

AGENDA REQUEST

Date: August 10, 2009

PUBLIC HEARING _____ RESOLUTION _____ ORDINANCE X

BOARD APPOINTMENT _____ CONSENT _____ OTHER BUSINESS _____

ITEM DESCRIPTION:

Second Reading of Ordinance #2009-O-05, Amending and Restating Chapter 12.5 (Parks and Recreation) of the City of Edgewater Code of Ordinances.

BACKGROUND:

City Staff, the Recreation and Cultural Services Board and the City Attorney have reviewed to amend and restate Chapter 12.5 (Parks and Recreation) in its entirety in an attempt to incorporate rules and regulations relating to Parks and Recreation for consistency with current statues.

STAFF RECOMMENDATION:

Staff recommends that City Council adopt Ordinance #2009-O-05 amending and restating Chapter 12.5 (Parks and Recreation) of the City of Edgewater Code of Ordinances.

ACTION REQUESTED:

Motion that City Council adopt Ordinance #2009-O-05 amending and restating Chapter 12.5 (Parks and Recreation) of the City of Edgewater Code of Ordinances.

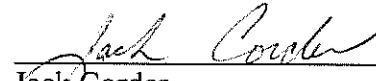
FINANCIAL IMPACT: (FINANCE DIRECTOR) _____

(SPECIFY IF BUDGET AMENDMENT IS REQUIRED) _____

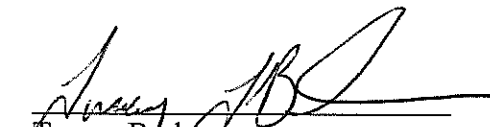
PREVIOUS AGENDA ITEM: YES _____ NO X

DATE: _____ AGENDA ITEM NO. _____

Respectfully submitted,



Jack Corder
Department Director



Tracey Barlow
City Manager

ORDINANCE NO. 2009-O-05

AN ORDINANCE OF THE CITY OF EDGEWATER AMENDING AND RESTATING CHAPTER 12.5 (PARKS AND RECREATION) OF THE CITY OF EDGEWATER CODE OF ORDINANCES IN ITS ENTIRETY; PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY AND APPLICABILITY; PROVIDING FOR CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Edgewater, has made the following determinations:

1. Chapter 12.5 (Parks and Recreation) has not been modified since 2004.
2. The City has received numerous requests from residents to designate certain parks as animal friendly.
3. City Council has determined that specified animals will be allowed into City parks, beaches and/or lakes as approved and designated by resolution.
4. An approved park, beach and/or lake shall be so designated and posted with the appropriate signage by the City as an animal permitted park with the permitted animal and/or animals listed.

NOW, THEREFORE, BE IT ENACTED by the People of the City of Edgewater, Florida:

PART A. AMEND AND RESTATE CHAPTER 12.5 (PARKS AND RECREATION) OF THE CODE OF ORDINANCES IN NITS ENTIRETY FOR THE CITY OF EDGEWATER, FLORIDA.

Chapter 12.5 is hereby amended and stated to read as follows:

Chapter 12.5 (Parks and Recreation)

ARTICLE I. IN GENERAL

Sec. 12.5-1. Activities prohibited in parks; enforcement.

- (a) It shall be unlawful for any person in a city park in the incorporated areas of the city to :
- (1) Bring any animal, including cats, dogs, horses, any fowl or birds and any living creatures within the jurisdiction of a city park or recreation area unless such park or beach is designated and posted by the City as an animal permitted park. An approved park, beach and/or lake shall be so designated and posted with the appropriate signage by the City as an animal permitted park with the permitted animal and/or animals listed.
 - (2) Bring alcoholic beverages, or controlled dangerous substances, drink or use the same at any time nor shall any person be under the influence of intoxicating liquor or a controlled dangerous substance in a city park or recreation area.
 - (3) Bring any glass container into a city park or recreation area.
 - (4) Expose or offer for sale any article in any city park or recreation area without a license as a concessionaire or to display any advertising signs or other advertising matter without a permit.
 - (5) Camp or stay overnight in a city park or recreation area.
 - (6) Build, kindle, maintain or use an open fire nor throw away or discard any lighted match, cigar, cigarette, tobacco, paper or other material until it is extinguished.
 - (7) Perform the cleaning or scaling of fish or other aquatic creatures in a city park or recreation area.
- (b) The city police department; and ~~park attendants~~ animal services personnel shall, in connection with their duties imposed by law, diligently enforce the provisions of this section and shall have the authority to order any person or persons acting in violation of this section

to leave the park or recreation area.

Sec. 12.5-2. Hours for parks and facilities.

- (a) *Areas remaining open 24 hours.* Fishing sites and related support facilities (ramps, natural or manmade, fishing docks, parking areas). These areas adjoin the Indian River ~~or city lakes~~ and remain open 24 hours only for the benefit of those persons actively, or pursuing fishing related activities (cast netting, crabbing, shrimping, etc.) or launching boats.
- (b) *Areas to be closed 11:00 p.m. to sunrise.* Certain parks or portions of parks designed and built for after-dark activities may remain open to persons actively using such lighted facilities as tennis courts, racquetball courts, basketball courts, shuffleboard courts, ballfields, playgrounds, lighted picnic shelters, etc. until 11:00 p.m. and the directly related support facilities (parking and restrooms), and hours shall be posted.
- (c) *Areas to be closed sundown to sunrise.* Certain parks, beaches and city lakes or portions of parks designed for day use only and no direct lighting is provided, shall be closed to the public as sundown (nature trails, playgrounds, ballfields, shelters, picnic areas, etc.) and also related support facilities.
- (d) *Special events.* The city council may change these hours in order to accommodate special events such as July 4 fireworks or any other event the council deems appropriate.

Secs. 12.5-3 - - 12.5-10. Reserved.

ARTICLE II. RECREATION AND CULTURAL SERVICES BOARD

Sec. 12.5-11. ~~Created~~ Purpose.

~~There is hereby created the~~ The purpose of the recreation and cultural services board ~~which shall~~ is to monitor and evaluate parks and recreational needs and activities, beautification, and historic preservation within the city and forward any recommendation to the director and city

~~Struck through~~ passage are deleted.
Underlined passages are added.

council. The board shall establish their by-laws pursuant to resolution of the City of Edgewater.

~~Sec. 12.5-12. Membership.~~

~~————The board shall consist of seven five (5) members who shall be selected by a majority vote of the city council and shall serve for a term of three (3) years. Terms of members shall be staggered; however, initial terms of office shall be as follows: Two members selected for three years, three members selected for two years and two members selected for one year.~~

~~Sec. 12.5-13. Duties.~~

~~————Upon request or recommendation by the director of parks and recreation/maintenance services, the board shall be utilized in review of general service needs as well as planning and development of specific projects involving parks and recreational activities and facilities, beautification of the city and historical preservation. Upon request the board shall make recommendations to the director and city council concerning the following areas:~~

- ~~(a) —The board shall study recreational needs for persons of all ages in the city, and recommend the acquisition and utilization of land and facilities for this purpose.~~
- ~~(b) —The board shall study existing recreation activities in the city and assess future needs. As such, the board shall recommend changes or additions to various activities and programs.~~
- ~~(c) —The board shall coordinate with organized groups within the city and outside the city on matters or programs that affect recreation within the city.~~
- ~~(d) —The board shall review and recommend land acquisition for public park purposes and matters concerning land utilization and facilities improvements.~~
- ~~(e) —The board shall make recommendations to the city council concerning maintenance and operation of city park and recreation facilities.~~

~~(f) The board shall study and recommend to the city council means for public and private funding for public park and recreation facilities and shall coordinate private fund drives as necessary.~~

~~(g) The board shall provide broad policy recommendations to the city council on all matters concerning public parks and city recreation.~~

~~(h) The board shall provide recommendation regarding beautification of city parks, city facilities and various areas throughout the city.~~

~~(i) The board shall provide recommendations regarding historical preservation within the areas of the city.~~

Sec. 12.5-12 – 12.5-13. Reserved.

ARTICLE III. RESERVED.

Sec. 12.5-14. Reserved.

PART B. CONFLICTING PROVISIONS.

All ordinances and resolutions, or parts thereof that are in conflict with this ordinance, are hereby superseded by this ordinance to the extent of such conflict.

PART C. EFFECTIVE DATE.

This ordinance shall become effective upon its final adoption and as provided by general law.

PART D. SEVERABILITY AND APPLICABILITY.

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative, or void, such holding shall not affect the remaining portions of this ordinance. If this ordinance or any provisions thereof shall be held to be inapplicable to any person, property, or circumstance, such holding shall not affect its applicability to any other person, property, or circumstance.

PART E. CODIFICATION.

Provisions of this ordinance shall be incorporated in the Code of Ordinances of the City of Edgewater, Florida, and the word "ordinance", may be changed to "section", "article", or other appropriate word, and the sections of this ordinance may be renumbered or relettered to accomplish such intention; provided, however, that Parts B through F shall not be codified.

PART F. ADOPTION.

During the July 20, 2009 Council meeting, a motion to approve was made by Councilwoman Rogers with Second by Councilman Cooper. The vote on the first reading of this ordinance held on July 20, 2009 is as follows:

	AYE	NAY
Mayor Mike Thomas	<u> X </u>	<u> </u>
Councilwoman Debra J. Rogers	<u> X </u>	<u> </u>
Councilwoman Gigi Bennington	<u> X </u>	<u> </u>
Councilwoman Harriet B. Rhodes	ABSENT	
Councilman Ted Cooper	<u> X </u>	<u> </u>

During the August 10, 2009 Council meeting, a motion to approve was made by _____ with Second by _____, the vote on the second reading/public hearing of this ordinance is as follows:

	AYE	NAY
Mayor Mike Thomas	<u> </u>	<u> </u>
Councilwoman Debra J. Rogers	<u> </u>	<u> </u>
Councilwoman Gigi Bennington	<u> </u>	<u> </u>
Councilwoman Harriet B. Rhodes	<u> </u>	<u> </u>
Councilman Ted Cooper	<u> </u>	<u> </u>

~~Struck through~~ passage are deleted.
Underlined passages are added.

PASSED AND DULY ADOPTED this 10th day of August, 2009.

ATTEST:

**CITY COUNCIL OF THE
CITY OF EDGEWATER, FLORIDA**

Bonnie Wenzel
City Clerk

By: _____
Mike Thomas
Mayor

Robin L. Matusick
Paralegal

For the use and reliance only by the City of Edgewater, Florida. Approved as to form and legality by: Carolyn S. Ansay, Esquire
City Attorney
Doran, Wolfe, Ansay & Kundid

Approved by the City Council of the City of Edgewater at a meeting held on this 10th day of August, 2009 under Agenda Item No. 8____.

~~Struck through~~ passage are deleted.
Underlined passages are added.

AGENDA REQUEST

Date: August 10, 2009

PUBLIC HEARING _____ RESOLUTION X ORDINANCE _____

BOARD APPOINTMENT _____ CONSENT _____ OTHER BUSINESS _____

ITEM DESCRIPTION:

Resolution #2009-R-15 hereby designating specific city parks in which leashed canines are permitted.

BACKGROUND:

City Staff, the Recreation and Cultural Services Board have reviewed modifications to Chapter 12.5 (Parks and Recreation) that would permit leashed canines in designated and posted city parks. Currently, the Riverwalk runs through several parks along Riverside Dr. and is heavily traveled by citizens with their pet(s). Resolution #2009-R-15 will modify Chapter 12.5-1 (Activities prohibited in parks; enforcement) and will permit pet owners' that use Riverwalk to use the listed parks per this resolution's rules and regulations relating to Parks and Recreation for consistency with current statues.

STAFF RECOMMENDATION:

Staff recommends that City Council adopt Resolution #2009-R-15 hereby designating specific city parks in which leashed canines are permitted.

ACTION REQUESTED:

Motion that City Council adopt Resolution #2009-R-15 hereby designating specific city parks in which leashed canines are permitted.

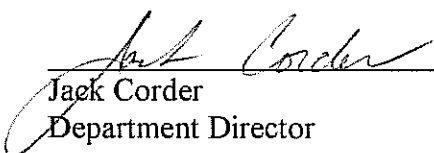
FINANCIAL IMPACT: (FINANCE DIRECTOR) _____

(SPECIFY IF BUDGET AMENDMENT IS REQUIRED) _____


PREVIOUS AGENDA ITEM: YES _____ NO X

DATE: _____ AGENDA ITEM NO. _____

Respectfully submitted,



Jack Corder
Department Director



Tracey Barlow
City Manager

RESOLUTION #2009-R-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWATER, FLORIDA; HEREBY DESIGNATING SPECIFIC CITY PARKS IN WHICH LEASHED CANINES ARE PERMITTED; REPEALING RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in June 2009, Council approved modifications to Chapter 5 (Animal Services), Section 5-13 (Animals prohibited in parks and on beaches) that permitted animals in a park or beach if designated and posted by the City as an animal park.

WHEREAS, in August 2009, Council approved modifications to Chapter 12.5 (Parks and Recreation), Section 12.5-1 (Activities prohibited in parks; enforcement) that permitted animals in a park or beach if so designated and posted by the City as an animal park. An approved park, beach and/or lake shall be so designated and posted with the appropriate signage by the City as an animal permitted park with the permitted animal and/or animals listed.

WHEREAS, City Council has considered all City parks, beaches and/or lakes to be so designated and has determined that leashed canines shall be permitted in all or parts of Highland Shores Park, George R. Kennedy Memorial Park, Menard-May Park and Veterans Park.

NOW, THEREFORE, be it resolved by the City Council of the City of Edgewater, Florida as follows:

Section 1. The City Council hereby approves and designates that leashed canines shall be permitted in all or parts of Highland Shores Park, George R. Kennedy Memorial Park, Menard-May Park and Veterans Park (specific listing including address/street locations are attached hereto and incorporated herein as Exhibit "A").

Section 2. City Council further stipulates that no animal, including leashed canines are allowed on fishing piers or in beaches unless such animal is an animal assisting disabled persons or dogs being used by law enforcement officials for law enforcement activities.

Section 3. It is still the animal owners responsibility to maintain all areas designated as an animal permitted park as a pristine park, beach and/or lake and to remove any evidence (feces,

etc) of their animal from each park. Refusal of an owner may result in removal from said park and issuance of a citation for each violation.

Section 4. City Council hereby authorizes the City Manager and staff to post the appropriate signage at the permitted locations as an animal permitted park with the permitted animal listed. If certain sections of the park, beach and/or lake do not allow animals, those sections should be posted appropriately.

Section 5. If any section, subsection, sentence, clause, phrase, or portion of this Resolution, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or applications hereof.

Section 6. All resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

Section 7. This resolution shall take effect immediately upon its adoption.

Section 8. After a motion to approve by _____ with second by _____, the vote on this resolution was as follows:

	AYE	NAY
Mayor Mike Thomas	_____	_____
Councilwoman Debra J. Rogers	_____	_____
Councilwoman Gigi Bennington	_____	_____
Councilwoman Harriet B. Rhodes	_____	_____
Councilman Ted Cooper	_____	_____

PASSED, APPROVED AND ADOPTED this 10th day of August, 2009.

ATTEST:

**CITY COUNCIL OF THE
CITY OF EDGEWATER, FLORIDA**

Bonnie Wenzel
City Clerk

By: _____
Mike Thomas
Mayor

Robin L. Matusick
Paralegal

For the use and reliance only by the City of Edgewater, Florida. Approved as to form and legality by: Carolyn S. Ansay, Esquire City Attorney Doran, Wolfe, Ansay & Kundid	Approved by the City Council of the City of Edgewater at a meeting held on this 10 th day of August, 2009 under Agenda Item No. 8 ____.
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EXHIBIT "A"
DESIGNATED ANIMAL PARKS

- | | | |
|----|---------------------------------|---------------------------------------|
| 1) | Highland Shores Park | 335 North Riverside Drive, Edgewater |
| 2) | George R. Kennedy Memorial Park | 103 North Riverside Drive, Edgewater |
| 3) | Menard-May Park | 413 South Riverside Drive, Edgewater |
| 4) | Veterans Park | 1181 South Riverside Drive, Edgewater |

AGENDA REQUEST

Date: July 30, 2009

PUBLIC
HEARING _____ RESOLUTION _____ ORDINANCE _____

BOARD
APPOINTMENT _____ CONSENT _____ OTHER
BUSINESS August 10, 2009

ITEM DESCRIPTION: Amendment #2 to the Curbside Residential Recycling Agreement.

BACKGROUND: On July 20, 2004, the City of Edgewater entered into an agreement with Southard Enterprises, Inc. to perform the services of curbside residential recycling services until September 30, 2007. The terms of the agreement allowed for two (2) additional two (2) year terms. On July 6, 2007, Amendment #1 extended the agreement for the first two (2) year term at a compensation rate of \$2.25 per residential unit per month. Amendment #2 would extend the agreement the second two (2) year term through September 30, ~~2009~~²⁰¹¹, and Mr. Southard has agreed to keep the compensation rate at \$2.25 per residential unit per month.

STAFF RECOMMENDATION: Southard Enterprises has performed the services of the curbside recycling program satisfactorily and staff recommends amending the agreement for another two(2) year period.

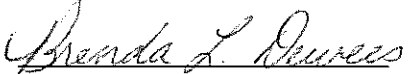
ACTION REQUESTED: Approve the amendment to the Agreement with Southard Enterprises, Inc. and authorize the Mayor to execute the document.

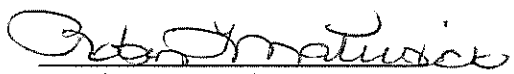
FINANCIAL IMPACT: (Finance Director) _____

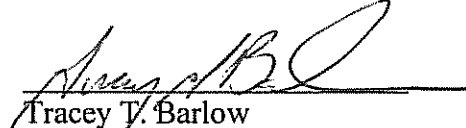
(SPECIFY IF BUDGET AMENDMENT IS REQUIRED) YES ___ NO XX

John McKinney, Finance Director

PREVIOUS AGENDA ITEM: YES ___ NO ___
If so, DATE: _____ AGENDA ITEM # _____

Respectfully submitted,

Brenda L. Dewees
Director of Environmental Services

Concurrence:

Robin L. Matusick
Paralegal


Tracey T. Barlow
City Manager

**AMENDMENT #2
TO THE
CURBSIDE RESIDENTIAL RECYCLING AGREEMENT**

THIS AMENDMENT TO THE CURBSIDE RESIDENTIAL RECYCLING AGREEMENT made this _____ day of _____, 2009, by and between the **CITY OF EDGEWATER, FLORIDA**, a municipal corporation (hereafter "City") and **SOUTHARD ENTERPRISES, INC.**, (hereafter "Contractor").

WITNESSETH, that the parties hereto have agreed to amend that certain Agreement between the parties dated July 19, 2004, and amended on July 7, 2007, such that:

A. Section II: Term and Termination - the City and Contractor have hereby exercised their option to renew the Agreement for an additional two (2) year period. The term of the Agreement is extended for an additional two (2) year period beginning October 1, 2009 and ending September 30, 2011.

B. Section IV: Compensation - For recycling services Contractor shall be compensated in the amount of \$2.25 per residential unit per month in return for the satisfactory performance of the services specified in the Curbside Residential Recycling Agreement.

C. The parties acknowledge that all other terms, provisions and conditions of the aforesaid original Agreement dated July 19, 2004, and all additions thereto not amended or changed by the provisions of the Amendments are republished, ratified and reaffirmed by the parties hereto and shall remain in full force and effect.

IN WITNESS, WHEREOF, the parties have caused this Amendment to the Curbside Residential Recycling Agreement to be made and entered into the day and year first written above.

ATTEST:

**CITY COUNCIL OF THE
CITY OF EDGEWATER, FLORIDA**

Bonnie Wenzel
City Clerk

By: _____
Michael Thomas
Mayor

Robin L. Matusick
Paralegal

WITNESSES:

**SOUTHARD ENTERPRISES,
INC.**

By: _____
Leonard E. "Duke" Southard

Dated: _____

SOUTHARD ENTERPRISES INC.
DbA SOUTHARD RECYCLING
1290 Turnbull Bay Rd.
New Smyrna Beach, Fl. 32168

RECEIVED
JUN 26 2006
CITY MANAGER

Ph: (386) 426-8858

Fax: (386) 428-3710

OK
8-31-06

To: City Mgr, Jon Williams, Mayor & City council:

Ref: Cost of living increase.

After talking to Terry Wadsworth about a cost of living increase due to a large increase in the cost of fuel; workmens comp; wages and equipment. Southard Recycling would like to request a cost per house increase to \$2.25 per house. This is still below the norm which is app. \$3.00. The price we are getting now is \$1.54 which is only up from \$1.38 fifteen years ago.

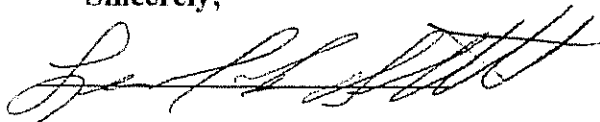
Be advised that a few years ago we negotiated a pay cut to be in line with the other cities. We negotiated this with Mr. Wadsworth. I'm sure you know that the cost of everything has gone up substantially over the years with this being our first request.

We also accepted this contract back after a 2 year contract with Florida Recycling failed as they were unable to fulfill the contract at the price they bid. This increase will allow us to purchase new equipment for the contract.

SPECIAL NOTE: The bids for recycling in New Smyrna Beach were \$3.00 per house except for Southard Recycling which was awarded the contract at \$2.64 per house.

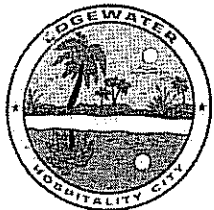
Thank you for your consideration in this matter.

Sincerely;



Leonard Southard, President

Handwritten initials/signature



THE CITY OF EDGEWATER
POST OFFICE BOX 100-EDGEWATER, FLORIDA 32132-0100

Mayor Donald A. Schmidt
District 1 Councilman James P. Brown
District 2 Councilman Dennis A. Vincenzi
District 3 Councilwoman Harriet E. Rhodes
District 4 Councilwoman Judith R. Lichter

City Manager Kenneth Hooper
City Attorney Scott Cookson
City Clerk Susan J. Wadsworth

July 21, 2004

Leonard E. "Duke" Southard
Southard Enterprises, Inc.
1290 Turnbull Bay Road
New Smyrna Beach, FL 32169

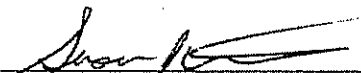
LETTER OF TRANSMITTAL

The Edgewater City Council authorized Kenneth Hooper, City Manager to execute the agreement between Southard Enterprises, Inc. and the City of Edgewater for curbside residential recycling, at their regular City Council meeting of July 19, 2004.

We are sending you the following attachment for action as defined below:

Originals	DESCRIPTION	ACTION
1	Agreements between Southard Enterprises, Inc. and the City of Edgewater for curbside residential recycling	1.

1. For your files
2. For execution & return
3. At your request
4. For review & comment
5. See remarks


Susan J. Wadsworth, CMC
City Clerk

cc: City Manager
Legal
Environmental Services
Finance

104 NORTH RIVERSIDE DRIVE
FAX-(386)424-2409 SUNCOM 383-2407
CITY CLERK-(386)424-2407

**AMENDMENT #1
TO THE
CURBSIDE RESIDENTIAL RECYCLING AGREEMENT**

THIS AMENDMENT TO THE CURBSIDE RESIDENTIAL RECYCLING AGREEMENT made this 6th day of July, 2007, by and between the **CITY OF EDGEWATER, FLORIDA**, a municipal corporation (hereafter "City") and **SOUTHARD ENTERPRISES, INC.**, (hereafter "Contractor").

WITNESSETH, that the parties hereto have agreed to amend that certain Agreement between the parties dated July 19, 2004, such that:

A. Section II: Term and Termination - the City and Contractor have hereby exercised their option to renew the Agreement for an additional two (2) year period. The term of the Agreement is extended for an additional two (2) year period beginning October 1, 2007 and ending September 30, 2009.

B. Section IV: Compensation - For recycling services Contractor shall be compensated in the amount of \$2.25 per residential unit per month in return for the satisfactory performance of the services specified in the Curbside Residential Recycling Agreement.

C. The parties acknowledge that all other terms, provisions and conditions of the aforesaid original Agreement dated July 19, 2004, and all additions thereto not amended or changed by the provisions of the Amendment are republished, ratified and reaffirmed by the parties hereto and shall remain in full force and effect.

IN WITNESS, WHEREOF, the parties have caused this Amendment to the Curbside Residential Recycling Agreement to be made and entered into the day and year first written above.

ATTEST:

CITY COUNCIL OF THE
CITY OF EDGEWATER, FLORIDA

Lisa Bloomer

~~Susan J. Wadsworth~~ Lisa Bloomer
City Clerk - Deputy

By: Mike Thomas

Mike Thomas
Mayor

Robin L. Matusick

Robin L. Matusick
Paralegal

WITNESSES:

SOUTHARD ENTERPRISES,
INC.

Lyndy Hilton

By: Leonard E. Southard

Leonard E. "Duke" Southard

Rebecca C. Brannon

Dated: 7-6-07

CURBSIDE RESIDENTIAL RECYCLING AGREEMENT

THIS AGREEMENT made and entered into this 19 day of July, 2004, by and between the **CITY OF EDGEWATER, FLORIDA**, a municipal corporation, whose mailing address is P. O. Box 100, Edgewater, FL 32132-0100 (hereafter "City") and **SOUTHARD ENTERPRISES, INC.**, whose mailing address is 1290 Turnbull Bay Road, New Smyrna Beach, Florida 32169 (hereafter "Contractor").

WHEREAS, the City desires to obtain the services of Contractor for the provision of curbside residential recycling services; and

WHEREAS, Contractor desires to provide these services to the City.

NOW, THEREFORE, in consideration of the agreements, premises, and covenants set forth herein and other good and valuable consideration, the parties agree as follows:

I. Scope of Services and Equipment Requirements

- A. As further described below, Contractor shall furnish all labor, tools, equipment, materials, supplies and services except as specifically set forth herein, to collect recyclable material, transport collected recyclable material to a disposal location, and perform all other necessary functions incidental to recyclable material collection and transportation. Such activities shall be collectively referred to as recycling services.
- B. The Contractor shall provide recycling services to all single-family and multi-family residential units within the City of Edgewater. Upon request from the City, the Contractor shall provide recycling services to any commercial, business, professional or non-residential unit not utilizing a dumpster service.
- C. The Contractor will provide a minimum of two (2) recycling vehicles and will hire and train an adequate number of personnel to satisfactorily perform the program with a minimum of two (2) workers per vehicle. Satisfactory performance shall be determined solely by the City.
- D. Contractor will provide weekly curbside collection service for: newspapers, including all inserts; glass bottles and jars, including clear, green and brown with or without labels;

aluminum cans; plastic containers, all #1, #2 and #3 with or without labels; corrugated cardboard; telephone books; and tin cans, with or without labels. All recyclable materials placed in or near the City supplied fourteen (14) gallon recycling containers or any other container shall be collected. Such collection shall be made between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday servicing each customer one (1) time per week pursuant to the schedule depicted in Exhibit A which is attached hereto and incorporated by reference.

- E. Contractor shall maintain an office equipped with a toll free telephone service and sufficient personnel to receive and handle complaints, instructions and/or directions from City Staff and residents between the hours of 7:00 a.m. and 5:00 p.m., Mondays through Fridays, excluding approved holidays.
- F. If a collection day falls on a holiday when normal refuse collection service is not provided by the City, then the Contractor shall provide an alternate recycling collection day which shall coincide with the alternate day chosen by the City.
- G. In the event that nonrecyclable materials are placed in the recycling containers, the materials will be left in the container with an explanatory notice. The containers will be placed upright with the nonrecyclable materials and note inside. All other containers will be placed upside down near the original location, but not in a driveway or in front of a mailbox or full garbage containers.
- H. The Contractor will be responsible for replacing recycling containers which are damaged by the actions of his employees.
- I. The Contractor shall submit weekly reports to the Solid Waste Supervisor in a format acceptable to the Solid Waste Supervisor identifying the total number of units utilizing the service and the dry weight of the following collected items:
 - 1. aluminum cans
 - 2. tin cans
 - 3. #1, #2 and #3 plastic containers
 - 4. clear, brown and green glass bottles and jars

5. corrugated cardboard
6. newspapers
7. phone books

- J. The City and the Contractor will share responsibility for the promotion of the recycling program.
- K. The Contractor shall be the owner of all recyclable materials collected in the program and shall be responsible for the lawful disposal of the collected materials.
- L. The Contractor shall, upon the City's request, participate in periodic reviews of the progress of the recycling program.
- M. The Contractor shall conduct his operation so as to interfere as little as possible with the public use of roads, walks, and entrances to houses, and shall, at his own expense, make such approved temporary provisions as are required to maintain at least one (1) lane of traffic open.
- N. All operations of the Contractor upon the premises of the City shall be confined to areas authorized by the City. No unauthorized or unwarranted entry, passage through, or storage or disposal of materials shall be made upon the City's or privately owned premises.
- O. All equipment and vehicles utilized by the Contractor shall comply with all applicable federal, state and local regulations.
- P. Contractor shall provide and maintain radio communication with all vehicles used in the performance of recycling services.
- Q. The Contractor shall maintain all vehicles and other equipment in a clean and sanitary condition at all times.
- R. All recyclables hauled by the Contractor over public streets of the City of Edgewater shall be hauled in such a manner as is necessary to prevent leakage, spillage or blowing.
- S. The name of the Contractor and the Contractor's toll free telephone number shall be prominently displayed on all vehicles used in the performance of recycling services.

I. Reports

Weekly Reports: Contractor shall maintain weekly reports submitted monthly to properly and accurately reflect the following:

- a. Total number of residential units utilizing the service to obtain an accurate county of residential participation.
- b. Dry weight of the following collected items: newspaper; aluminum cans; corrugated cardboard; tin cans: clear, green and brown glass bottles and jars; #1, #2 and #3 plastic containers; and telephone books.

Dates of submission: Contractor shall submit the completed monthly reports to the Department of Environmental Services, Public Works Division on or before the 15th day of the subsequent month.

Right to Examine: The City reserves the right to examine, audit and review any and all reports of Contractor relating to this contract at any time during normal business hours upon giving reasonable notice.

III. Term and Termination

- A. This Agreement shall be effective from July 20, 2004 through September 30, 2007, unless terminated earlier as provided herein. At the option of the parties, this Agreement may be renewed for two (2) additional two (2) year terms, provided however, that the Agreement may be amended to reflect the renegotiation of terms acceptable to the parties.
- B. If the City determines that the Contractor's lack of performance serves as grounds for termination, the Agreement will terminate immediately.
- C. In the event the City privatizes garbage collection, this Agreement may, at the City's request, terminate upon the expiration of the last fiscal year in which the City maintained its own service.
- D. The term of this Agreement shall be subject to the appropriation of sufficient funds to satisfy the City's obligation under this Agreement in any of the City's fiscal years subsequent to the

initial year of this Agreement.

E. The City warrants that the necessary funds have been appropriated for the first fiscal year and that there is currently no intent on the part of the City to curtail the necessary funding. In the event that sufficient funds are not appropriated in any subsequent fiscal year, this Agreement shall terminate upon the expiration of the fiscal year in which sufficient funds were appropriated.

F. All provisions of this Agreement are considered material. Upon the failure of Contractor to comply with any of the provisions of this Agreement within ten (10) days of written notice by the City of such deficiencies, the City may terminate this Agreement upon written notice to Contractor.

IV. Compensation

A. The City estimates there are 8,000 residential units in the recycling service area. Expansion of the number of residential units from which recyclable materials are to be collected will not increase the per unit cost to the City.

B. Contractor shall on a monthly basis submit to the Environmental Service Department an invoice sufficient for audit purposes specifying the actual number of units utilizing the recycling services. Upon submission of the required invoice, City shall make payment to Contractor within thirty (30) days.

C. For recycling services Contractor shall be compensated in the amount of \$1.46 per residential unit per month in return for the satisfactory performance of the services specified in this Agreement. As of October 1, 2004, the compensation amount will be modified to reflect \$1.50 per residential unit.

D. After the first year of the Agreement, Contractor shall be entitled to an increase in per unit price equivalent to the percentage change in the Consumer Price Index for the preceding year ending in June (prior to the October 1st start of the fiscal year) as reported for the category of Groups less than 50,000 population, all urban customers. The basis for such change shall

be the June Consumer Price Index released approximately July 15th (before the October 1st start of the fiscal year) by the Bureau of Labor and Statistics Southeastern Regional Office.

V. Independent Contractor

Contractor is and shall be an independent contractor and operator, responsible to all parties for all of its acts or omissions and the City shall in no way be responsible for such acts or omissions. Contractor shall and will indemnify and hold harmless the City from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions, and costs of actions, including reasonable attorney's fees of any kind and nature arising or growing out of or in any way connected with Contractor's provision of recycling services to the City except as shall have been occasioned by the sole negligence of the City.

VI. Minimum Insurance Requirements

A. Prior to the commencement of recycling services, Contractor shall procure at least the following insurance coverages with the limits specified herein. All insurance companies providing insurance under this Agreement shall be authorized to conduct business in the State of Florida and shall have a general policy holders rating of A or better and a financial rating of X or better according to the latest publication of Best Key Rating Guide, published by AM Best, Inc.. Said insurance shall be evidenced by delivery to the City of (1) a certificate of insurance executed by the insurers listing coverage and limits, expiration dates and terms of policies and all endorsements whether or not required by the City, and listing all carriers issuing said policies; and (2) a certified copy of each policy, including all endorsements.

The insurance requirements shall remain in effect throughout the term of this Agreement.

1. Workers' Compensation limits as required by law and Employers' Liability Insurance of not less than \$100,000.00 for each accident.
2. Comprehensive General Liability Insurance including, but not limited to, Independent Contractor, Contractual, Premises/Operations, Products/Completed Operations and Personal Injury covering the liability assumed under the indemnification provisions of this Agreement, with limits of liability for personal injury and/or bodily injury, including death, of not less than \$1,000,000.00 each occurrence; and property

damage of not less than \$100,000.00 each occurrence. (Combined Single Limits of not less than \$500,000.00 each occurrence, will be acceptable unless otherwise stated). Coverage shall be on an "occurrence" basis, and the policy shall include Broad Form Property Damage coverage, and Fire Legal Liability of not less than \$50,000.00 per occurrence, unless otherwise stated by exception herein.

3. Comprehensive Automobile and Truck Liability covering owned, hired and non-owned vehicles with minimum limits of \$1,000,000.00 each occurrence, and property damage of not less than \$100,000.00 each occurrence. (Combined Single Limits of not less than \$500,000.00 each occurrence will be acceptable unless otherwise stated). Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards.
4. \$500,000.00 combined single limits, personal injury and/or bodily injury, including death, and property damage liability insurance as an excess of the primary coverage required above.

B. Each insurance policy shall include the following conditions by endorsement to the policy:

1. Each policy shall require that at least thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverages or limits, a notice thereof shall be given to the City by certified mail to: City Attorney, P. O. Box 100, Edgewater, Florida 32132-0100. Contractor shall also notify City, in a like manner, within twenty-four (24) hours after receipt of any notices of expiration, cancellation, non-renewal or material change in coverage received by said Contractor from its insurer; and nothing contained herein shall absolve Contractor of this requirement to provide notice.
2. The City of Edgewater shall be endorsed to the required policy or policies as an additional named insured.

VII. Performance and Payment Bond

Prior to the commencement of recycling services Contractor shall furnish a guarantee of performance and payment in a form acceptable to the City in the amount of twenty-five thousand and 00/100 dollars (\$25,000.00). Contractor shall maintain such guarantee throughout the term of this Agreement.

VIII. Permits and Licenses

The Contractor shall secure and pay for any permits, licenses, or any other governmental fees which may be applicable to the services performed under the provisions of this Agreement.

IX. Compliance

Contractor shall observe, obey, and comply with all ordinances, laws, rules and regulations

of the City, State of Florida, and any other governmental units or agencies which may be applicable to Contractor's performance under this Agreement.

X. Complaints and Liquidated Damages

The City shall notify the Contractor of any reported failure to comply with the provisions of the Agreement. The Contractor shall take whatever steps are necessary to remedy the cause of the complaint within twenty-four (24) hours and report to the City regarding the action taken. The City and Contractor agree that all provisions of this Agreement are considered material and that the City and its residents will be harmed if the recycling services are not performed pursuant to the provisions of this Agreement. In addition, the parties recognize the difficulties involved in proving the actual harm suffered by the City and its residents. Accordingly, instead of requiring any such proof, the City and Contractor agree that the Contractor's failure to remedy the cause of the complaint shall be considered a breach of the contract for the purpose of computing damages under the provisions of this section. In the alternative, at the option of the City such failure may be grounds for termination of the Agreement pursuant to Paragraph III. It is agreed that the City may deduct the following amounts as liquidated damages:

	(Each occurrence)
a. Failure to clean up spilled recyclables.	\$ 50.00
b. Failure to maintain vehicles and other equipment as provided in the specifications.	\$ 100.00
c. Failure to collect recyclable materials.	\$ 25.00
d. Failure to correct chronic problems. Chronic problems shall be construed to mean 3 or more similar instances at the same residence within a 60 day period.	\$ 100.00
e. Failure to return containers to designated locations.	\$ 10.00

Liquidated damages shall be determined by the Director of Environmental Services and deductions made from the following month's payment to the Contractor. The Contractor may appeal the

determination of the Director of Environmental Services to the City Manager in writing within ten (10) days after notice. Any decision made by the City Manager is the final determination.

XI. Availability of Records

Contractor shall make available to the City upon request all reports, records, and other pertinent information relating to the Contractor's performance under this Agreement as may be required by the City.

XII. Amendments

This Agreement may only be amended by a written document signed by both parties.

XIII. Entire Agreement

This Agreement embodies the whole understanding of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

XIV. Notices

All notices or other communications required or permitted under this Agreement shall be in writing and shall be deemed duly given if delivered in person or sent by certified mail, return receipt requested, and addressed as follows:

If to City:

City Manager
City of Edgewater
P. O. Box 100
Edgewater, FL 32132-0100

With a Copy to:

Legal Department
City of Edgewater
P. O. Box 100
Edgewater, FL 32132-0100

Director of Environmental Services
City of Edgewater
P. O. Box 100
Edgewater, FL 32132-0100

If to Contractor:

Leonard E. "Duke" Southard
Southard Enterprises, Inc.
1290 Turnbull Bay Road
New Smyrna Beach, FL 32169
(386)428-3307

XV. Assignment

Contractor shall not assign its obligations hereunder without the prior written consent of City.

XVI. Binding Effect

All of the terms and provisions of this Agreement, whether so expressed or not, shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and permitted assigns.

XVII. Governing Law

This Agreement shall be governed by the laws of the State of Florida.

IT WITNESS WHEREOF, the parties have caused this Agreement to be made and entered into the date and year first written above.

7-20-04
Dated

CITY OF EDGEWATER, FLORIDA

By: Kenneth R. Hooper
Kenneth R. Hooper
City Manager

WITNESSES:

SOUTHARD ENTERPRISES, INC.

By: Leonard E. "Duke" Southard
Leonard E. "Duke" Southard
President

Dated 6-30-04

Tanya Wadsworth
John Matysick

AGENDA REQUEST
Date: August 10, 2009

PUBLIC HEARING _____ RESOLUTION _____ ORDINANCE _____
CONSENT _____ OTHER BUSINESS x CORRESPONDENCE _____

ITEM DESCRIPTION:

Award of Contract for Independent Audit services for Fiscal Years 2009 thru 2011.

BACKGROUND:

At its June 15, 2009 meeting, City Council directed Staff to go out for request for proposals for independent audit services. Formal proposals were solicited and the City received four responses. The proposals were to include three base years with two one year optional extensions. A five member selection committee was established with three members of staff, one local financial business owner and one citizen at large. Each firm was graded based on their proposal and presentation using four criteria. The criteria graded were their Business Plan, Firm's expertise and experience, staff proposed experience and cost. In this evaluation cost was a factor in the evaluations of the proposals. The selection committee ranked the four firms in the follow order:

Rank	Firm	Total Score	Total Contract
1	James Moore and Company	479	\$220,595
2	Hoyman Dobson	469	\$215,000
3	McGladrey & Pullen	457	\$278,574
4	Brent Millikan & Company	456	\$215,278

Exhibits Attached:

1. Selection Committee Ranking
2. Contract
3. F.S. Chapter 218.391 – Auditor selection procedures

STAFF RECOMMENDATION:

The selection committee recommends City Council award independent audit services to James Moore and Company beginning with Fiscal Year 2009.

ACTION REQUESTED:

Motion to award independent audit services to James Moore and Company and authorization for City Manager to execute the contract.

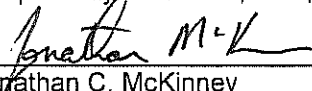
FINANCIAL IMPACT:

(FINANCE DIRECTOR) _____
(SPECIFY IF BUDGET AMENDMENT IS REQUIRED) _____


PREVIOUS AGENDA ITEM: _____
DATE: _____

YES ___ NO x
AGENDA ITEM NO. _____

Respectfully submitted,


Jonathan C. McKinney
Finance Director

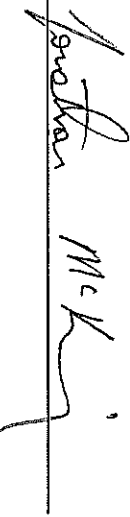
Concurrence:


Robin Matusick
Paralegal


Tracey Barlow
City Manager

Company Name	John McKinney	Steve Cousins	Ferd Heeb	Jamie Calkins	Michelle Grenham	TOTAL SCORE	Rank
McGladrey & Pullen	94	93	99	85	86	457	3
Hoyman Dobson	98	90	98	90	93	469	2
James Moore	96	93	100	94	96	479	1
Brent Millikan	93	73	97	100	93	456	4

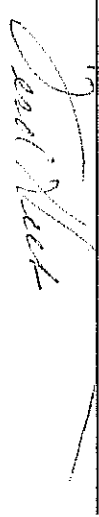
John McKinney




Steve Cousins



Ferd Heeb



Jamie Calkins



Michelle Grenham



CONTINUING SERVICES AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2009, by and between the **CITY OF EDGEWATER, FLORIDA**, a municipal corporation (hereinafter referred to as "CITY"), whose address is 104 North Riverside Drive, P. O. Box 100, Edgewater, Florida 32132-0100 and **JAMES MOORE & CO**, (hereinafter referred to as "Consultant"), whose address is 121 Executive Circle, Daytona Beach, Florida 32114-1180.

PREMISES

WHEREAS, the City wishes to employ a professional consulting firm to assist the City relating to various auditing and related financial services, and,

WHEREAS, the City desires to employ the Consultant in connection therewith upon terms and conditions hereinafter set forth, and the Consultant is desirous of obtaining such employment and has represented that it is qualified and competent to perform such services, and,

WHEREAS, this Agreement shall constitute a "continuing contract" as defined under the laws of the State of Florida.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter set forth, City and Consultant agree as follows:

1. SCOPE OF PROFESSIONAL SERVICES

The Consultant agrees that it shall diligently and timely perform professional auditing and related financial services as requested by the City. Consultant understands that the City may request these professional services on an as-needed basis and that the requested services will require preparation of an audit of the City's financial statements in order to express an opinion on the fairness of the statements as well as compliance with GAAP. As a result of the financial services requested, additional related services may be required.

The City reserves the right to contract with other parties for professional services within the scope of this Agreement when it is determined to be in the best interests of the City to do so.

The Consultant, or his/her designee as approved by the City, agrees to perform the functions of their office in a competent and professional manner. The Consultant shall maintain an adequate and competent staff of professionals and may associate with other qualified firms for the purpose of rendering services hereunder, without cost to the City, and upon approval by the City. The Consultant, however, shall not sublet, assign, or transfer any work under this Agreement without the written consent of the City.

The Consultant shall perform the Audit in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, and the (Agreement/Consultant-James Moore & Co.)

standards for financial audits set forth in the U.S. Government Accountability Office's Government Auditing Standards, and per the provisions of section 11.45, F.S.

The Consultant shall retain all working papers and reports, at the auditor's expense, for a minimum of five (5) years, unless the firm is notified in writing by the City of the need to extend the retention period. The Consultant will be required to make working papers available, upon request, without charge, to any federal or state agency upon request.

The Consultant shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

The Consultant shall provide an affirmative statement that it is independent of the City, including each City Officer, as defined by the U.S. Government Accountability Office's Government Auditing Standards. In addition, the Consultant shall give the City written notice of any professional relationships entered into during the period of this agreement.

The Consultant shall express an opinion on the fair presentation of its general purpose financial statements in conformity with generally accepted accounting principles.

The Consultant shall provide a report on the internal control structure based on the auditor's understanding of the control structure and assessment of control risk ("Management Letter")

The Consultant shall provide a report on compliance with applicable laws, regulations and bond covenants.

The Consultant shall provide an "in-relation-to" report on the schedule of federal and state financial assistance if applicable.

The Consultant shall provide a report on compliance with laws and regulations related to major and non-major federal and state financial assistance programs. This report should include an opinion on compliance with specific and general requirements applicable to major federal and state financial assistance programs and a report on compliance with laws and regulation applicable to non-major financial assistance program transactions tested if applicable.

The Consultant shall provide a review of the Statistical and Secondary Market Disclosure schedules provided by the City for inclusion in the statistical section of the CAFR. These schedules are not to be audited.

In accordance with section 218.32, F.S., the auditor shall review the Annual Financial Report to the Department of Financial Services.

The Consultant shall prepare the entity-wide and individual financial statements for the City. Also, the federal and state financial assistance schedule if applicable. The Finance Department will prepare the remaining portions of the comprehensive annual financial report.

The auditor shall be required, if requested by the fiscal advisor and/or the underwriter, to issue a "consent and citation of expertise" as the auditor and any necessary "comfort letters."

The partner-in-charge shall attend at least one public meeting for discussion of the audit report.

The auditors shall assure themselves that the City is informed of each of the following:

- The auditor's responsibility under generally accepted auditing standards
- Significant accounting policies
- Management judgments and accounting estimates
- Significant audit adjustments
- Other information in documents containing audited financial statements
- Disagreements with management
- Management consultation with other accountants
- Major issues discussed with management prior to retention
- Difficulties encountered in performing the audit

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue:

- A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles.
- A report on the internal control structure based on the auditor's understanding of the control structure and assessment of control risk.
- A report on compliance with applicable laws and regulations.
- A report on the internal control structure used in administering federal, state, and local financial assistant programs.
- A report on the compliance with laws and regulations related to major and non-major federal, state, and local financial assistant programs. These reports should include an opinion on compliance with specific requirements applicable to major federal financial assistance programs, and a report on compliance with laws and regulations applicable to non-major federal and state financial assistance program transactions tested.
- A report on the fair presentation of Supplementary Information Schedules of Federal, State, and Local financial assistance in relation to the City's financial statements taken as a whole.
- Any other attestations as may be required by Florida Statutes or Florida Administrative Code.
- Management letters for the City with required elements as required by the Rules of the Auditor General.

- An immediate, written report of all irregularities and illegal acts of which they become aware. Such report shall be made to the City Manager responsible for the operations of the City being audited and to the Finance Director.

2. TIME FOR COMPLETION

The services to be rendered by the Consultant shall be commenced, upon receipt of a written request, and shall be completed within the time specified. In the event the Consultant is unable to complete the services within the time specified because of delays resulting from untimely review and approval by the City, City shall grant a reasonable extension of time for completion of the work upon timely written request for same which shall be given by Consultant to the City no later than 48 hours after such occurrence.

In the event there are delays on the part of the City or regulatory agencies as to the approval of any work product submitted by the Consultant, which might delay the project's scheduled completion date, the City shall grant to the Consultant in writing an extension of the time equal to the aforementioned delays. The City shall be solely responsible for determination of whether or any extension of the time for performance should be awarded to the Consultant. Notwithstanding the foregoing in the performance of services under this Agreement, dates for preparation, submission and review of audits as established by the Auditor General of the State of Florida and any applicable laws, regulations and rules shall prevail over this Section and shall be complied with.

3. AUTHORIZATION FOR SERVICES

Authorization for performance of professional services by the Consultant shall be in the form of written requests issued by the City.

4. COMPENSATION AND METHOD OF PAYMENT

Upon satisfactory completion of the work required, and, upon acceptance of the work by the City, the Consultant may invoice the full final amount of compensation provided for under the terms of the Agreement less amounts already paid by the City. All invoices, whether partial or final billing, shall be accompanied by appropriate documentation of work accomplished to date. Upon approval of such payment request submitted by the Consultant, City agrees that it will make its best efforts to pay the Consultant within thirty (30) days of receipt of such invoice.

In addition to the above, if federal, state or county funds are used for any work under this Agreement, the Comptroller General of the United States or of the State of Florida or of the County of Volusia, or any representatives, shall have access to any books, documents, papers, and records of the Consultant which are directly pertinent to work performed under this Agreement for purposes of making audit, examination, excerpts and transcriptions. The stipulations contained in any

federal, state or county grant pertaining to Consultant will be adhered to by the Consultant. Copies of such grants shall be furnished to Consultant.

The Consultant agrees to maintain all books, documents, papers, accounting records and other evidences pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for audit or inspection as previously provided. Incomplete or incorrect entries in such books and records may be grounds for disallowance by the City of amounts due based upon such entries. Consultant acknowledges that City is required to comply with Chapter 119, Florida Statutes, in the handling of materials created under this Agreement and that said statute controls over the terms of this Agreement.

In the event any audit or inspection conducted reveals any overpayment by the City under the terms of the Agreement, Consultant shall refund such overpayment to the City within thirty (30) days of notice by the City.

The City agrees to pay Consultant for auditing services a not to exceed amount of forty-one thousand five hundred and fifty dollars and no cents (\$41,550) for fiscal year 2010 (10/1/09 – 09/30/10), forty-two thousand eight hundred dollars and no cents (\$42,800) for fiscal year 2011 (10/1/10 – 09/30/11), forty-four thousand and eighty dollars and no cents (\$44,080) for fiscal year 2012 (10/1/11 – 09/30/12).

The City reserves the right to an optional extension of the agreement for auditing services at a rate of pay not to exceed amount of forty-five thousand four hundred dollars and no cents (\$45,400) for fiscal year 2013 (10/1/12 – 09/30/13), forty-six thousand seven hundred and sixty-five dollars and no cents (\$46,765) for fiscal year 2014 (10/1/13 – 09/30/14).

5. CHANGES IN SCOPE OF WORK

City or Consultant may request changes that would increase, decrease, or otherwise modify the Scope of Work under this Agreement. Such changes and method of compensation must be agreed upon in writing. Such changes, shall not bind the City unless executed with the same formality as the respective Agreement. Written Change Orders shall be in form and content acceptable to the City.

6. RESPONSIBILITY OF THE CITY

City shall furnish the Consultant with all existing financial data and additional information available and useful in connection with a proposed project on file with the City which shall be returned to the City upon the completion of the services to be performed by the Consultant, unless such data are necessary for daily operations; then such information shall be (Agreement/Consultant-James Moore & Co.)

promptly reproduced or copied by the Consultant and returned to the City.

The City will send its comprehensive annual financial report to the Government Finance Officers Association of the United States and Canada for review in its Certificate of Achievement for Excellence in Financial Reporting program. It is expected that the auditor will provide any special assistance necessary to ensure the City continues to meet the requirements of that program. The City has received this award for the last twenty-four fiscal cycles.

The City may prepare one or more official statements in connection with the sale of debt securities, which will contain the general purpose financial statements and the auditor's report thereon.

The City will issue the schedule of federal financial assistance and related auditor's report, as well as the reports on the internal control structure and compliance, as part of the comprehensive annual financial report.

The Finance Department and responsible management personnel will be available during the audit to assist the firm by providing information, documentation and explanations. The preparation of confirmations will be the responsibility of the Finance Department.

The City will provide the auditor with reasonable workspace, desks and chairs. The auditor will also be provided with access to the Internet, telephone and copier.

The City will be responsible for the editing and printing of the CAFR report.

7. RESPONSIBILITY OF THE CONSULTANT

Consultant shall be responsible for professional quality, technical accuracy, and the coordination of all professional services furnished by Consultant relating to auditing and financial services furnished by the Consultant under this Agreement. Consultant shall, without additional compensation, correct or revise any errors or deficiencies in the services produced pursuant to this Agreement.

Neither the City's review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and the Consultant shall be and remain liable to the City in accordance with applicable law for all damages to the City caused by the Consultant's errors, omissions, misconduct or negligent performance of any of the services furnished under this Agreement.

In the event that arbitration or litigation becomes necessary for any reason with regard to the terms of this Agreement, the prevailing party shall be due the cost and expense of this action including, but not limited to, court or arbitration costs, interest and reasonable attorney's fees.

Unless otherwise specifically provided for in this Agreement, Consultant agrees to comply with the performance specifications and report requirements and responsibilities contained in the City of Edgewater Request for Proposal: RFP #09-FIN-01, the terms of which are incorporated herein by this reference.

The rights and remedies of the City, provided for under this Agreement, are in addition to any other rights and remedies provided by law

The Consultant must have been established as a legal entity in the State of Florida and have performed continuous CPA services for a minimum of five (5) years.

The Consultant and all assigned key professional staff shall be properly licensed to practice in Florida.

The Consultant must also be a member of the American Institute of Certified Public Accountants and the Florida Institute of Certified Public Accountants.

The Consultant must meet the standards for financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States (the Yellow Book) and Laws and Rules of Florida Board of Accountancy, Chapters 455 and 473, Florida Statutes (F.S.), and Florida Administrative Code.

8. REPRESENTATIVE OF CITY AND CONSULTANT:

It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement may arise. The City hereby designates the representative identified under "NOTICES" as the employee to whom all communications pertaining to the day-to-day performance of the Agreement shall be addressed. The designated representative shall have the authority, as the City's coordinator for this Agreement, to transmit instructions, receive information, and interpret and define the City's policy and decisions pertinent to the work covered by this Agreement.

Consultant shall, at all times during the normal work week, designate or appoint one or more representatives who are authorized to act on behalf of the Consultant regarding all matters involving the conduct of the performance pursuant to this Agreement and shall keep the City continually advised of such designation in writing.

For purposes of this Agreement only, the designated Consultant representative is:

Yan Lapointe
Audit Manager
James Moore & Co
121 Executive Circle
Daytona Beach, FL 32114-1180

(Agreement/Consultant-James Moore & Co.)

9. NON-EXCLUSIVE AGREEMENT:

The City reserves the right at its sole discretion to enter into contracts with other consultants to provide similar services as those identified herein.

10. TERM OF THE AGREEMENT:

The term of this Agreement shall be for three (3) years from the date first written above. The City, with the mutual agreement of the Consultant may elect to renew the agreement for two (2) additional terms of one (1) year each. Consultant shall perform all services authorized during any renewal period in accordance with the terms and conditions herein.

11. TERMINATION:

The City may, by written notice to the Consultant, terminate this Agreement or any Work Order issued hereunder, in whole or in part, at any time, either for the City's convenience or because of the failure of the Consultant to fulfill its Agreement obligations. Upon receipt of such notice, the Consultant shall:

- Immediately discontinue all services affected (unless the notice directs otherwise); and
- Deliver to the City all data and other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process.

If the termination is for the convenience of the City, the Consultant shall be paid for the actual services performed to the date of termination.

If the termination is due to the failure of the Consultant to fulfill its Agreement obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the City for reasonable additional costs occasioned to the City thereby including, but not limited to, all damages arising from Consultant's breach and all attorney's fees and expenses incurred as a result of any action or proceeding, litigation or arbitration, if applicable, arising there from.

If, after notice of termination for failure to fulfill its Agreement obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, the Consultant shall be paid for the actual services performed to the date of termination.

E. It is specifically agreed that, in the event that the Consultant or any (Agreement/Consultant-James Moore & Co)

employee, servant, or agent of the Consultant is indicted or has any direct information issued against him for any crime arising out of or in conjunction with any work being performed by the Consultant for or on behalf of the City. It is understood and agreed that in the event of such termination, the Consultant shall be compensated for services rendered under this Contract up to the time of termination in accordance with this Paragraph. The City also reserves the right to terminate and cancel this contract in the event that the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of Consultant's creditors. That the Agreement is terminable by the City in accordance with Paragraph C of this Section 11.

The rights and remedies of the City provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

The Consultant shall have the right to terminate for failure of the City to fulfill its Agreement obligations and all other rights and remedies otherwise available to Consultant under law.

12. INDEMNIFICATION OF CITY:

To the fullest extent permitted by law, the Consultant shall indemnify, hold harmless and defend the City, its agents, servants, elected officials and employees, or any of them, from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees and other legal costs such as those for paralegal, investigative, and legal support services, and the actual costs incurred for expert witness testimony, arising out of or resulting from the performance of services required under this Agreement, provided that same is caused by the error, omission, negligent act, or misconduct of the Consultant, its agents, servants, employees, or sub consultants. Consultant hereby acknowledges that adequate consideration has been provided to the Consultant for this obligation, the receipt and sufficiency of which is hereby specifically acknowledged. Nothing herein shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Section 768.28, Florida Statutes. In claims against any person or entity indemnified under this Section by an employee of the Consultant or its agents or sub consultants, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Consultant or its agents or sub consultants, under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

The execution of this Agreement by the Consultant shall obligate the Consultant to comply with the foregoing indemnification provision; however, the collateral obligation of insuring this indemnity must be complied with as set forth below.

The City will require that any consultant, performing work in connection with data collection, reports, schedules and summaries produced under this Agreement, agrees to hold harmless, indemnify and defend the City and Consultant, their consultants and each of their
(Agreement/Consultant-James Moore & Co.)

officers, agents, and employees from any and all liability claims, losses, or damages arising out of the consultant's (or sub consultant's) performance of the work described in the preparation of any documents, but not including liability that may be due to the sole negligence of the City, the Consultant, their sub consultants, or their officers, agents and employees.

13. OWNERSHIP OF DOCUMENTS:

It is understood and agreed that all documents, including detailed reports, plans, and all other data prepared or obtained by the Consultant in connection with its services hereunder shall become the property of the City.

14. REUSE OF DOCUMENTS:

Wherever and whenever applicable, all data and documents furnished by Consultant pursuant to this Agreement may be reused by the City for future projects.

City shall have the right to reuse the data and documents and contract with other parties, not the Consultant. Such reuse will be without need of written approval of the Consultant, however, Consultant shall not be held professionally responsible for any such reuse. To the extent permitted by law, City shall indemnify and hold Consultant harmless for any and all damages resulting from such reuse.

If the City elects to reuse the documents and engage the professional services of the Consultant for future work, Consultant agrees to perform said services for a mutually agreed upon discounted fixed fee to be negotiated under such Change Order for additional work. If issuance of any Work Order for future work shall require that a "Clerk-of-the-Works" be employed pursuant to the Scope of Work, compensation for his/her services shall be negotiated as part of that Work Order. If any modifications are required to adapt the documents, compensation for such work shall be negotiated.

15. NOTICES:

All notices or other communications required or permitted hereunder shall be in writing and shall be deemed duly given if delivered in person or sent by certified mail return receipt requested and addressed as follows:

If to City:

Finance Director
City of Edgewater
P. O. Box 100
104 North Riverside Drive
Edgewater, Florida 32132-0100
(386)424-2400 Extension 1301
(Agreement/Consultant-James Moore & Co)

With Copy to:

Legal Department
City of Edgewater
P. O. Box 100
104 North Riverside Drive
Edgewater, Florida 32132-0100
(386)424-2400 Extension 1203

If to Consultant:

Yan Lapointe
Audit Manager
James Moore & Co.
121 Executive Circle
Daytona Beach, Florida 32114-1180
(386) 257-4100

16. EQUAL OPPORTUNITY EMPLOYMENT:

Consultant agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age or national origin and will take affirmative steps to insure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age or national origin. This provision shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment, advertising; layoff or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

17. NO CONTINGENT FEES:

Consultant warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount for such fee, commission, percentage, gift or consideration.

18. COMPLIANCE WITH § 287.133, FLORIDA STATUTES:

Consultant shall, simultaneous with the execution of this Agreement, if not previously done, execute a public entity crime statement required by §287.133, Florida Statutes.

19. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS:

The Consultant shall comply with all Federal, State and Local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex or national origin in the performance of work under this Agreement.

20. CONFLICT OF INTEREST:

(Agreement/Consultant-James Moore & Co.)

Consultant agrees that it will not contract for or accept employment for the performance of any work or services with any individual, business, corporation or government unit that would create a conflict of interest with the City in the performance of its obligations pursuant to this Agreement.

21. ASSIGNMENT:

This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith. However, this Agreement shall run to the Edgewater City Government and its successors.

22. ALL PRIOR AGREEMENTS SUPERSEDED:

This Agreement incorporates and includes all prior negotiations, correspondence, conservation, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modifications, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

23. INDULGENCE NOT WAIVER:

The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any provision of this Agreement either at the time the breach or failure occurs or at any time throughout the term of this Agreement.

24. INDEPENDENT CONTRACTOR:

It is hereby mutually agreed that the Consultant is and shall remain an independent contractor and not an employee of the City.

25. NO THIRD-PARTY BENEFICIARIES:

The agreements contained herein are for the sole benefit of the parties hereto and their successors and permitted assigns and no other party shall have the right to enforce any provision of this Agreement or to rely upon the provisions of this Agreement.

26. INTERPRETATIONS; VENUE:

(Agreement/Consultant-James Moore & Co)

In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Seventh Judicial Circuit for Volusia County, Florida, for claims under state law and the Middle District of Florida for any claims, which are justifiable in federal court.

27. ATTORNEY'S FEES:

If the City is required to institute or defend any legal proceedings in connection with this Agreement, the Consultant agrees to pay the costs thereof, together with reasonable attorney's fees for the City's attorney in the event such legal proceedings are terminated in favor of the City.

IN WITNESS WHEREOF, the parties have hereto caused the execution of these documents, the year and date first written above.

WITNESSES:

CITY OF EDGEWATER, FLORIDA

By: _____
Tracey T Barlow
City Manager

Dated: _____

Robin L. Matusick
Legal Assistant

WITNESSES:

JAMES MOORE & CO.

James Halleran
Partner

Dated: _____

For the use and reliance only by the City of Edgewater, Florida. Approved as to form and legality by: Carolyn Ansay, Esquire
City Attorney
Doran, Wolfe, Ansay & Kundid

Approved by the City Council of the City of Edgewater at a meeting held on this _____ day of _____, 2009 under Agenda Item No. _____.

Select Year: 2009

Go

The 2009 Florida Statutes

Title XIV
TAXATION AND
FINANCE

Chapter 218
FINANCIAL MATTERS PERTAINING TO POLITICAL
SUBDIVISIONS

[View Entire
Chapter](#)

218.391 Auditor selection procedures.--

(1) Each local governmental entity, district school board, charter school, or charter technical career center, prior to entering into a written contract pursuant to subsection (7), except as provided in subsection (8), shall use auditor selection procedures when selecting an auditor to conduct the annual financial audit required in s. [218.39](#).

(2) The governing body of a charter county, municipality, special district, district school board, charter school, or charter technical career center shall establish an audit committee. Each noncharter county shall establish an audit committee that, at a minimum, shall consist of each of the county officers elected pursuant to s. 1(d), Art. VIII of the State Constitution, or a designee, and one member of the board of county commissioners or its designee. The primary purpose of the audit committee is to assist the governing body in selecting an auditor to conduct the annual financial audit required in s. [218.39](#); however, the audit committee may serve other audit oversight purposes as determined by the entity's governing body. The public shall not be excluded from the proceedings under this section.

(3) The audit committee shall:

(a) Establish factors to use for the evaluation of audit services to be provided by a certified public accounting firm duly licensed under chapter 473 and qualified to conduct audits in accordance with government auditing standards as adopted by the Florida Board of Accountancy. Such factors shall include, but are not limited to, ability of personnel, experience, ability to furnish the required services, and such other factors as may be determined by the committee to be applicable to its particular requirements.

(b) Publicly announce requests for proposals. Public announcements must include, at a minimum, a brief description of the audit and indicate how interested firms can apply for consideration.

(c) Provide interested firms with a request for proposal. The request for proposal shall include information on how proposals are to be evaluated and such other information the committee determines is necessary for the firm to prepare a proposal.

(d) Evaluate proposals provided by qualified firms. If compensation is one of the factors established pursuant to paragraph (a), it shall not be the sole or predominant factor used to evaluate proposals.

(e) Rank and recommend in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services after considering the factors established pursuant to paragraph (a). If fewer than three firms respond to the request for proposal, the committee shall recommend such firms as it deems to be the most highly qualified.

(4) The governing body shall inquire of qualified firms as to the basis of compensation, select one of the firms recommended by the audit committee, and negotiate a contract, using one of the following methods:

(a) If compensation is not one of the factors established pursuant to paragraph (3)(a) and not used

to evaluate firms pursuant to paragraph (3)(e), the governing body shall negotiate a contract with the firm ranked first. If the governing body is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the governing body shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The governing body, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time.

(b) If compensation is one of the factors established pursuant to paragraph (3)(a) and used in the evaluation of proposals pursuant to paragraph (3)(d), the governing body shall select the highest-ranked qualified firm or must document in its public records the reason for not selecting the highest-ranked qualified firm.

(c) The governing body may select a firm recommended by the audit committee and negotiate a contract with one of the recommended firms using an appropriate alternative negotiation method for which compensation is not the sole or predominant factor used to select the firm.

(d) In negotiations with firms under this section, the governing body may allow a designee to conduct negotiations on its behalf.

(5) The method used by the governing body to select a firm recommended by the audit committee and negotiate a contract with such firm must ensure that the agreed-upon compensation is reasonable to satisfy the requirements of s. 218.39 and the needs of the governing body.

(6) If the governing body is unable to negotiate a satisfactory contract with any of the recommended firms, the committee shall recommend additional firms, and negotiations shall continue in accordance with this section until an agreement is reached.

(7) Every procurement of audit services shall be evidenced by a written contract embodying all provisions and conditions of the procurement of such services. For purposes of this section, an engagement letter signed and executed by both parties shall constitute a written contract. The written contract shall, at a minimum, include the following:

(a) A provision specifying the services to be provided and fees or other compensation for such services.

(b) A provision requiring that invoices for fees or other compensation be submitted in sufficient detail to demonstrate compliance with the terms of the contract.

(c) A provision specifying the contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(8) Written contracts entered into pursuant to subsection (7) may be renewed. Such renewals may be done without the use of the auditor selection procedures provided in this section. Renewal of a contract shall be in writing.

History.--s. 65, ch. 2001-266; s. 1, ch. 2005-32.

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TENTATIVE AGENDA ITEMS

AUGUST 17 (items due Thurs 8/6) **CANCEL**

AUGUST 24 – GENERAL FUND BUDGET WORKSHOP – 5:00 PM

AUGUST 31 – ENTERPRISE FUND BUDGET WORKSHOP 5:00 PM

- 1) RFP Award – Agent of Record

SEPT 7 – LABOR DAY HOLIDAY; MOVE TO SEPT 14 (items due 9/3)

- 1) 2009/2010 Budget

SEPT 21 – MOVE TO SEPT 28 (items due 9/10)

SEPT 28 (items due Thurs 9/17)

- 1) Set Final Millage Rate

OCT 5 (items due 9/24)

OCT 19 (items due 10/8)

NOV 2 (items due 10/22)

NOV 16 (items due 11/5/)

DEC 7 (items due 11/25)

DEC 21 (items due 12/10)

UNSCHEDULED UPCOMING HEARINGS - PLANNING DEPART APPS RECEIVED

- 1) SeaGate - Edgewater Preserve PUD Agreement