florida Statutes.

If the foregoing meets with the approval of you and the Commission, please have the Commission's authorized representative execute this letter agreement in the space provided, and return it to me. Your acceptance of our representation will include our agreement regarding fees and costs.

Our firm looks forward to continuing to work with you and all the Commissioners in the future. If you have any questions regarding this representation letter or any other matter, do not hesitate to call me.

Sincerely,

GrayRobinson, P.A.

Heather M. Ramos

HMR/jg

Enclosures

cc:

Merry Chris Smith, Operations Manager

ACCEPTED BY:

VOLUSIA GROWTH MANAGEMENT COMMISSION

Signature

Print Name and Title

Date: 9 27 23

POLICY REGARDING FEES AND EXPENSES

FEES:

Quality legal services and good results require ability and effort. These are our "stock in trade." Our fees are based on our skill, the time expended, and the responsibility involved. Our fees will be solely based on the time devoted to the matter and professional skills involved.

EXPENSES:

You will be charged a reasonable rate for postage, reproduction, couriers, express mail, long-distance telephone, travel costs and other costs. We may also use computerized research services to assist in handling your matters. This service will be used when we believe that it will save you money to do so. Expenses incurred or advanced on your behalf will be itemized on the statement.

BILLING:

You will be billed periodically, usually monthly. There will be a service charge of 1-1/2% per month on all accounts not paid within 30 days of the date the statement is mailed to you. Interest charges will be added on to any outstanding balance and will be reflected in subsequent statements.

In the event you should disagree with or question any amount due under an invoice, you agree to communicate such disagreement to us, in writing, within thirty (30) days of the invoice date. Any disagreement you may have with a bill that is not communicated to us within that period shall be deemed waived.

COMMENCEMENT OF REPRESENTATION:

Our representation will not commence until we receive a signed copy of the letter to which this statement is attached, together with payment of any retainer specified therein.

WITHDRAWAL FROM REPRESENTATION:

We reserve the right to withdraw as your counsel in the event you fail to honor your agreement with respect to our legal fees or for any just reason as permitted or required under the Florida Code of Professional Responsibility or as permitted by the rules of courts of the State of Florida. In the event of our withdrawal, you will promptly pay for all services rendered by us prior to the date of withdrawal.

DOCUMENT AND FILE RETENTION:

In representing the Volusia Growth Management Commission, our firm could be deemed to be "acting on behalf" of the Commission as contemplated under section 119.0701 of the Florida Statutes. In an abundance of caution, we have always complied in such representations with the

letter and spirit of Florida's Public Records Act, Chapter 119 of the Florida Statutes including specifically subsection 119.0701(2), which requires the firm to:

- a. Keep and maintain public records required by the Commission to perform the services under this Agreement.
- b. Upon request from the Commission's custodian of public records, provide the Commission with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 of the Florida Statutes or otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the firm does not transfer the records to the Commission.
- d. Upon completion of the Agreement, transfer, at no cost, to the Commission all public records in our possession or keep and maintain public records required by the Commission to perform the services under this Agreement. If the firm transfers all public records to the Commission upon the expiration or termination of this Agreement, the firm shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the firm keeps and maintains public records upon the expiration or termination of this Agreement, the firm shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Commission, upon request from the Commission's custodian of public records, in a format that is compatible with the information technology systems of the Commission.

If we fail to provide the public records to the Commission within a reasonable time we may be subject to penalties under Section 119.10 of the Florida Statutes. Further, the Commission may exercise any remedies at law or in equity, including, without limitation, the right to (i) impose sanctions and assess financial consequences, (ii) withhold and/or reduce payment, and (iii) terminate the legal representation contract.

IF GRAYROBINSON HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COMMISSION'S CUSTODIAN OF PUBLIC RECORDS AT vgmc@volusia.org, 386-947-1875, 140 S. Beach Street, Suite 305, Daytona Beach, FL 32114.

You should be aware of our document and file retention policy. If and when representation of the Commission is concluded, the file will be officially closed. Once the file is closed, it may be sent to off-site storage, and there may be costs associated with retrieval of information from the file. The firm retains stored and closed files for a period of ten (10) years after which time they may be destroyed. This period is twice as long as that required under Florida retention laws. Thus, if there are any documents which you need from the documents we possess, we recommend that you obtain them at the termination or expiration of this Agreement.

CLIENT CHARGES

Express Mail (Federal Express) - Fed Ex Discounted Charges.

Express Mail (UPS) - Actual UPS Charges.

Courier Service (Outside Courier) - Actual charges.

Postage and Handling - Actual Postage.

DSMITH2



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/21/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

	EPRESENTATIVE OR PRODUCER,										
l If	MPORTANT: If the certificate hold SUBROGATION IS WAIVED, sub- ples certificate does not confer rights	iect to t	the terms and condi	tions of	f the po uch en	olicy, certair dorsement(:	n policies ma s).	ONAL INSURE ay require an e	D provision ndorseme	ns or t	e endorsed. statement on
1	DUCER				CONT	CT Dawn K	night				
Hub International Florida								FAX (A/C, No)			
Suite) Orange Avenue e 750				PHONE (A/C, No, Ext): (407) 893-3875 [A/C, No): BOOK AND COMPANY OF THE PHONE (A/C, NO): BOOK AND COMPANY OF THE						
Wint	ter Park, FL 32789				AUDIK			ORDING COVERAG	•		NAIC #
					INCUD			n Specialty Insu		nany	NAIC # 41718
INSU	RED						Specialty		141100 0011	ipany	10717
	Gray-Robinson P.A.				INSURI		opecialty	insurance			10717
	PO Box 3068						~				 -
	Orlando, FL 32802-3068				INSURER D: INSURER E:						1
					INSUR						
COV	/ERAGES CE	RTIFICA	ATE NUMBER:		LINOOKI	-KF.		DEVISION NI	IMPED.		<u></u>
	IIS IS TO CERTIFY THAT THE POLICE			BELOW I	HAVE B	FEN ISSUED	TO THE INSI	REVISION NU		THE DO	LICY DEDICE
CE	DICATED. NOTWITHSTANDING ANY ERTIFICATE MAY BE ISSUED OR MA' CLUSIONS AND CONDITIONS OF SUCH	REQUIRE Y PERTA H POLICIE	EMENT, TERM OR CO NN, THE INSURANCE ES.LIMITS SHOWN MA	NDITIOI AFFORI	NOF A	ANY CONTRA	ACT OR OTHE	R DOCUMENT V	VITH DECD	ECT TO	WILLOU THIS
INSR LTR	TYPE OF INSURANCE	ADDL SU	JBR IVD POLICY NU	MBER		POLICY EFF (MM/DD/YYYY)	POLICY EXP	\	LIMI	TS	
Ĺ	COMMERCIAL GENERAL LIABILITY							EACH OCCURRE	NCE	\$	
L	CLAIMS-MADE OCCUR							DAMAGE TO REN PREMISES (Ea or		\$	-
		_						MED EXP (Any on		\$	-1
L		_						PERSONAL & AD		\$	
L	GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGR		\$	
	POLICY PRO- LOC							PRODUCTS - CO	1.00	\$	
	OTHER:						İ			s	*******
	AUTOMOBILE LIABILITY							COMBINED SING (Ea accident)	LE LIMIT	\$	
	ANY AUTO							BODILY INJURY (Per person)	\$	
L	OWNED SCHEDULED AUTOS ONLY AUTOS							BODILY INJURY (
Ĺ	HIRED NON-OWNED AUTOS ONLY							PROPERTY DAMA (Per accident)	AGE	\$, <u>, , , , , , , , , , , , , , , , , , </u>
								(1.57.5550011)		\$	
L	UMBRELLA LIAB OCCUR							EACH OCCURREN	NCF	\$	
	EXCESS LIAB CLAIMS-MADE	<u> </u>						AGGREGATE		\$	
	DED RETENTION \$				j				-	\$	
V	VORKERS COMPENSATION AND EMPLOYERS' LIABILITY							PER STATUTE	OTH- ER	*	
	NY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	N/A						E.L. EACH ACCIDI		\$	
		N/A						E.L. DISEASE - EA		,	
	yes, describe under DESCRIPTION OF OPERATIONS below	_[.						E.L. DISFASE - PC	DICYLIMIT	\$	
AF	Prof Liab/\$30k Ded.		LPW30014259901			12/21/2022	12/21/2023	Both Claim &	Aggr	*	10,000,000
ВР	Prof Liab/ded \$30k		LX00EYG22			12/21/2022	12/21/2023	Both Claim &	Aggr		10,000,000
33138 33138 310M 3	RIPTION OF OPERATIONS / LOCATIONS / VEHIC 750,000 Claim, \$1,500,000 Agg Retent I: Aspen American Insurance, 12/21/2 8, Policy # LQS800235 // \$5M xs \$25M xs \$30M: QBE Insurance Company, 1: 10, Policy #T8591302APL	:2-23, NAI I: Endura	ICS #23647, Policy # L Ince American Specia	LX00EY0 itv. 12/2	G22	5M xs \$20M: 3. NAICS #41	: Landmark A 718 Policy #	merican Insura XT3001434046	nce, 12/21 01 //	/22-23,	NAICS
	nformation Only**				CANC	ELL ATION					
For Information Only - Orlando **For Information Only**				SHOU THE ACCO	EXPIRATION	I DATE TH	ESCRIBED POLICEREOF, NOTICEY PROVISIONS.				
	I			İ	1						

		.•

William Dove, Esq. | Billy.Dove@Gray-Robinson.com
301 East Pine Street, Suite 1400, Orlando, Florida 32801 | **T** 407.843.8880 | **F** 407.244.5690

Exhibit D

December 20, 2023

VIA – E-MAIL

Volusia County
Planning and Land Development Regulation Commission
123 West Indiana Ave.
Room 202
DeLand, FL 32720
planning@volusia.org

Re: O-24-003 - Ordinance 2023-47 - Moratorium on Heavy Industrial (I-2) Zoned Parcels

Dear Members of the Commission,

This firm represents Belvedere Terminals Company, LLC ("Belvedere"). The following comments and enclosures are provided on behalf of Belvedere in opposition to proposed Ordinance 2023-47 — Moratorium on Heavy Industrial (I-2) Zoned Parcels (the "Moratorium"). Belvedere Terminals has planned the development of a bulk fuel storage terminal at the Property located at 874 Hull Road, Ormond Beach, FL. This site was specifically selected due to its zoning and access to rail lines, which are necessary for the project.

In 2006, the County Council approved a rezoning of this property to I-2 Heavy Industrial to accommodate the proposed development of a bulk concrete materials distribution plant. The County also approved site plans for the Concrete plant at that time, but the project did not proceed due to the 2008 recession. The current I-2 zoning classification is permissive for the development of a fuel terminal, as confirmed by Volusia County staff during a pre-application meeting last summer. In fact, I-2 is the only Volusia zoning classification that would allow this Project in unincorporated Volusia County. Based on representations from County staff during the pre-application meeting, Belvedere has undertaken substantial planning efforts to propose a project that is compliant with existing county ordinances, state, and federal laws, including environmental and safety standards. On December 4, 2023, Belvedere submitted a Conceptual Site Plan which the County refused to review.

The Moratorium Ordinance that the County Council has directed you to recommend applies only to 5 parcels, owned by only three entities. The Belvedere Property is the only property in I-2 zoning that has not been developed. Accordingly, this moratorium is strictly and solely targeting Belvedere. Not only is this moratorium patently discriminatory, it directly contradicts the Volusia County Comprehensive Plan at Chapter 19, which protects the rights of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights and to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

December 20, 2023 Page 2

Volusia County's attempts to use the pending ordinance doctrine to refuse to act on site plan applications has the legal and functional effect of a zoning moratorium, except that in this case, the County Council has acted with total disregard to due process in directing staff not to process site plans or other applications within the I-2 zoning classification. Any moratorium subsequently enacted is simply a further reflection of the County's bad faith attempts to stop an otherwise permissible use of private property and unlawfully deprive Belvedere of their rights.

Enclosed, please find the following documents in support of Belvedere's opposition to this Moratorium:

- 1. Memorandum of Avid Group planners outlining issues with the proposed Moratorium
- 2. Proof of site plan application confirmation (the full submitted site plan application is within the publicly available County records and is incorporated herein by reference)
- 3. Volusia County email refusing to review Belvedere's site plan application
- 4. Map of properties within the I-2 Zoning classification with matrix of ownership
- 5. Volusia County Property Appraiser details of surrounding I-2 Properties showing previous permitted development

Belvedere respectfully requests this Commission set aside the vitriolic comments of the County Council and reject the proposed Moratorium.

Sincerely,

William Dove, Esq.

Enclosures as stated.



2300 CURLEW ROAD, Suite 201 PALM HARBOR, FLORIDA 34683 PHONE (727) 789-9500

> [AUTH#6139 LB7345] WWW.AVIDGROUP.COM

TO:

Belvedere Terminals Company, LLC

FROM:

Peter Pensa, AICP, Senior Associate / Director of Planning

Charlie Potter, P.E., Senior Associate / Senior Project Manager

SUBJECT:

Proposed moratorium on Heavy Industrial (I-2) zoned parcels

AVID JOB NO.:

2968003.02

This memorandum is in response to your request for analysis of Volusia County's proposed moratorium on Heavy Industrial (I-2) zoned parcels (Ordinance 2023-47) and its impact on Belvedere Terminal's Ormond Beach Fuel Terminal project. The project is proposed on three parcels totaling approximately 61.53 acres located on the north side of Hull Road, west of US Highway 1 and the FEC Railroad right-of-way (Tax Parcel ID Nos. 420600000061, 423801140011, and 423801160012).

The properties have a Volusia County future land use map designation of Urban Low Intensity and Industrial,

The site is located within unincorporated Volusia County. The project area within the site has a future land use map designation of Industrial and is zoned I-2A (Heavy Industrial / Airport Protection Overlay).¹

During the month of June 2022, representatives from Belvedere Terminals, AVID Group, and other project consulting firms attended regulatory agency pre-application meetings with the Volusia County Fire Department on 06/08/2022, Volusia County on 06/09/2022, and the City of Ormond Beach on 06/22/2022. During these pre-application meetings, the proposed fuel terminal project was discussed including but not limited to the proposed use, conceptual site plan configuration, land use/zoning status, site development standards, access management, utilities, and permitting processes.

At the pre-application meeting, County staff confirmed that the existing I-2A zoning was the appropriate designation for the proposed use, that rezoning would not be required for the project, and that the airport overlay would not have an impact on the project as proposed. As a permitted use by right within the I-2A zoning district, we were advised that the project would go through the Conceptual Site Plan (CPN) and Final Site Plan (FSP) processes for administrative review and approval by County staff.

Belvedere Terminals relied upon the statements of County staff to proceed with making a substantial investment of both time and expense to engage the services of numerous consulting firms over the next 1.5 years to conduct the additional due diligence (e.g., site and rail survey, wetland delineation, environmental assessment, geotechnical analysis, etc.) necessary to perform engineering design (e.g., site civil, transportation, railway, fuel terminal, air quality, etc.) and start permitting the project through the numerous local, state and federal regulatory agencies that have permitting jurisdiction over the project's design and operation.

¹ There is no development proposed within the area along the western boundary that has a future land use map designation of Urban Low Intensity and is zoned A-2A (Rural Agricultural / Airport Protection Overlay).

Volusia County received the Conceptual Site Plan application submitted by AVID Group on December 4, 2023, and responded the same day to the property owner, applicant, and agent via email that the County would not accept and process the application at this time citing pending ordinance doctrine and direction from the Volusia County Council to review and analyze potential changes to the list of permitted and special exception uses in the I-2 zoning classification and to initiate a moratorium on development in the I-2 zoning classification. Because the County ordinances do not incorporate the pending ordinance doctrine, this refusal to process the site plan has the effect of a moratorium ordinance. Such a moratorium may only be adopted in accordance with the process for adopting ordinances provided in the Volusia County code, which has not occurred in this case.

Volusia County has cited pending ordinance doctrine as justification for withholding acceptance, and thus effectively denying the CSP application without review. However, Volusia County has not adopted this doctrine into law within their Code of Ordinances, Land Development Regulations, or Comprehensive Plan, as have some other local governments around the state.

In our professional opinion, Volusia County's intention to consider a moratorium and explore potential changes to the I-2 zoning classification is directed solely at Belvedere. This belief is supported by our analysis of the 3 other properties in the I-2 zoning classification which appear to have been previously developed with predominantly industrial uses and show no signs of future permitting activity. Further, the I-2 zoning classification for this area has remained undisturbed for many years and the timing of this moratorium directly follows the Belvedere site plan application. These actions are in violation of the Volusia County Comprehensive Plan. Specifically, Chapter 19 – Property Rights Element states the following and our analysis follows each statement in bold text:

"The following statement of rights is hereby adopted into the Volusia County Comprehensive Plan and shall be considered in local decision-making:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

The proposed moratorium and code amendment, if adopted, will adversely impact the rights of the property owner (Florida East Coast Railway LLC) and the applicant (Belvedere Terminals Company LLC).

2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

The proposed moratorium and code amendment, if adopted, will adversely impact the rights of the property owner and applicant to use the property consistent with, and subject to, state law and local ordinances currently in force and effect. There are only five parcels located within Volusia County having the appropriate I-2 zoning classification and two of these parcels are already developed and unsuitable for the proposed use for numerous reasons. Thus, these three parcels are the only suitable location for the proposed use based upon land use, zoning, size, rail and highway proximity, and various other site and location specific factors. FEC and Belvedere have relied in good faith upon the current Volusia County Comprehensive Plan and Land Development Regulations, as well as information and assurances provided by Volusia County staff, to make a substantial investment of time and money in due diligence and design to permit the proposed fuel terminal project at this location.

3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

The proposed moratorium and code amendment, if adopted, would not adversely impact this right.

4. The right of a property owner to dispose of his or her property through sale or gift."

The proposed moratorium and code amendment, if adopted, would adversely impact this right by excluding the property owner and applicant's right to develop and possess the property consistent with, and subject to, state law and local ordinances currently in force and effect.

In summary, it is our professional opinion as an AICP certified planner and a licensed Professional Engineer that the project is consistent with Volusia County's current future land use map designation and zoning classification for the property and the project can be permitted and developed consistent with applicable federal and state law and local ordinances to protect the health, safety, and welfare of the general public. The proposed moratorium and code amendment, if adopted, would be done in bad faith and in violation of the County's Comprehensive Plan and the property owner's rights, and that these actions would violate the property owner and applicant's vested rights to proceed with permitting and development of the fuel terminal project as proposed.

Reference Number	Folder Type	Sub Type	Work Type	Folder Name	Status	Application Issuance Expiration
23 089494	Conceptua	al	New	ORMOND BEACH	A 1: 1:	12/04/2022

23 089494 Conceptual New ORMOND BEACH Application 12/04/2023 000 00 CPN Site Plan Application TERMINAL

Description of Work

BULK FUEL STORAGE AND DISTRIBUTION TERMINAL

423801140011 & 423801160012

Street #	ix Street Name	Type Direction Unit	Unit #	City	State	e Zip	Parcel Number
874	HULL	Road		ORMOND BEACH	FL	32174	4 420600000061

Description Name **Address** City, State Zip **Phone Applicant** Charles Potter 2300 Curlew RD Suite 201 Palm Harbor FL 34683 (727) 789-9500 7150 PHILIPS HWY Owner FEC RAILROAD JACKSONVILLE FL 32256

Information is subject to change
All information may not be available at this time.
Information, as provided here, is not to be relied upon as all encompassing.
If you have questions regarding the information, please use the Contact Us link at the bottom of the page to request clarification.

Information Description	Information Value	Information Description	Information Value
Application Information		Site Information (cont.)	
Jurisdiction Community	COUNTY ORMOND BEACH	Total Number of Parking Spaces	17
Site History? Date Submitted Date of Survey Type of Development External Reviews Concurrency Site Information Parcel Size	Yes Dec 04, 2023 Nov 08, 2023 Commercial Concurrency Review 61.93	Proposed Use 1 Units/Sq Ft 1 Project Density FEMA Designation Located in floodplain? Stormwater Impervious Area (Sq Ft) Stormwater Impervious Area (Percentage)	Truck Terminal 4600 12 AE Yes 190000
Units of Measurement acres # Dwelling Units 0 Total Floor Area (Sq Ft) 4600 Total Number of Structures 12	0 4600	Utilities Water Provider Sewer Provider Construction Info Estimated Construction Cost Zoning & Land Use Information Current Zoning Land Use Designation	Well Septic 7475367 999 INDUSTRIAL,URBAN LOW INTENSITY

Item 05 - Supplemental Document

Page 7 of 15

To view the fees that are any any any any any any link above. If you have questions about the fees, please use the Contact Us link at the bottom of the page to request clarification.

Fee Description	Amount
Concurrency Review Fee	\$416.00
Conceptual Site Plan Review Fee	\$166.00
Total	\$582.00

Review and inspection requirements are subject to change. All reviews and inspections may not be available at this time.

Review and inspection information, as provided here, is not to be relied upon as all encompassing. If you have questions about the reviews and inspections, please use the Contact Us link at the bottom of the page to request clarification.

Process Description	Status	Schedule Date	Start Date	End Date	Assigned Staff
Application Process	sing				
Application Intake	Open	Dec 04, 2023			Land Development

Documents may not be available at this time.

Type of Attachment	Attachment Description	View Attachment

Plans	Site Plan Dec 04, 2023
Form Authorization of Owner	
Application	Submitted Application Form 12/04/2023
Other	Other
Other	Other
Other	Other
0.11	

Other Other Other Other Other Other

Upload

We are accepting the attachments listed below:

Authorization of Owner - Notarized, required if not the owner

Site Plan - To scale, showing location of all existing and proposed structures including vehicular circulation.

Traffic Impact Analysis Documents

Content - Volusia County, Florida. 2011 - All rights reserved. Graphics - Randy Charron II. © 2010 - All rights reserved.

Site powered by AMANDA Software



From: Carol McFarlane < CMcFarlane@volusia.org Sent: Monday, December 4, 2023 5:28:25 PM

To: robert.ledoux@fecrwy.com; Edwin Cothron ecothron@belvedereterminals.com; charlie.potter@avidgroup.com; ronnie@clearpointengineers.com

Cc: George Recktenwald <<u>GRecktenwald@volusia.org</u>>; Suzanne Konchan <<u>SKonchan@volusia.org</u>>; Paolo Soria <<u>PSoria@volusia.org</u>>; Michael Dyer <<u>mdyer@volusia.org</u>>; Christopher Ryan <<u>CRyan@volusia.org</u>>; Scott Ashley <<u>SAshley@volusia.org</u>>; Benjamin Walter <<u>BWalter@volusia.org</u>>; Kimberly Reading <<u>KReading@volusia.org</u>>; Rebekah Cottle <rcottle@volusia.org>

Subject: Ormond Beach Terminal, Row ID 1198442

Good evening,

Volusia County received your application for a conceptual site plan for a proposed fuel terminal at 874 Hull Road, near the city of Ormond Beach. The county staff cannot accept and process the conceptual site plan application at this time. On November 21, 2023, the Volusia County Council publicly directed the County Manager and the County Attorney to review and analyze potential changes to list of permitted and special exception uses in the I-2 (Heavy Industrial) zoning classification. Under the pending ordinance doctrine, the county staff cannot process the application at this time.

Additionally, the County Council directed staff to initiate a moratorium on development in the I-2 (Heavy Industrial) zoning classification. The Planning and Land Development Regulation Commission will review the pending moratorium ordinance at its December 21, 2023, meeting. It is anticipated that the County Council will review the pending ordinance at its January 4, 2024, and January 16, 2024, meetings. It is anticipated that the moratorium will be in effect until August 21, 2024.

Please let us know if you have any questions.

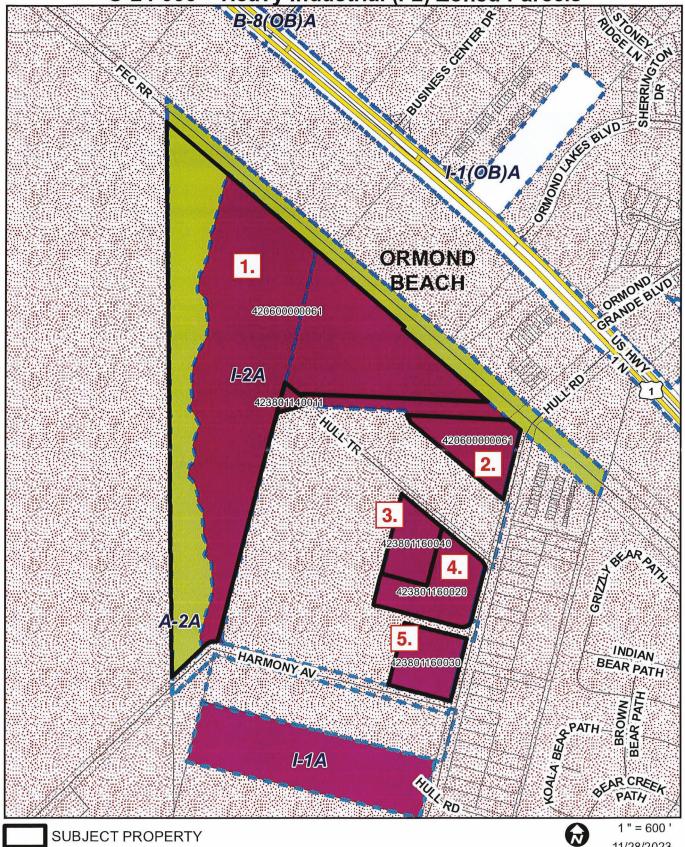
Thank you,

Carol McFarlane, AICP
Planning and Development Services Director
County of Volusia
123 W. Indiana Avenue, Room 202
DeLand, FL 32720
Phone (386) 736-5959, ext. 12736
www.volusia.org

*** Use www.ConnectLivePermits.org, Volusia County's online permit service center, to apply, query zoning, make payments, research permit records and so much more. Please use the ConnectLive system to upload documents relating to a particular permit, as any documents sent via email are subject to a firewall and may not reach your intended recipient. ***

All email correspondence are subject to public records laws.

O-24-003 – Heavy Industrial (I-2) Zoned Parcels



SUBJECT PROPERTY

ZONING BNDY INCORPORATED

INDUSTRIAL AGRICULTURAL

Map #	Parcel ID No.	Owner Name	Existing Development
2.	420600000061	FEC RAILROAD (BELVEDERE PROPERTY)	None
3.	423801160040	WASTE MANAGEMENT INC	Y05-1
4.	423801160020	OF FL	03-1
5.	423801160030	JMJ VENTURES GROUP LLC	Yes

11/28/2023



Volusia County Property Appraiser 123 W. Indiana Ave., Rm. 102 DeLand, FL. 32720

Phone: (386) 736-5901 Web: vcpa.vcgov.org

AltKey: 4515381
JMJ VENTURES GROUP LLC

Parcel ID: 423801160030

826 HULL RD, ORMOND BEACH, FL

Parcel Summary

Alternate Key:

4515381

Parcel ID:

423801160030

Township-Range-Section:

14 - 32 - 38

Subdivision-Block-Lot:

01 - 16 - 0030

Owner(s):

JMJ VENTURES GROUP LLC - FS - Fee Simple - 100%

Mailing Address On File:

388 PINE CONE DR

ORMOND BEACH FL 32174 8076

Physical Address:

826 HULL RD, ORMOND BEACH 32174

Property Use:

4100 - LIGHT INDUSTRIAL

Tax District:

200-UNINCORPORATED - NORTHEAST

2023 Final Millage Rate:

17.8598

Neighborhood:

7285

Subdivision Name:

Homestead Property:

No

AltKey: 4515381
JMJ VENTURES GROUP LLC

Parcel ID: 423801160030 826 HULL RD, ORMOND BEACH, FL

Permit List

Permit Date	Permit #	Description	Contractor	Amount
05/07/2010	20080508005	STORMWATER NON-ADVALOREM	Custom Storm Shutter	\$0
04/02/2008	20080402042	OCCUPATIONAL LICENSE	STEVEN LOPRESTI	\$0
11/05/1998	19981029018	WELL/PUMP/IRRIGATION	OSCEOLA PLUMBING & W	\$0
12/20/1991	19911217003	ELEC UPGRD/REP/MISC	GILES ELECTRIC	\$0
09/01/1982	21052	48C NC	MR PERMIT	\$108,000



Volusia County Property Appraiser 123 W. Indiana Ave., Rm. 102 DeLand, FL. 32720

Phone: (386) 736-5901 Web: vcpa.vcgov.org

AltKey: 4092803

Parcel ID: 423801160020

WASTE MANAGEMENT INC OF FL

848 HULL RD, ORMOND BEACH, FL

Parcel Summary

Alternate Key:

4092803

Parcel ID:

423801160020

Township-Range-Section:

14 - 32 - 38

Subdivision-Block-Lot:

01 - 16 - 0020

Owner(s):

WASTE MANAGEMENT INC OF FL - FS - Fee Simple - 100%

Mailing Address On File:

PO BOX 1450

CHICAGO IL 60690 1450

Physical Address:

848 HULL RD, ORMOND BEACH 32174

Property Use:

4000 - VACANT INDUS

Tax District:

200-UNINCORPORATED - NORTHEAST

2023 Final Millage Rate:

17.8598

Neighborhood:

7285

Subdivision Name:

Homestead Property:

No

AltKey: 4092803

WASTE MANAGEMENT INC OF FL

Parcel ID: 423801160020

848 HULL RD, ORMOND BEACH, FL

Permit List

Permit Date	Permit #	Description	Contractor	Amount
07/09/1998	19980709033	ELEC UPGRD/REP/MISC	GILES ELECTRIC CO	\$0
03/03/1998	19980303036	OCCUPATIONAL LICENSE	CINELLI JAMES	\$0
12/03/1997	19971010009	NONRESIDENTIAL	SCOTT CONSTRUCTION	\$15,680
08/20/1993	19930820004	OCCUPATIONAL LICENSE	FLETCHER JAMES PRES	\$0
03/22/1993	19930322048	ELEC UPGRD/REP/MISC	GILES ELECTRIC	\$0
11/06/1990	19900830003	NONRESIDENTIAL	DAUGHERTY CONSTR OF	\$150,000
02/27/1990	19900227011	ELEC UPGRD/REP/MISC	GILES ELECTRIC	\$0
08/01/1988	43489D	STRU OTHER THAN BLDG	LOAD DOCK & RAMP	\$60,000
10/23/1986	20895D	MISCELLANEOUS	OWNER/SIGN	\$0
03/21/1984	33747C	INDUSTRIAL	PETROLEUM EQUIP. CO	\$0
12/01/1981	11335	ELEC & AC	MR PERMIT	\$10,000
10/01/1981	14724	MAINT. SHOP	MR PERMIT	\$40,000



Volusia County Property Appraiser 123 W. Indiana Ave., Rm. 102 DeLand, FL. 32720

Phone: (386) 736-5901 Web: vcpa.vcgov.org

AltKey: 4609491

Parcel ID: 423801160040

WASTE MANAGEMENT INC OF FL

1325 HULL TR, ORMOND BEACH, FL

Parcel Summary

Alternate Key:

4609491

Parcel ID:

423801160040

Township-Range-Section:

14 - 32 - 38

Subdivision-Block-Lot:

01 - 16 - 0040

Owner(s):

WASTE MANAGEMENT INC OF FL - FS - Fee Simple - 100%

Mailing Address On File:

PO BOX 1450

Physical Address:

CHICAGO IL 60690

Property Use:

4100 - LIGHT INDUSTRIAL

Tax District:

200-UNINCORPORATED - NORTHEAST

1325 HULL TR, ORMOND BEACH 32174

2023 Final Millage Rate:

17.8598

Neighborhood:

7285

Subdivision Name:

Homestead Property:

No

AltKey: 4609491
WASTE MANAGEMENT INC OF FL

Parcel ID: 423801160040 1325 HULL TR, ORMOND BEACH, FL

Permit List

Permit Date	Permit #	Description	Contractor	Amount
10/27/2023	20231016035	INSTALLATION OF NEW UNDERGROUND FIRE HYDRANT	MR. KYLE SIEVERT - N	\$38,600
08/23/2023	20221223032	INSTALL MOBILE COMPRESSOR UNIT FOR FUELING OF	STEVEN LYNN JACKSON	\$65,000
11/17/2004	20041027015	ELEC UPGRD/REP/MISC	GILES ELECTRIC CO	\$0
09/13/2002	20020318036	NONRESIDENTIAL	BRYAN S HARTMAN	\$193,750
07/20/1995	19950720042	OCCUPATIONAL LICENSE	MR PERMIT	\$0
09/08/1994	19940908025	WELL/PUMP/IRRIGATION	BOBS WELL DRILLING	\$0
10/05/1990	19900830004	NONRESIDENTIAL	DAUGHERTY CONSTR OF	\$75,000
08/10/1987	30778D	ELEC UPGRD/REP/MISC	GILES ELEC	\$0
07/01/1987	30327D	NC STORAGE BLDG DR-KC	TRIANGLE CONST	\$16,500
08/27/1986	20506D	MISCELLANEOUS	FOX AND SONS BLDRS	\$0
11/01/1983	32641	NC 48C & 17C	TOM DAUGHERTY STEEL	\$125,000

Exhibit E

ORDINANCE NO. 2023-47

AN ORDINANCE OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, DECLARING AND IMPLEMENTING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, PROCESSING, AND CONSIDERATION OF DEVELOPMENT ORDERS, DEVELOPMENT PERMITS, SITE PLANS, OR BUILDING PERMITS FOR DEVELOPMENTS LOCATED IN THE I-2 HEAVY INDUSTRIAL CLASSIFICATION; REQUIRING COUNTY STAFF TO REVIEW THE CURRENT CODE FOR COMPATIBILITY AND PROPOSE NEW RESTRICTIONS FOR THE I-2 CLASSIFICATION; PROVIDING FOR NON-CODIFICATION; CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the County of Volusia (the "County"), as provided in section 2(b), Article VIII of the Florida Constitution and chapters 163 and 125, Florida Statutes, enjoys all home rule authority, police power, land development and zoning authority, governmental and proprietary powers necessary to conduct county government and perform county functions, and the County may exercise any power for county purposes, except as expressly prohibited by law; and

WHEREAS, the currently allowable uses in the I-2 Heavy Industrial Classification encompass many permitted uses, including "any industrial use or structure provided it meets the minimum environmental standards" as well as various special exceptions. Such language has not been reviewed or changed in many years and does not anticipate the evolution of the surrounding areas; and

WHEREAS, other listed uses in the I-2 Heavy Industrial Classification may additionally be incompatible with the current character of the surrounding zoning classifications, and the County Council believes it necessary to conduct a comprehensive review to determine whether changes are appropriate; and

WHEREAS, the County is currently prepared to study the current code and its compatibility with surrounding areas with the intent of reviewing, updating and/or promulgating new County land development regulations that provide a clearer guideline for which uses are allowable by right in the I-2 Industrial zoning district and which may promote additional safety limitations via the special exception vehicle to ensure the health, safety, and welfare of the residents in adjacent properties; and

WHEREAS, the County finds that in order to protect the health, safety and welfare of its citizens and property owners, it is imperative to study and potentially update the allowable uses in the I-2 Heavy Industrial Classification; and

WHEREAS, once the County completes its study, staff will prepare proposed policies and land development regulations, as necessary, for the Council to ensure the compatibility of uses and to implement the County's planning vision; and

WHEREAS, the County, with a unanimous 5-0 vote of Councilmembers present at the November 21, 2023 meeting, invoked the pending ordinance doctrine, which now applies, by directing staff to review the I-2 Heavy Industrial Classification code for potential amendment, and now desires to place the public and all other interested parties on further notice the County is considering such land development regulation amendments and creating a temporary moratorium on the acceptance, processing, and consideration of site plans and permits for permitted principal uses or special exceptions and structures in the I-2 Heavy Industrial Classification for a period of nine months, beginning on November 21, 2023; and

WHEREAS, the County, in good faith, determines that this Ordinance is in the best interest of the County and its residents, businesses, and property owners, and promotes

the health, safety, and welfare of the public. The study and potential update to standards

and requirements relating to the allowable uses in the I-2 Heavy Industrial Classification

will further promote land use compatibility, account for the proximity of residential

neighborhoods when accounting for noise, light pollution, noxious fumes, vibration, traffic,

and other potential byproducts of industrial expansion, and result in greater quality of life

and increased property values for surrounding neighborhoods.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA

COUNTY, FLORIDA, AS FOLLOWS:

SECTION I. INTENT - The above recitals are hereby adopted as the legislative

purpose of this Ordinance and as the County Council's findings.

SECTION II. MORATORIUM - The County hereby places a temporary moratorium

on the acceptance, processing, and consideration of all development orders,

development permits, site plans, or building permits for any property in the I-2 Heavy

Industrial Classification for a period not to exceed the end date of August 21, 2024, unless

terminated or extended earlier by County Council via resolution.

SECTION III. NON-CODIFICATION - Given the temporary nature and effect of this

ordinance, it is the intent of the County Council that this Ordinance not be codified.

SECTION IV: VESTED RIGHTS – In the event a property owner possesses a

current development order, development permit, or building permit legally issued by

Volusia County prior to November 21, 2023, the property owner may petition for a vested

Page **3** of **4**

rights determination pursuant to and consistent with Section 72-341(i) of the Code of Ordinances, County of Volusia.

SECTION V: SEVERABILITY - Should any word, phrase, sentence, subsection or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection or section so held shall be severed from this ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

SECTION VI: CONFLICTING ORDINANCES - All ordinances, or part thereof, in conflict herewith are, to the extent of such conflict, repealed.

SECTION VII: EFFECTIVE DATE. This ordinance shall take effect upon electronic filing of a certified copy with the Department of State.

ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNTY COUNCIL CHAMBERS AT THE THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA AVENUE, DELAND, FLORIDA, THIS ___ DAY OF _________A.D., 2024.

ATTEST:	COUNTY COUNCIL VOLUSIA COUNTY, FLORIDA
George Recktenwald	Jeffrey S. Brower
County Manager	County Chair