

EAST CENTRAL FLORIDA REGIONAL PLANNING COUNCIL

COUNCIL MEETING MINUTES

JANUARY 19, 2011

CHAIR COMMISSIONER CHERYL L. GRIEB PRESIDING

In Attendance:

County Representatives:

Commissioner Chuck Nelson, Brevard County
Commissioner Welton Cadwell, Lake County
Commissioner Sean Parks, Lake County
Commissioner Fred Brummer, Orange County
Commissioner Brandon Arrington, Osceola County
Commissioner John Horan, Seminole County
Commissioner Brenda Carey, Seminole County
Councilman Andy Kelly, Volusia County

Municipal Representatives:

Mayor Rocky Randels, Space Coast League of Cities
Commissioner Patty Sheehan, City of Orlando
Commissioner Cheryl Grieb, City of Kissimmee
Mayor John Land, City of Apopka
Commissioner Leigh Matusick, Volusia County

Gubernatorial Appointees:

Mayor Melissa DeMarco, Lake County
Mr. Dan O'Keefe, Orange County
Mr. Atlee Mercer, Osceola County
Ms. Melanie Chase, Seminole County
Mr. John Lesman, Seminole County
Mr. Lonnie Groot, Volusia County

Ex-Officio Members:

Ms. Nancy Christman, St. Johns River Water Management District
Ms. Vivian Garfein, Florida Department of Environmental Protection
Ms. Cecelia Weaver, South Florida Water Management District
Mr. John Moore for Susan Sadighi, Florida Department of Transportation

Other Attendees:

Mr. Chris Testerman, Orange County
Ms. Laura Minns, Lynx
Ms. Liz Alward, Brevard County
Mr. David Bottomley, MetroPlan BPAC
Mr. Lisa Kelty, FDEP

Members not in Attendance:

Commissioner Andy Anderson, Brevard County
Commissioner Scott Boyd, Orange County
Commissioner Frank Attkisson, Osceola County
Councilwoman Patricia Northey, Volusia County
Commissioner Joanne Krebs, Winter Springs, Tri-County League of Cities
Mr. Al Glover, Brevard County
Ms. Christina Dixon, Orange County
Mr. William McDermott, Economic Development

ECFRPC Staff in attendance:

Executive Director Philip Laurien
Attorney Jerry Livingston
Mr. George Kinney
Ms. Lelia Hars
Ms. Claudia Paskauskas
Mr. Chris Chagdes
Mr. Keith Smith
Mr. Andrew Landis
Ms. Tara McCue
Ms. Elizabeth Rothbeind
Mr. Josh Hoffman
Ms. Gina Marchica
Ms. Carole Clark

I. Call to Order and General Business

Commissioner Cheryl Grieb called the meeting to order at 10:00 a.m., and welcomed new appointees to the Council. The new appointees are: Commissioner Andy Anderson, Brevard County; Commissioner Sean Parks, Lake County; Commissioner Frank Attkisson, Osceola County; and Commissioner John Horan, Seminole County. Ms. Carole Clark called the roll and announced a quorum was present.

II. Consent Agenda

Commissioner Grieb asked for a motion to approve the November 2010 Meeting Minutes and the November and December 2010 Financial Reports. The motion was made by Mayor John Land and seconded by Commissioner Fred Brummer. All were in favor and the motion passed.

III. Pension Plan Amendment

Director Phil Laurien asked that this item be tabled until the February Council meeting. Although the Amendment is mandated, there are selections that need to be made by the Council. Director Laurien plans to have Attorney Jeffrey Koltun present at the next meeting to discuss the details.

IV. FY 2011 Budget Amendment Package

Director Laurien reported that since the beginning of FY2011 on October 1st, the RPC staff has been entrepreneurial in obtaining contracts that are above and beyond the "Likely Speculative Contract Revenue" budgeted for the current year. He presented the attached projected revenue information to show how the Staff's expected contracts will result in no reserves being needed in FY2011.

Chairwoman Grieb called for a motion to acknowledge the FY 2011 Budget Amendment Package. The motion was made by Mr. Atlee Mercer and seconded by Commissioner Patty Sheehan. All were in favor and the motion passed.

V. Director's Report

Director Laurien discussed the HUD debriefing as it pertained to the HUD Sustainability Grant application.

The evaluation of the ECFRPC's HUD Grant application showed that the RPC scored well (69/100) for an applicant not receiving a grant. A score of 85 was required in order to be funded. The Grant

committee was impressed and excited about many of the ideas submitted and felt that if the proper HUD language had been used, it is possible the application could have been funded. The main objections to the application were that it did not include certain language required by the HUD Reform Act (but not specified in the Sustainable Community Development Grant application package) and that the plan needed to be more specific with respect to engaging underserved populations.

Overall, the Grant committee liked the ECFRPC's application and encouraged the RPC to continue it's pursuit for funding at a second round offering should one occur.

VI. New FRCA Policy Board Members Needed to Replace Mary Martin and Elaine Renick

Chairwoman Grieb mentioned that she and Mr. O'Keefe had attended the monthly Florida Regional Councils Association (FRCA) meeting the previous Friday along with Director Laurien. She asked if there was any interest from the Council to serve on the FRCA policy board. The Council suggested that she and Mr. O'Keefe continue as the replacements for Mary Martin and Elaine Renick. Chairwoman Grieb and Mr. O'Keefe both agreed they would be willing. The motion was made and seconded for Commissioner Cheryl Grieb and Mr. Dan O'Keefe to be replacement FRCA Policy Board Members. All were in favor and the motion passed.

VII. Future of Regional Planning in Florida

Mr. O'Keefe informed the Council of a meeting he had with the Governor's office while he was in Tallahassee the prior week. He said they conveyed to him the Governor's desire to shake things up and do whatever is necessary to: 1) create jobs, and 2) stimulate economic growth in Florida. They are looking to streamline state agencies and narrow the focus of DCA. The impact on Florida's Regional Planning Councils is undetermined but should become more clear in the next few months.

He mentioned that the Governor's office was up front about needing to make changes in Growth Management. The system that is now in place addresses a different set of challenges than the challenges Florida faces today. Mr. O'Keefe also said there are some common misconceptions about what planning councils really do. Councils are seen as "the staff that review DRI's," and it is not commonly understood that there are many other significant activities in which councils are involved.

Ms. Vivian Garfein asked whether or not the Governor's office is aware of the many innovative disciplines the East Central Florida Regional Planning Council engages in. It was also asked if it was realistic to assume that Senator Mike Bennett, who has filed recent Growth Management bills, would empower Regional Planning Councils to do any more than they are currently doing. Mr. O'Keefe answered that he did not foresee an empowering of the councils but more advisory responsibilities could be given to the regional planning Councils.

Director Laurien took the opportunity to talk about a conference call he had with the Century Commission. The Century Commission was created by Governor Jeb Bush for the purpose of looking 100 years out to see how Florida could grow in a more sustainable fashion. Senator Bennett was a guest on the call.

Director Laurien said that Senator Bennett was looking for some suggestions from the Commission on what to do after the Growth Management era. He was looking for very specific natural resource policies and a map of Florida with all of the state lands identified overlaid on the most critical natural resources. Director Laurien provided the Senator with both the NRORS policies from the ECFRPC 2060 Plan and the Critical Lands and Waters Identification (CLIP) maps overlaid on state lands for our region.

This opened the door to introduce a white paper put together by Phil Laurien, George Kinney and Andrew Landis entitled: "After Growth Management: A Proposed New Planning Framework for Florida." The white paper develops a strategy for transitioning and moving forward from the current Growth Management number counting, formulaic style of planning to a strategic planning based platform.

The white paper is a working draft that is intended to guide and inform key legislators of the capabilities of the regional planning councils. It has been sent to Senator Mike Bennett, Senator Andy Gardiner, Speaker Dean Cannon, DCA Secretary Billy Buzzett, and the Governor's Chief of Staff. It carries disclaimers that it is not an official ECFRPC policy document.

Director Laurien also mentioned that Ron Book, FRCA's lobbyist, expressed that now is the time to call and visit legislators to let them know what is working and not working with the current growth management system.

More discussion followed concerning what the future of the planning councils might be and it was agreed that there is definitely change coming from the Governor and the Legislature and that a year from now RPCs will have a different role than they do currently.

Mr. Mercer summarized the discussion by saying that now is the time to act. It is not the time to sit by and wait until decisions are made concerning Regional Planning Councils before we speak and present our ideas. He suggested that the Council review the white paper prepared by Director Laurien, Mr. Kinney and Mr. Landis and come prepared with comments to next month's meeting. The Council should then decide if it wants the white paper to be a formal recommendation from the Council either in its original form or as modified by the Council.

VIII. DEP Office of Greenways and Trails Presentation

Director Laurien presented a Power Point presentation outlining the goals, objectives and accomplishments of the DEP Office of Greenways and Trails.

After the presentation Mr. Mercer motioned that the Council write a Resolution of Support of the Office of Greenways and Trails. Mayor Melissa DeMarco seconded the motion. All were in favor and the motion passed.

IX. Planning Manger's Report

Mr. George Kinney presented the November 2010 and December 2010 Planning Manager's Reports and mentioned there was no unusual activity. He explained that the report summarizes the RPC staff's activities for the previous month and includes a list of the comprehensive plans that were reviewed, utility plans that were reviewed, and any intergovernmental coordination review. It also includes a summary of any workshops, meetings, functions, or conferences the staff has attended.

Mr. Kinney noted that time spent on Intergovernmental Reviews was up during this last reporting period due to year end grant application requests received for review by the RPC Staff.

Mr. Kinney explained for new Council members that Florida Regional Planning Councils are required by the state to update their Strategic Regional Policy Plan every 10 years. Mr. Kinney reported that the RPC staff had finalized the last of their comments and that a red-line strike-through copy of the Policy Plan is ready for the Policy Plan Task Force to review and make comments and recommendations.

The Policy Plan Task Force consists of the following members: Mayor Rocky Randels, Commissioner Cheryl Grieb, Ms. Melanie Chase, Commissioner Fred Brummer, and Mr. Atlee Mercer. The Task Force

will review the updated Policy Plan and their comments and recommendations will be incorporated. The Council will be presented with a digital copy of the Policy Plan at the February 2011 Council meeting and will then have an opportunity to review the Plan and prepare comments. Council members should be prepared to vote for potential transmittal to the Governor (as required by law) at the March Council meeting.

After Council transmittal, the Governor's Office is required to respond within 90 days. Because of new leadership, no one is sure what the response of the Governor's Office will be. We will be the first Florida Regional Planning Council to submit a Policy Plan pursuant to its regional vision.

X. Where Americans are Moving

Director Laurien showed the Committee an Internet link that shows "Where Americans are Moving." It shows Florida as a flat growth state with as many people moving out of Florida as are moving in.

As a matter of interest, the Council viewed the data on several different communities throughout the United States. Overall, the Council felt the web link was an interesting look at what is happening around the country.

XI. Announcements and Comments

Commissioner Brenda Carey re-introduced Commissioner John Horan as a new appointee to the Council.

Mr. Mercer reiterated the need for explanation of the Pension Plan Amendments.

Commissioner Leigh Matusick reported that the City of Deland just finished their 2050 Visioning Plan. Deland and Volusia County are working together to ensure that the city and county are in line with each other.

Commissioner Grieb mentioned that Osceola County is conducting a meeting with the County Commissioners, the School Board and City officials to discuss the overall mission for the county and what role each organization plays in that mission.

Mayor Randels commented on the handout the Council received in the meeting packet entitled, "Sarasota's Smart Growth Dividend." He said the article showed that the value of return on property tax for mixed-use properties is about the highest return you can get.

Discussion followed on types of mixed-use properties and ones that are currently working or not working.

Commissioner Grieb invited everyone to visit downtown Kissimmee on February 12, 2011 and participate in the 3rd Annual 5K race to benefit the American Heart Association. You can visit www.kissimmeemainstreet.com for more information.

Commissioner Sean Parks of Lake County extended an invitation to the Council to attend Lake County Commissioner Workshop on February 1, 2011 in the Magnolia Room at the Lake Sumter Community College campus. The five commissioners of Lake County plan to hold breakout sessions to address economic development of which a large component will be infrastructure and infrastructure planning. The sessions will concentrate on what needs to be done differently in Lake County and how it can be packaged looking at it from a "jobs creation" aspect.

He mentioned that during the workshop, there could be opportunity for visioning and looking at where Lake County is going as a county and how the 14 municipalities can act together to promote growth in the future.

Commissioner Grieb offered the assistance of the RPC and its staff if there is any way they can be of help.

IX. Adjournment

Chairwoman Grieb adjourned the meeting at 11:27 a.m.

FY 2011 Prospective Contracts
Updated February 8, 2011

FY2011 Anticipated Reserves Needed (Because membership fees have been reduced over the last few years, a need has been created for use of reserves.)	-\$456,669.00	
New contracts not included in Anticipated Budget Contract Revenue for FY2011 (Already funded)	\$179,400	
Brevard PDRP		\$89,300
CDC Radiation Drill		\$52,000
FDOT GIS Coordination		\$30,000
FDEP Greenways/Trails REMI		\$2,500
FL Greenways/Trails FDN		\$5,600
Reserves Needed reduced to:	-\$277,269	
Other Possible/Probable New Contracts not included in Anticipated Budget Contract Revenue	\$334,000	
Apopka Food Assessment (Kellog Foundation) (30,000-40,000/year/next 3 years)		\$40,000
Volusia PDRP		\$80,000
EDA REMI Model of Economic Impact of BP Oil Spill		\$90,000
FDOT TOD Sketch Book		\$54,000
UASI Admin (Anti-Terrorism) \$70-100K		\$70,000
CLIP/NPORS State Inventory		???
Reserves Needed (None)	\$56,731	
Reduced Adopted Contract Revenues (actual)	-38,000	
New Projected Reserves Needed (None)	18,731	

Financial Forecast

Statement of Condition as of January 31, 2011

Cash-in-bank on January 1, 2011		\$2,004,278.16
Deposits and Interest - January 2011	\$254,632.97	
Checks Issued - January 2011	<u>-\$162,108.24</u>	
Cash-in-bank on January 31, 2011		<u><u>\$2,096,802.89</u></u>

Financial Forecast for February 2011

Operating Cash February 1, 2011		\$2,096,802.89
Accounts Payable on February 1, 2011		<u>-26,475.02</u>
Net Operating Cash for February 1, 2011		<u><u>\$2,070,327.87</u></u>

Anticipated Revenue/Expense for February 2011:		
Accounts Receivables (Revenues)	\$119,439.35	
Accounts Payables (Expenditures)	<u>-132,676.52</u>	
Net Anticipated Revenue/Expense		<u>-13,237.17</u>
Anticipated Operating Cash for March 1, 2011		<u><u>\$2,057,090.70</u></u>

	Budget	12/31/2010	Actual	Current	Under (Over)	33.3%
		Year to Date	January	Year to Date		
Personnel						
Salaries & Wages (Permanent)	978,920	204,650	75,845	280,495	698,425	28.7%
Fringe Benefits	347,000	78,085	27,682	105,767	241,233	30.5%
Outside /Temporary Services	11,650	6,248	2,376	8,624	3,026	74.0%
Contract labor-SRPP and contracts	5,000	-	-	-	5,000	0.0%
Interns	16,800	1,005	-	1,005	15,795	6.0%
Unemployment	3,500	-	-	-	3,500	0.0%
Total Personnel	1,362,870	289,988	105,903	395,891	966,979	29.0%
Overhead						
Annual Audit	17,000	770	-	770	16,230	4.5%
Advertising/Regional Promotion	3,000	-	-	-	3,000	0.0%
Computer Ops (General)	35,000	1,535	14,285	15,820	19,180	45.2%
Depreciation/Use Charge	12,000	4,904	1,635	6,539	5,461	54.5%
Equipment (General)	22,000	3,161	1,539	4,700	17,300	21.4%
Equipment Maintenance/Rental	1,500	-	-	-	1,500	0.0%
Equipment Lease/Sales Taxes	400	-	-	-	400	0.0%
Graphics/Outside Printing	29,650	5,271	2,580	7,851	21,799	26.5%
Insurance	14,000	1,639	938	2,577	11,423	18.4%
Inter-Regnl Bd Rel (travel/training)	3,000	-	-	-	3,000	0.0%
Legal Counsel	44,000	11,513	3,333	14,846	29,154	33.7%
Library/Publications/Subscriptions	3,000	151	446	597	2,403	19.9%
Office Supplies	11,000	2,109	630	2,739	8,261	24.9%
Pension Fund Mgmt. Fee	900	-	-	-	900	0.0%
Postage	9,000	867	157	1,024	7,976	11.4%
Professional Dues	26,000	7,440	2,139	9,579	16,421	36.8%
Rent	123,750	30,625	10,208	40,833	82,917	33.0%
Office Maintenance	2,000	1,556	-	1,556	444	77.8%
Staff Training	9,000	400	2,236	2,636	6,364	29.3%
Telephone & Communications	8,000	1,411	694	2,105	5,895	26.3%
Staff Travel	24,000	4,663	974	5,637	18,363	23.5%
Recruiting	4,000	-	-	-	4,000	0.0%
Hmep Training	33,000	2,139	1,104	3,243	29,757	9.8%
GIS Coordination	3,000	-	3,000	3,000	-	100.0%
GIS Data Collection	1,500	-	-	-	1,500	0.0%
Consultants (DRI)	50,000	3,312	-	3,312	46,688	6.6%
Consultants DEM Communication Exercise	50,000	-	-	-	50,000	0.0%
Consultants - UASI EM Portal	-	-	10,000	10,000	(10,000)	
Storage-Off Site Records	1,600	447	-	447	1,153	27.9%
Meeting Expenses	10,000	742	213	955	9,045	9.6%
CFGIS Workshop Expenses	-	541	-	541	(541)	
Web site maintenance	-	-	10,000	10,000	(10,000)	
REMI Annual Maintenance	20,600	5,150	1,717	6,867	13,733	33.3%
S. Bitar VISA Sponsorship	6,000	-	-	-	6,000	0.0%
Total Overhead	577,900	90,346	67,828	158,174	419,726	27.4%
Total Expenditures	1,940,770	380,334	173,731	554,065	1,386,705	28.5%

Project:	General	DR1 Reviews	FY11 DCA General	FY11 LEPC Staff Support	FY11 Hiz Mat Emrg Preparedness	FDOT Cont & Imp of CFGIS	Regional Evacuation Study	USDC EADCEDS FY11	SR 50 Corridor Study	State TEP 2011-2013 Update	UASE 2010 Exerciset	RDSIF FY09	HSEEP Fall 2010	Greenways & Trails Economic	UASI Gap Analysis	Motorola & Harris Training	Brevard PD/RP	UASI EM Portal	UASI ProJ Mgmt FY 2008	Total
REVENUES																				
Revenues Paid:																				
Member Assessments	519,601.00																			519,601.00
Member REMI Contributions																				0.00
Federal										15,000.00	59,327.97		4,000.00		4,000.00			20,500.00		102,827.97
State																				0.00
Local																				0.00
DR1 Fees	7,412.30	37,681.65																		37,681.65
Other																				0.00
Total Revenues Received	527,013.30	37,681.65	0.00	0.00	0.00	0.00	0.00	0.00	0.00	15,000.00	59,327.97	0.00	4,000.00	4,000.00	0.00	0.00	0.00	20,500.00	0.00	667,522.92
Account Receivables:																				0.00
Member Assessments																				0.00
Federal							1,788.07	13,282.56												13,282.56
State								19,923.85												19,923.85
Local/Other								30,265.70												30,265.70
Total Accounts Receivables	0.00	0.00	137,582.63	12,453.11	9,670.40	30,265.70	1,788.07	33,206.41	0.00	0.00	0.00	13,899.82	0.00	0.00	0.00	0.00	0.00	0.00	0.00	180,301.44
TOTAL REVENUES	527,013.30	37,681.65	137,582.63	12,453.11	9,670.40	30,265.70	1,788.07	33,206.41	0.00	15,000.00	59,327.97	13,899.82	4,000.00	4,000.00	0.00	0.00	0.00	20,500.00	0.00	929,043.53
EXPENDITURES																				
Salaries	100,119.44	16,587.55	74,953.56	5,969.69	3,426.24	5,608.24	972.04	18,319.86	201.71	1,445.85	275.97	7,633.44	1,844.06	3,120.14	2,686.34	75.40	7,956.37	572.06	775.40	252,548.26
Fringe Benefits (Pool)	38,148.71	6,495.13	27,681.72	2,280.08	1,323.83	1,408.38	380.62	7,173.44	78.98	566.15	108.06	2,906.02	642.28	1,207.38	1,062.66	29.32	2,419.48	224.00	303.82	84,429.87
Indirect Cost (Pool)	40,768.97	6,806.06	30,282.47	2,432.48	1,401.41	2,068.88	399.84	7,516.81	82.76	583.25	113.23	3,107.60	733.11	1,275.89	1,103.05	30.94	3,059.36	234.72	318.15	102,308.08
Unemployment Comp																				0.00
Audit Fees																				7,076.54
Advertising/Regional Promotion																				245,942.68
Computer Operations	6,566.83					8,180.00														14,806.78
Dues	1,935.00																			1,935.00
Equipment	4,918.97																			4,918.97
Graphics	1,800.36	2,519.15	2,935.58	508.55	152.85	0.20	34.84	42.78		16.74	3.83	31.89	1,197.76	270.74	0.40			0.86		4,318.97
Inter-Regnl Bd Relations																				0.00
Legal	19,333.32	1,512.50																		20,845.82
Office Supplies	1,037.18																			1,037.18
Postage	240.87	380.81	74.74	9.55	13.36		1.73	38.02		2.34	16.43	32.82	7.50	22.50	0.44		0.44			589.06
Publications	367.54		154.00	47.12																582.30
Recruiting																				0.00
Rent																				0.00
Equipment Rent & Maintenance																				0.00
Staff Training	2,410.64																			2,410.64
HMEP Training																				0.00
Overtime/Backfill reimbursement																				0.00
Taxes, Sales/Property																				0.00
Telephone	3,037.34	26.70	1,128.69	881.63	205.76															5,280.12
Travel																				0.00
Temporary Labor/Outside Services	6,975.39	41.25	391.87																	7,408.51
Interest Expense																				0.00
DATA Fees																				0.00
Consultants																				0.00
GIS Coordination																				0.00
CRGIS Workshop Expense																				0.00
Meeting Expenses	541.04																			541.04
REMI Annual Maintenance	955.15																			955.15
Web Site Maintenance	6,866.66																			6,866.66
Web Site Upgrade																				0.00
S. Bilat VISA Sponsorship																				0.00
Office Maint/Printing	1,556.23																			1,556.23
New Office Fit Up																				0.00
TOTAL EXPENDITURES	231,069.74	37,681.65	137,582.63	12,453.11	9,670.40	30,265.70	1,788.07	33,206.41	363.45	2,624.33	517.52	13,899.82	4,461.93	7,076.54	4,833.94	135.86	14,013.75	11,031.88	1,428.32	554,065.05

STEVEN H. KANE*
JEFFREY M. KOLTUN**

*L.L.M. in Taxation
Florida Board Certified in
Wills, Estates and Trusts

**Also admitted in Ohio
and Kentucky

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IRINA G. DOLINSKY***
ELINA G. VALENTINE

***Also admitted in New York

December 27, 2010

PERSONAL AND CONFIDENTIAL

Ms. Lelia Hars
East Central Florida Regional Planning Council
309 Cranes Roost Boulevard
Suite 2000
Altamonte Springs, Florida 32701

RECEIVED
DEC 28 2010
30

Re: East Central Florida Regional Planning Council
Money Purchase Pension Plan and Trust

Dear Lelia:

As a result of pension legislation passed by Congress, the Council's retirement plan is required to be amended to comply with the Heroes Earnings Assistance and Relief Tax Act of 2008 and related guidance issued by the IRS interpreting that legislation (the "HEART Act"), as well as the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"). Many of the changes made by the HEART Act and WRERA are technical in nature and will have limited effect on the manner in which the Plan is operated. In order to comply with the HEART Act and WRERA legislation, I have enclosed the following:

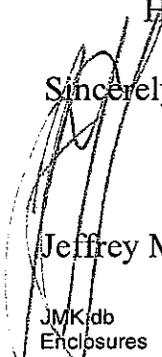
1. Supplemental HEART Act and WRERA Amendment. Please review the Amendment and let me know if you have any questions. The Amendment should be dated and signed where indicated no later than December 31, 2010. The original of the signed Amendment should be retained with your Plan records, and a copy of the executed Amendment returned to me for my files.
2. Resolution, which certifies that the Board of Directors has approved the Amendment. The Resolution should be signed by an authorized representative of the Council or otherwise documented in the formal minutes of the Board. The original should be retained with your Plan records; please return a signed copy of the Resolution to me for my files.

Ms. Lelia Hars
December 27, 2010
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Please call me if you have any questions.

Happy Holidays and best wishes for the New Year!

Sincerely,



Jeffrey M. Koltun

JMK/db
Enclosures

**EAST CENTRAL FLORIDA REGIONAL PLANNING COUNCIL
MONEY PURCHASE PENSION PLAN AND TRUST**

SUPPLEMENTAL AMENDMENT FOR HEART ACT AND WRERA

SUPPLEMENTAL AMENDMENT FOR HEART ACT AND WRERA

**ARTICLE I
PREAMBLE**

- 1.1 **Effective date of Amendment.** The Employer adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all the default provisions of this Amendment except as otherwise elected in Article II.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these HEART and WRERA provisions).

**ARTICLE II
EMPLOYER ELECTIONS**

The Employer only needs to complete the questions in Sections 2.2 through 2.3 below in order to override the default provisions set forth below.

- 2.1 **Default Provisions.** Unless the Employer elects otherwise in this Article, the following defaults will apply:
 - a. **Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided.**
 - b. **Differential wage payments are treated as Compensation for all Plan benefit purposes.**
 - c. **The Plan permits distributions pursuant to the HEART Act on account of "deemed" severance of employment.**
 - d. **Required Minimum Distributions (RMDs) for 2009 were suspended unless a Participant or Beneficiary elected to receive such distributions.**

2.2 **HEART ACT provisions (Article III).**

Continued benefit accruals. Amendment Section 3.2 will not apply unless elected below:

- a. The provisions of Amendment Section 3.2 apply effective as of: (select one)
 - 1. the first day of the 2007 Plan Year
 - 2. _____ (may not be earlier than the first day of the 2007 Plan Year).

However, the provisions no longer apply effective as of: (select if applicable)

- 3. _____.

Differential pay. Differential wage payments (as described in Amendment Section 3.3) will be treated, for Plan Years beginning after December 31, 2008, as compensation for all Plan benefit purposes unless b. is elected below:

- b. In lieu of the above default provision, the employer elects the following (select all that apply; these selections do not affect the operation of Amendment Section 3.3(ii)):
 - 1. the inclusion is effective for Plan Years beginning after _____ (may not be earlier than December 31, 2008).
 - 2. the inclusion only applies to Compensation for purposes of Elective Deferrals.

Distributions for deemed severance of employment. The Plan permits distributions pursuant to Amendment Section 3.4 unless otherwise elected below:

- c. The Plan does not permit such distributions.

- d. The Plan permits such distributions effective as of _____ (may not be earlier than January 1, 2007).

2.3 **WRERA (RMD waivers for 2009).** The provisions of Amendment Section 4.1 apply (RMDs are suspended unless a Participant or Beneficiary elects otherwise) unless otherwise elected below:

- a. The provisions of Amendment Section 4.2 apply (RMDs continued unless otherwise elected by a Participant or Beneficiary).
- b. RMDs continued in accordance with the terms of the Plan without regard to this Amendment (i.e., no election available to Participants or Beneficiaries).
- c. Other: _____

For purposes of Amendment Section 4.3, the Plan will also treat the following as eligible rollover distributions in 2009: (If no election is made, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H)):

- d. 2009 RMDs and Extended 2009 RMDs (both as defined in Article IV of this Amendment).
- e. 2009 RMDs (as defined in Article IV of this Amendment) but only if paid with an additional amount that is an eligible rollover distribution without regard to Code §401(a)(9)(H).

ARTICLE III HEART ACT PROVISIONS

- 3.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.
- 3.2 **Benefit accrual.** If the Employer elects in Amendment Section 2.2 to apply this Section 3.2, then effective as of the date specified in Amendment Section 2.2, for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.
- a. **Determination of benefits.** The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 3.2 for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.
- 3.3 **Differential wage payments.** For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment; (ii) the differential wage payment is treated as compensation for purposes of Code §415(c)(3) and Treasury Reg. §1.415(c)-2 (e.g., for purposes of Code §415, top-heavy provisions of Code §416, determination of highly compensated employees under Code §414(q), and applying the 5% gateway requirement under the Code §401(a)(4) regulations); and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the differential wage payment. The Plan Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any deferrals, and if applicable, any matching contributions, attributable to differential wages. Differential wage payments (as described herein) will also be considered compensation for all Plan purposes unless otherwise elected at Amendment Section 2.2.

Section 3.3(iii) above applies only if all employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).

- 3.4 **Deemed Severance.** Notwithstanding Section 3.3(i), if a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code §412. However, the Plan will not distribute such a Participant's account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on

account of a deemed severance, and a distribution on account of another Plan provision (such as a qualified reservist distribution), then the other Plan provision will control and the 6-month suspension will not apply.

ARTICLE IV WAIVER OF 2009 REQUIRED DISTRIBUTIONS

- 4.1 **Suspension of RMDs unless otherwise elected by Participant.** This paragraph does not apply if the Employer elected Amendment Section 2.3a, b, or c. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.
- 4.2 **Continuation of RMDs unless otherwise elected by Participant.** This paragraph applies if Amendment Section 2.3a is selected. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.
- 4.3 **Direct Rollovers.** Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2009, as elected by the Employer in Amendment Section 2.3, will be treated as eligible rollover distributions. If no election is made by the Employer in Amendment Section 2.3, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H).

ARTICLE V DIVESTMENT OF EMPLOYER SECURITIES

- 5.1 **Application and Effective Date of Article.**
- a. **Application.** This Article V only applies to a Plan that is an "applicable defined contribution plan." Except as provided herein or in Treas. Reg. §1.401(a)(35)-1, an "applicable defined contribution plan" means a defined contribution plan that holds employer securities (within the meaning of Treas. Reg. 1.401(a)(35)-1(f)(3)) that are publicly traded (within the meaning of Treas. Reg. 1.401(a)(35)-1(f)(5)). An "applicable defined contribution" does not include a one-participant plan, as defined in Code §401(a)(35)(E)(iv) or an employee stock ownership plan ("ESOP") as defined in Code §4975(e)(7) if: (i) the ESOP holds no contributions (or related earnings) that are (or were ever) subject to Code §§ 401(k) or 401(m); and (ii) the ESOP is a separate plan, for purposes of Code §414(l), from any other defined benefit plan or defined contribution plan maintained by the same employer or employers. Except as provided in Treas. Reg. §1.401(a)(35)-1(f)(2)(iv) or in Code §401(a)(35)(F)(ii) (relating to certain controlled groups), the Plan is treated as holding publicly traded Employer securities if any Employer corporation, or any member of a controlled group of corporations which includes such Employer corporation (as defined in Code §401(a)(35)(F)(iii)) has issued a class of stock which is a publicly traded Employer security.
- b. **Effective date.** The provisions of Code §401(a)(35) generally apply to Plan Years beginning after December 31, 2006. However, the effective date of the provisions relating to Treas. Reg. 1.401(a)(35)-1 are applicable to Plan Years beginning on or after January 1, 2011.
- 5.2 **Rule applicable to elective deferrals and employee contributions.** If any portion of an "applicable individual's" account attributable to elective deferrals or employee contributions is invested in publicly-traded Employer securities, then, except as otherwise provided herein, the "applicable individual" may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Section 5.4. For purposes of this Section 5.2, an "applicable individual" means: (i) a Participant; (ii) an alternate payee who has an account under the Plan; or (iii) a Beneficiary of a deceased Participant.

5.3 **Rule applicable to Employer contributions.** If any portion of an "applicable individual's" account attributable to nonelective or matching contributions is invested in publicly-traded Employer securities, then, except as otherwise provided herein, the "applicable individual" may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Section 5.4.

- a. **Definition of "Applicable individual."** For purposes of this Section 5.3, an "applicable individual" means: (i) a Participant who has completed at least three (3) years of service; (ii) an alternate payee who has an account under the Plan with respect to a Participant who has completed at least three (3) years of service; or (iii) a Beneficiary of a deceased Participant. For this purpose, a Participant completes three (3) years of service on the last day of the vesting computation period provided for under the Plan that constitutes the completion of the third year of service under Code §411(a)(5). However, if the Plan uses the elapsed time method of crediting service for vesting purposes (or the Plan provides for immediate vesting without using a vesting computation period or the elapsed time method of determining vesting), a Participant completes three (3) years of service on the day immediately preceding the third anniversary of the Participant's date of hire.
- b. **Three-year phase-in applicable to Employer contributions.** For Employer securities acquired with nonelective or matching contributions during a Plan Year beginning before January 1, 2007, the rule described in this Section 5.3 only applies to the percentage of the Employer securities (applied separately for each class of securities) as follows:

<u>Plan Year</u>	<u>Percentage</u>
2007	33
2008	66
2009	100

- c. **Exception to phase-in for certain age 55 Participants.** The 3-year phase-in rule of Section 5.3.b does not apply to a Participant who has attained age 55 and who has completed at least three (3) years of service (as defined in Section 5.3.a above) before the first Plan Year beginning after December 31, 2005.

- 5.3 **Investment options.** For purposes of this Article V, other investment options must include not less than three (3) investment options, other than Employer securities, to which the individual who has the right to divest under Amendment Section 5.2 or 5.3 may direct the proceeds from the divestment of Employer securities. Each of the three (3) investment options must be diversified and have materially different risk and return characteristics. For this purpose, investment options that constitute a broad range of investment alternatives within the meaning of Department of Labor Regulation §2550.404c-1(b)(3) are treated as being diversified and having materially different risk and return characteristics.
- 5.4 **Restrictions or conditions on investments in Employer securities.** The Plan must provide reasonable divestment and reinvestment opportunities at least quarterly. Furthermore, except as permitted by Treas. Reg. §1.401(a)(35)-1(e), the Plan may not impose restrictions or conditions on the investment of Employer securities which the Plan does not impose on the investment of other Plan assets.

This amendment is executed as follows:

Name of Plan: East Central Florida Regional Planning Council Money Purchase Pension Plan and Trust

Name of Employer: East Central Florida Regional Planning Council

By: _____ Date: December _____, 2010

**RESOLUTION OF
EAST CENTRAL FLORIDA REGIONAL PLANNING COUNCIL**

The undersigned, on behalf of EAST CENTRAL FLORIDA REGIONAL PLANNING COUNCIL (the "Employer"), hereby certifies that the Board of Directors of the Employer adopted the following resolutions:

WHEREAS, the Employer sponsors the East Central Florida Regional Planning Council Money Purchase Pension Plan and Trust, a qualified retirement plan maintained for the benefit of eligible employees (the "Plan"); and

WHEREAS, the Board of Directors was advised that all qualified plans are required to be amended to comply with the provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008 and the Worker, Retiree, and Employer Recovery Act of 2008; and

WHEREAS, the Board of Directors reviewed a good-faith supplemental amendment which is intended to comply with the provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008, including guidance contained in IRS Notice 2010-15, and the Worker, Retiree, and Employer Recovery Act of 2008 (the "Supplemental HEART Act and WRERA Amendment"), with the recommendation that it be adopted as drafted.

NOW, THEREFORE, it is hereby:

RESOLVED, that the Supplemental HEART Act and WRERA Amendment is hereby approved and adopted effective as provided therein.

RESOLVED, that the Board of Directors hereby ratifies, confirms and approves the execution of the Supplemental HEART Act and WRERA Amendment.

IN WITNESS WHEREOF, the undersigned hereby certifies that the Board of Directors of the Employer adopted the foregoing actions on _____.

EAST CENTRAL FLORIDA REGIONAL
PLANNING COUNCIL

By: _____