



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## New Business - Support Services Group

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J.2.

2/23/2021

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### **Subject:**

Assignment of Lease Agreement RE: Complex Cafés at Brevard County Government Center-Viera and Harry T. & Harriette V. Moore Justice Center

### **Fiscal Impact:**

The snack bar vendor will pay the County \$14,400 annually (\$1,200 month) for rent, maintenance and utilities

### **Dept/Office:**

Public Works Department/Facilities

### **Requested Action:**

It is requested that the Board of County Commissioners authorize Chair to execute an Assignment of Lease Agreement with Viera Complex Food Services, Inc. to Powers 1022, Inc. for the operation of snack bars at the Government Center, Viera and the Harry T. & Harriette V. Moore Justice Center.

### **Summary Explanation and Background:**

Brevard County initially entered into a Lease with Viera Complex Food Services, Inc., d/b/a Complex Café on May 04, 2004. The current expiration of said Lease is September 20, 2027. The lease is for food service operations at the Moore Justice Center and in Building C at the Viera Government Center.

Paul Novick, Owner of Viera Complex Food Services, Inc., has set up another corporation named Powers 1022, Inc. for the purpose of operating the snack bars at both locations. The Assignment and Modification Agreement will transfer all responsibility for the snack bar Agreement from Viera Complex Food Services, Inc. d/b/a Complex Café to Powers 1022, Inc. d/b/a Complex Café.

Payments to the County will remain \$14,400 annually (\$1,200 month) for both locations. Mr. Novick of Viera Complex Food Services has requested forbearance of rental payment from Powers 1022, Inc. until June 30, 2021. On July 1, 2021 the rental payments will begin in accordance with the Amendment dated October 20, 2015. All other terms and provisions of the Agreement and Amendments shall remain in full force and effect.

### **Clerk to the Board Instructions:**

Please send one (1) executed copy to Facilities Department.

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

# CONTRACT REVIEW AND APPROVAL FORM

## SECTION I - GENERAL INFORMATION

1. Contractor:		2. Amount:	
3. Fund/Account #:		4. Department Name:	
5. Contract Description:			
6. Contract Monitor:		8. Contract Type:	
7. Dept/Office Director:			
9. Type of Procurement:			

## SECTION II - REVIEW AND APPROVAL TO ADVERTISE

### APPROVAL

#### COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

Purchasing

Risk Management

County Attorney


## SECTION III - CONTRACTS MANAGEMENT DATABASE CHECKLIST

### APPROVAL

#### COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

Purchasing

Risk Management

County Attorney


## SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	
Department	
Program	
Contact Name	
Cost Center, Fund, and G/L Account	
Vendor Information (SAP Vendor #)	
Contract Status, Title, Type, and Amount	
Storage Location (SAP)	
Contract Approval Date, Effective Date, and Expiration Date	
Contract Absolute End Date (No Additional Renewals/Extensions)	
Material Group	
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	
"Right To Audit" Clause Included in Contract	
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	



February 24, 2021

**M E M O R A N D U M**

**TO:** Marc Bernath, Public Works Director

**RE:** Item J.2., Assignment of Lease Agreement for Complex Cafes at Brevard County Government Center-Viera and Harry T. and Harriette V. Moore Justice Center

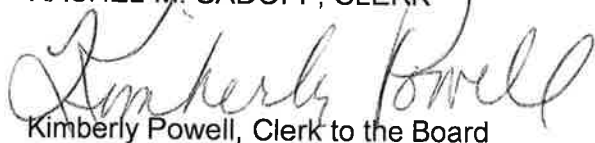
The Board of County Commissioners, in regular session on February 23, 2021, authorized the Chair to execute an Assignment of Lease Agreement with Viera Complex Food Services, Inc. to Powers 1022, Inc. for the operation of snack bars at the Government Center, Building C, Viera and the Harry T. and Harriette V. Moore Justice Center. Enclosed is an executed Agreement.

**Upon execution by all parties, please return a fully-executed Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

/sm

Encl. (1)

cc: County Manager  
Facilities  
Finance  
Budget

## ASSIGNMENT AND MODIFICATION AGREEMENT

**THIS ASSIGNMENT AND MODIFICATION AGREEMENT**, made and entered into this 23 day of February, 2021, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **VIERA COMPLEX FOOD SERVICES, INC., dba COMPLEX CAFÉ** (hereinafter "**Assignor**"), and **POWERS 1022, INC., dba as COMPLEX CAFÉ** (hereinafter "**Assignee**"), a Florida Corporation whose address is 422 Eldron Boulevard NE, Palm Bay, FL 32907 .

### WITNESSETH:

**WHEREAS**, the County and Logan Ventures dba MASH Hoagies have previously entered into an Agreement on May 4, 2004, a copy of which is attached hereto and incorporated herein as Exhibit A, and made part of hereof by this reference; and

**WHEREAS**, with the County's consent, Logan Ventures dba MASH Hoagies assigned its rights and interest under the Agreement to Viera Complex Food Services, Inc., on September 25, 2007, through an Assignment of Modification Agreement, a copy of which is attached hereto and incorporated herein as Exhibit B, and made part of hereof by this reference; and

**WHEREAS**, the Agreement dated September 25, 2007, was amended on October 12, 2010, a copy of which is attached hereto and incorporated herein as Exhibit C, and made part of hereof by this reference; and

**WHEREAS**, the Agreement dated October 12, 2010 was amended on October 18, 2011, a copy of which is attached hereto and incorporated herein as Exhibit D, and made part of hereof by this reference; and

**WHEREAS**, the Agreement dated October 18, 2011, was amended on February 21, 2012, a copy of which is attached hereto and incorporated herein as Exhibit E, and made part of hereof by this reference; and

**WHEREAS**, the agreement dated February 21, 2012 was amended on October 20, 2015, a copy of which is attached hereto and incorporated herein as Exhibit F, and made part of hereof by this reference; and

**WHEREAS**, Assignor, Viera Complex Food Services, Inc. agrees to assign the Lease to Assignee, POWERS 1022, INC., dba Complex Café, with the same terms and conditions.

**NOW, THEREFORE**, in consideration of the covenants and premises contained herein, the County, Assignor, and Assignee agree as follows:

**SECTION 1. Term.** The assignment of the lease will begin on February 24, 2021. The term of the Agreement and Amendments, as approved by the Board of County Commissioners on October 20, 2015, shall terminate on September 30, 2027.

**SECTION 2. Assignment and Assumption.** Assignor hereby assigns to Assignee all of Assignor's rights and interest under the Agreement to Assignee that arise from and after the Effective Date. Further, Assignor hereby delegates to Assignee all of Assignor's duties and obligations under the Agreement that arise from and after the Effective Date. Assignee hereby accepts the above-referenced assignment of rights and delegation of duties and obligations of Assignor under the Agreement and assumes all of the rights, duties, and obligations of Assignor under the Agreement that arise from and after the Effective Date. By its joinder in the execution of this Assignment, the County hereby consents to such assignment and delegation by Assignor to Assignee.

**SECTION 3.** The parties agree to a forbearance of rental payment until June 30, 2021. On July 1, 2021 the rental payments will begin in accordance with the amendment dated October 20, 2015.

**SECTION 4.** All other terms and provisions of the Agreement dated May 4, 2004, as amended by the Assignment and Modification Agreement dated September 25, 2007, and further amended on October 12, 2010, October 18, 2011, February 1, 2012, and October 20, 2015, which are not inconsistent with the terms and provisions of this Assignment and Modification Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand and seals on the date first above written.

  
\_\_\_\_\_  
Rachel Sadoff, Clerk of the Court

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
As approved by the Board on 02/23/2021

  
\_\_\_\_\_  
Rita Pritchett, Chair

\_\_\_\_\_  
Paul Novick  
Viera Complex Food Services, Inc.

\_\_\_\_\_  
Steve Powers  
POWERS 1022, Inc.



October 21, 2015

MEMORANDUM

TO: Teresa Camarata, Central Services Director

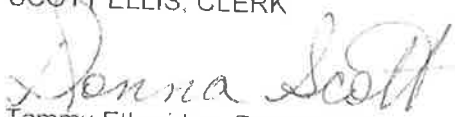
RE: Item VI C.2., Request from Viera Complex Food Service, Inc. to Extend Snack Bar Lease

The Board of County Commissioners, in regular session on October 20, 2015, approved extending the current Lease Agreement with the Viera Complex Food Services, Inc. to 2027 with the Consumer Price Index (CPI) starting in 2020, not exceeding three percent, and authorized the Right of First Refusal.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*For:*   
Tammy Etheridge, Deputy Clerk

/ds

RECEIVED

OCT 27 2015

ADMINISTRATIVE  
POLICE DEPARTMENT



## AMENDMENT TO LEASE AGREEMENT

**THIS AMENDMENT**, made and entered into this 20<sup>th</sup> day of October 2015, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **VIERA COMPLEX FOOD SERVICES, INC.**, dba Complex Café, a Florida Corporation whose address is P.O. Box 411008, Melbourne, Florida 32941, hereinafter referred to as "Vendor".

### WITNESSETH:

**WHEREAS**, the County and Viera Complex Food Services, Inc., dba Complex Café, have previously entered into an Agreement dated May 4, 2004 which was amended by an Assignment of Modification Agreement dated September 25, 2007, a copy of which is attached hereto and incorporated herein as Exhibit A, and made a part hereof by this reference; and

**WHEREAS**, the Agreement dated September 25, 2007 was amended on October 12, 2010 a copy of which is attached hereto and incorporated herein as Exhibit B, and made a part hereof by this reference; and

**WHEREAS**, the Agreement dated October 12, 2010 was amended on October 18, 2011, a copy of which is attached hereto and incorporated herein as Exhibit C, and made a part hereof by this reference; and

**WHEREAS**, the Agreement dated October 12, 2010 was amended on October 18, 2011, a copy of which is attached hereto and incorporated herein as Exhibit D, and made a part hereof by this reference; and

**WHEREAS**, the Agreement dated October 18, 2011 was amended on February 21, 2012, a copy of which is attached hereto and incorporated herein as Exhibit E, and made a part hereof by this reference; and

**WHEREAS**, Viera Complex Food Services, Inc. has requested the current lease be extended an additional eight (8) years, to September 30, 2027.

**NOW, THEREFORE**, in consideration of the covenants and premises contained herein, the County, and Viera Complex Food Services, Inc. agree as follows:

**Section 1. Term.** The lease term (which would have terminated September 30, 2019 in accordance with the amendment dated February 21, 2012) is hereby extended for a period of eight (8) years, and will terminate on September 30, 2027, or on such earlier date as this Lease may terminate as hereinafter provided.

**Section 2. Base Rent:** The payment for rent, maintenance, operations and utilities shall remain a fixed rate of \$1,200.00 per month, \$14,400 annually, with rent relief at the Moore Justice Center Government Center-Viera as provided for in the Amendment dated October 18, 2011. Beginning September 30, 2020 annual base rent, and any subsequent renewals thereafter, shall be subject to a maximum adjustment not to exceed 3% in accordance with the

Consumer Price Index for All Urban Consumers, "U.S. City Average: All Items", published by the U.S. Department of Labor, Bureau of Labor Statistics.

**Section 3. Right of First Refusal.** Six (6) months prior to the termination/expiration of this Agreement as provided for in Section 1, Brevard County will advertise Request for Proposals for the snack bar concessions. In the event a proposer other than the Vendor makes an offer acceptable to the County, for a lease to commence upon October 01, 2027 (or earlier termination as provided for in Exhibit A), the County, prior to acceptance thereof, shall give the Vendor written notice thereof and a copy of said offer(s). The Vendor shall have thirty (30) days after receipt of such notice within which to elect to lease the Premises under the same terms and conditions of said offer. If Vendor shall elect to lease the Premises pursuant to this option and first refusal herein granted, it shall give written notice to the County of intent to exercise such option within the thirty (30) day period. Vendor's failure at any time to exercise this option under this paragraph shall not affect this Lease and the continuance of Vendor's rights and options under this and any other paragraph herein.


**Section 4.** All other terms and provisions of the Agreement dated May 04, 2004 as amended by the Assignment and Modification Agreement dated September 25, 2007, and further amended on October 12, 2010, October 18, 2011 and February 21, 2012, which are not inconsistent with the terms and provisions of this Amendment to Lease Agreement, shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals on the date first above written.

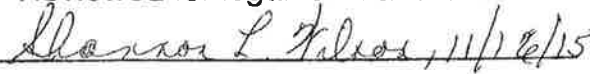
ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

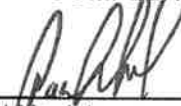
BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA  
As approved by the Board on 10/20/2015

  
\_\_\_\_\_  
Jim Barfield, Chair

**Reviewed for legal form and content:**

  
\_\_\_\_\_  
(Assistant) County Attorney

VIERA COMPLEX FOOD SERVICES, INC.

  
\_\_\_\_\_  
Paul Novick  
Vice President



# BREVARD County

BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972



February 22, 2012

## MEMORANDUM

TO: Howard Tipton, County Manager

RE: Item VII.E.1., Citizen Request of Paul Novick, Owner of Complex Café – Contract Extension

The Board of County Commissioners, in regular session on February 21, 2012, approved an extension of Complex Café contract to September 30, 2019, to allow amortization of improvements to the Cafés at the Government Center and Moore Justice Center over a seven and one-half year period.

Your continued cooperation is always appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
MITCH NEEDELMAN, CLERK

*Tammy Etheridge*

Tammy Etheridge, Deputy Clerk

/kg

cc: Facilities

cc: Clerk to the Board  
Paul Novick, ComplexCafe

**Please have contracts signed and attested and return to:**

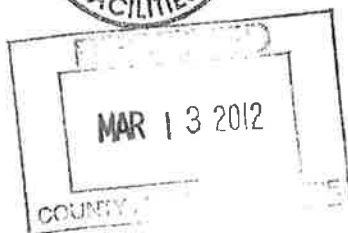
**Facilities Department  
Teresa Camarata  
Mail Stop #81**

*[Signature]*  
Steve Quickel, Facilities Dept Director

*See attached agreement*  
Shannon Wilson, Deputy County Attorney

*[Signature]*  
Stockton Whitten, Assistant Co Manager

3/27 scanned  
to Xdrive



PRINTED ON RECYCLED PAPER

## AMENDMENT TO LEASE AGREEMENT

**THIS AMENDMENT**, made and entered into this 21<sup>st</sup> day of February, 2012, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **VIERA COMPLEX FOOD SERVICES, INC.**, dba Complex Café, a Florida Corporation whose address is P. O. Box 411008, Melbourne, Florida 32941, hereinafter referred to as "Vendor".

### WITNESSETH:

**WHEREAS**, the County and Viera Complex Food Services, Inc., dba Complex Café, have previously entered into an Agreement dated May 4, 2004 which was amended by an Assignment and Modification Agreement dated September 25, 2007, a copy of which is attached hereto and incorporated herein as Exhibit A, and made a part hereof by this reference; and,

**WHEREAS**, the Agreement dated September 23, 2007 was amended on October 18, 2011, a copy of which is attached hereto and incorporated herein as Exhibit B, and made a part hereof by this reference; and

**WHEREAS**, Viera Complex Food Services, Inc. has requested the current lease be extended to September 30, 2019 in order for it to be able to amortize the cost of improvements it proposes to make to the premises to improve service.

**NOW, THEREFORE**, in consideration of the covenants and premises contained herein, the County, and Viera Complex Food Services, Inc. agree as follows:

**Section 1. Term.** The original lease term, which would have terminated on September 30, 2013, is extended for a period of six (6) years, and will terminate on September 30, 2019, or on such earlier date as this Lease may terminate as hereinafter provided.

**Section 2. Improvements.** In return for the extension of the term as provided for in Section 1 above, and in compliance with paragraph 19 of Exhibit A, the Vendor shall replace the serving and work cabinets/counters and repaint the walls of the cafés at both the Government Complex and the Moore Justice Center and add new dining booths in the café at the Government Complex. The Vendor has obtained estimates that indicate the improvements will cost approximately \$39,000.00. The Vendor shall provide the County with copies of the work orders and payments made for the work performed related to these improvements.

It is understood between the parties that this extension is for the purpose of allowing the Vendor to improve the environment and service at the cafés and to amortize the cost to the Vendor of making the improvements. Should the Vendor fail to make the improvements prior to August 30, 2013, the County reserves the right to terminate the Agreement (as amended) effective September 30, 2013 by providing the Vendor thirty (30) days advance written notice.

**Section 3.** All other terms and provisions of the Agreement dated May 4, 2004 as amended by the Assignment and Modification Agreement dated September 25, 2007, and further amended on October

18, 2011, which are not inconsistent with the terms and provisions of this Amendment to Lease Agreement, shall remain in full force and effect.


**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals on the date first above written.

Reviewed for legal form and content:


  
Shannon Wilson, Deputy County Attorney

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
As approved by the Board on February 21, 1011

ATTEST:

  
Mitch Needelman, Clerk

  
Chuck Nelson, Chairman

  
Paul Novick, Viera Complex Food Services, Inc.



August 10, 2011

MEMORANDUM

TO: Howard Tipton, County Manager

RE: Item VII.E.1, Paul Novick - Complex Café

The Board of County Commissioners, in regular session on August 9, 2011, acknowledged request of Paul Novick, Complex Café, to amend contract providing rent relief at the Moore Justice Center when Judges are having conference and on holiday weeks; and directed staff to move forward with the reduction of rent.

Your continued cooperation is always appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
MITCH NEEDELMAN, CLERK

*Tammy Etheridge*

Tammy Etheridge, Deputy Clerk

/ds



*Approved for  
Pub. Chairman's  
Signature  
[Signature]*

# AMENDMENT TO LEASE AGREEMENT

**THIS AMENDMENT**, made and entered into this 18<sup>th</sup> day of October, 2011, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **VIERA COMPLEX FOOD SERVICES, INC.**, dba Complex Café, a Florida Corporation whose address is P. O. Box 411008, Melbourne, Florida 32941.

## WITNESSETH:

**WHEREAS**, the County and Viera Complex Food Services, Inc., dba Complex Café, have previously entered into an Agreement on September 25, 2007, and amended on October 12, 2010, a copy of which is attached hereto and incorporated herein as Exhibit A, and made a part hereof by this reference.

**NOW, THEREFORE**, in consideration of the covenants and premises contained herein, the County, and Viera Complex Food Services, Inc. agree as follows:

**Section 1. Payment to County.** The payment for rent, maintenance, operations, and utilities is a fixed rate of \$1,200.00 per month, \$14,400.00 annually. Rent relief shall be provided at the Moore Justice Center when a majority of the Judges are attending a conference (and as a consequence, court proceedings are not being held), and on holidays at Moore Justice Center and the Government Center by deduction from the rent on a pro rata basis for the days as set forth in Exhibit "A".

**Section 2.** All other terms and provisions of the Agreement dated September 25, 2007, and amended on October 12, 2010, which are not inconsistent with the terms and provisions of this Amendment to Lease Agreement, shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals on the date first above written.

Reviewed for legal form and content:

Shannon L. Wilson, 10/17/11  
Shannon Wilson, Deputy County Attorney

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
As approved by the Board on October 12, 2010

ATTEST:

Mitch Needelman  
Mitch Needelman, Clerk

Robin Fisher  
Robin Fisher, Chairman

Paul Novick  
Paul Novick, Viera Complex Food Services, Inc.

**Moore Justice Center Holidays**

1. New Year's Day
2. Martin Luther King, Jr.'s Birthday
3. Good Friday
4. Week including Memorial Day
5. Week including Independence Day
6. Week including Labor Day
7. Jewish New Year
8. Yom Kippur
9. Veteran's Day
10. Thanksgiving Week
11. Christmas Week

**Brevard County Government Center, Building C**

1. New Year's Day
2. Martin Luther King, Jr.'s Birthday
3. Memorial Day
4. Independence Day
5. Labor Day
6. Veteran's Day
7. Thanksgiving Day and following Friday
8. Christmas Eve
9. Christmas Day



October 13, 2010

MEMORANDUM

TO: Steve Quickel, Facilities Department Director      Attn: Teresa Camarata

RE: Item VI.C., Amendment to Lease Agreement with Viera Complex Food Services, Inc.

The Board of County Commissioners, in regular session on October 12, 2010, authorized the Chairman to execute an Amendment to the Lease Agreement with Viera Complex Food Services, Inc. for snack bars at the Government Center, Viera, and the Harry T. and Harriette V. Moore Justice Center. Enclosed are two certified copies of the Amendment to Lease Agreement for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

A handwritten signature in cursive script that reads "Tamara Van Fossan".

Tamara Van Fossan, Deputy Clerk

/jj

Encls. (2)

cc: Contracts Administration  
Finance  
Budget



## **AMENDMENT TO LEASE AGREEMENT**

**THIS AMENDMENT**, made and entered into this 12<sup>th</sup> day of October, 2010, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **VIERA COMPLEX FOOD SERVICES, INC.**, dba Complex Café, a Florida Corporation whose address is P. O. Box 411008, Melbourne, Florida 32941.

### **WITNESSETH:**

**WHEREAS**, the County and Viera Complex Food Services, Inc., dba Complex Café, have previously entered into an Agreement dated May 4, 2004 which was amended by an Assignment and Modification Agreement dated September 25, 2007, a copy of which is attached hereto and incorporated herein as Exhibit A, and made a part hereof by this reference.

**NOW, THEREFORE**, in consideration of the covenants and premises contained herein, the County, and Viera Complex Food Services, Inc. agree as follows:

**Section 1. Paragraph 3. Base Rent. and Paragraph 4. Payment of Utilities and Maintenance are hereby amended, and combined as follows:**

**3. Base Rent, Utilities and Maintenance.** The payment for rent, maintenance and utilities (except as otherwise provided for herein) shall be a fixed rate of \$1,200.00 per month, \$14,400.00 annually effective October 1, 2010.

The total annual sum of the rent, maintenance and utilities is \$14,400.00, which sum is payable in equal monthly installments of Twelve Hundred Dollars (\$1,200.00), together with all applicable sales tax or use tax, in advance, on the first day of each calendar month during the term, the first such installment to be due October 1, 2010.

Any payment received after the seventh (7<sup>th</sup>) day of the month will be deemed late and carry an additional late charge penalty of five percent (5%). If payment is not paid within 15 days of the due date, the Vendor will be in default for nonpayment.

All natural gas costs utilized by the Vendor shall be borne and paid by the Vendor.

**Section 2. A new paragraph 4 is created to provide as follows:**

**4. Right of First Refusal.** Six (6) months prior to the expiration of the initial term, Brevard County will advertise Requests for Proposals for the snack bar concession. In the event a proposer other than the Vendor makes an offer acceptable to the County, for a lease to commence upon October 1, 2013 (or earlier termination as provided for in Exhibit "A"), the County, prior to acceptance thereof, shall give the Vendor written notice thereof and a copy of said offer(s). The Vendor shall have thirty (30) days after receipt of such notice within which to elect to lease the Premises under the same terms and conditions of said offer. If Vendor shall elect to lease the Premises pursuant to this option and first refusal herein granted, it shall give written notice to the County of intent to exercise such option within the thirty (30) day period. Vendor's failure at any time to exercise this option under this paragraph shall not affect this lease and the continuance of Vendor's rights and options under this and any other paragraph herein.



**Section 3.** All other terms and provisions of the Agreement dated May 4, 2004 as amended by the Assignment and Modification Agreement dated September 25, 2007, which are not inconsistent with the terms and provisions of this Amendment to Lease Agreement, shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals on the date first above written.

Reviewed for legal form and content:

\_\_\_\_\_  
Shannon Wilson, Deputy County Attorney

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
As approved by the Board on October 12, 2010

ATTEST:

\_\_\_\_\_  
Mary Bolin, Chair

As approved by the Board 10-12-10

\_\_\_\_\_  
Scott Ellis, Clerk of Court

\_\_\_\_\_  
Paul Novick, Viera Complex Food Services, Inc.

STATE OF FLORIDA  
COUNTY OF BREVARD

This is to certify that the foregoing is a  
true and current copy of Amend.  
Lease Agmt witness my hand  
and official seal this 18 day of  
October, 20 10

SCOTT ELLIS  
Clerk Circuit Court  
BY [Signature] D.C.

Reviewed for legal form and  
content: Shannon L. Wilson, 9/29/10  
(Assistant/County Attorney)



# **ASSIGNMENT AND MODIFICATION AGREEMENT**

**THIS ASSIGNMENT AND MODIFICATION AGREEMENT**, made and entered into this 25 day of September, 2007, by and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **LOGAN VENTURES, INC. dba M.A.S.H. HOAGIES**, and **VIERA COMPLEX FOOD SERVICES, INC.**, dba **Complex Cafe**, a Florida Corporation whose address is P. O. Box 411008, Melbourne, Florida 32941.

## **WITNESSETH:**

**WHEREAS**, the County and Logan Venture, Inc. dba M.A.S.H. Hoagies have previously entered into a Contract on May 4, 2004, a copy of which is attached hereto and incorporated herein as Exhibit A, and made a part hereof by this reference, and

**WHEREAS**, the County grants permission, and Logan Ventures, Inc. agrees to assign the lease to Viera Complex Food Services, Inc., with the same terms and conditions.

**NOW, THEREFORE**, in consideration of the covenants and premises contained herein, the County, and Viera Complex Food Services, Inc. agree as follows:

**SECTION 1.** The term of the Contract executed by the parties on May 4, 2004, shall be extended for a period of six (6) years commencing October 1, 2007, and terminating on September 30, 2013, or on such earlier date as provided in Exhibit A.

**SECTION 2.** All other terms and provision of the Contract dated May 4, 2004, which are not inconsistent with the terms and provisions of this Assignment and Modification Agreement, shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals on the date first above written.

Reviewed for legal form and content:

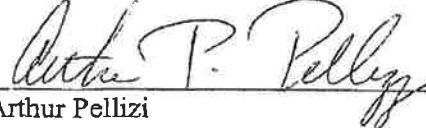
  
 Scott Knox, County Attorney

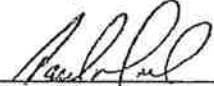
ATTEST:

BOARD OF COUNTY COMMISSIONERS  
 OF BREVARD COUNTY, FLORIDA  
 As approved by the Board on September 25, 2007

  
 Scott Ellis, Clerk

  
 Jackie Colon, Chair

  
 Arthur Pellizi  
 Logan Ventures, Inc.

  
 Paul Novick  
 Viera Complex Food Services, Inc.

## EXHIBIT A

### CONTRACT

**THIS AGREEMENT**, made and entered into this 4<sup>th</sup> day of May, 2004, by and between **Logan Ventures, Inc. dba MASH Hoagies**, and the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as County.

### WITNESSETH:

**NOW THEREFORE**, in consideration of the mutual promises and terms and conditions contained herein, the parties hereto hereby agree as follows:

1. **Description.** County hereby leases to Logan Ventures, Inc. and Logan Ventures, Inc. hereby hires from County, the space as presently constituted, hereinafter called "premises", located at 2725 Judge Fran Jamieson Way, and 2825 Judge Fran Jamieson Way, Melbourne, Florida 32940, known as the Brevard County Government Center, and Harry T. and Harriette V. Moore Justice Center, respectively, commonly known as the Snack Bars.
2. **Term.** The premises are leased for a term of five (5) years to commence on June 1, 2004, and terminate on May 31, 2009, or on such earlier date as this Lease may terminate as hereinafter provided. This contract may be renewed two times for additional twenty-four month periods, pending approval of the Board of County Commissioners.
3. **Base Rent.** The total annual rent is the sum of Eight Thousand Seven Hundred Sixty Dollars (\$8,760.00), which sum is payable in equal monthly installments of Seven Hundred Thirty Dollars (\$730.00), together with all applicable sales or use tax, in advance, on the first day of each calendar month during the term, the first such installment to be due June 1, 2004. Rent payments received after the seventh day of the month will be late and carry an additional late charge penalty of 5% of the Rent. If payment of rent, utilities, and maintenance charges are not paid fifteen (15) days from the due date, vendor will be in default for nonpayment. Rent payment will be renegotiated June, 2005, and annually thereafter. Annual base rent for the second year, and any subsequent renewal years shall be subject to a minimum adjustment in accordance with the Consumer Price Index for All Urban Consumers, "U. S. City Average: All Items", published by the U.S. Department of Labor, Bureau of Labor Statistics, for the most current period prior to the renewal date. The increase will commence September 1 of each consecutive year.
4. **Payment of Utilities and Maintenance.** Vendor shall pay to County the sum of Five Hundred Dollars (\$500.00) for building maintenance and Two Hundred Seventy Dollars (\$270.00) per month for utility expenses incurred in the operation of the food concession service described herein. All natural gas costs utilized by Vendor shall be borne and paid by Vendor. In the event of an increase in the cost of utility services for the premises, the monthly payment for utilities shall be adjusted accordingly.
5. **Use of Premises.** The premises are to be used as a food service concession and Vendor agrees to restrict its use to such purposes, and not to use, or permit the use of the premises for any other purpose without first obtaining the consent, in writing, of County or of County's authorized agent.
6. **Insurance:** Vendor, at its own expense, shall keep in force and at all times maintain during the term of this Agreement:
  - General Liability Insurance.** General Liability Insurance issued by responsible insurance companies and in a form acceptable to the County, protecting and insuring against all the foregoing with combined single limits of not less than One Million dollars (\$1,000,000) for Bodily Injury and Property Damage.
  - Automobile Liability Insurance.** Automobile Liability coverage shall be in the minimum amount of One Million Dollars (\$1,000,000) combined single limit for Bodily Injury and Property Damage.
  - Workers' Compensation and Employers Liability Insurance.** Full and complete Workers' Compensation Coverage, as required by State of Florida law, shall be provided.

**Insurance Certificates:** Vendor shall provide the County with Certificate(s) of Insurance on all policies of insurance and renewals thereof in a form(s) acceptable to the County. Said Liability Policies shall provide that the County is an additional insured, and that County shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action. All insurance policies shall be issued by responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida.

**7. Indemnification:** Vendor shall indemnify and hold harmless the County and their employees from all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting from the performance of its work under this agreement, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of Vendor, or anyone directly or indirectly employed by Vendor, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. In any and all claims against the County, or any of its agents or anyone directly or indirectly employed by Vendor, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for Vendor, under workers' compensation acts, or other related policies of insurance. Vendor acknowledges adequate consideration for this agreement.

**8. No Use that Increases Insurance Risk.** Vendor shall not use the premises in any manner, even in its use for the purposes for which the premises are leased, that will increase risk covered by insurance on the building where the premises are located, so as to increase the rate of insurance on the premises, or to cause cancellation to any insurance policy covering the building. Vendor further agrees not to keep on the premise, or permit to be kept, used, or sold thereon, anything prohibited by the policy of fire insurance covering the premises. Vendor shall comply, at its own expense, with all requirements of insurers necessary to keep in force the fore and public liability insurance covering the premises and building.

**9. Licenses, Permits, and Taxes.** Vendor agrees to secure and maintain all licenses and permits required to operate a food service concession and pay all taxes and assessments, including any applicable sales or use tax, which shall be imposed or assessed by any and all governmental authorities, in connection with the business or operation conducted under this Lease, and to meet all federal, state, county and municipal laws, ordinances, policies and rules applicable to the operation of a food service concession and commercial vending enterprise.

**10. Tenant's Exclusive Right to Provide Food Concession and Vending Services.** Vendor will be the sole food service provider, excluding vending machine service, and County will not allow any other food concerns, other than vending machine providers, to operate on the premises during the term of this contract.

**11. No Waste, Nuisance or Unlawful Use.** Vendor shall not commit, or allow to be committed, any waste on the premises, create or allow any nuisance to exist on the premises, or use or allow the premises to be used for any unlawful purpose.

**12. Repairs and Maintenance.** Vendor acknowledges that the Premises are in good order and repair, unless otherwise indicated herein. Brevard County shall ensure that the building conforms to all fire, building, and other codes. County shall maintain the structural portions of the Premises in reasonably good order and condition, as well as the mechanical equipment installed in the Premises as of the Lease Date, including the HVAC system, except for damage occasioned by act or omission of Vendor or its contractors, agents, invitees, licensees or employees, the repair of which damage shall be paid by Vendor. County shall maintain the Premises in good and safe condition, including plate glass, electrical and plumbing systems, in as good condition as received, normal wear and tear excepted. Vendor shall be responsible for all repairs required, excepting the roof, exterior walls, and structural foundation, which shall be maintained by County. Vendor shall also be responsible for interior pest control, janitorial service, refuse removal, and fire extinguishers.

**13. Alterations, Changes and Additions.** No structural changes, alterations or additions shall be made by Vendor to the premises without the prior written consent of County. Any such alterations, changes and additions shall remain for the benefit of and become property of the County.

**14. Delivery Acceptance and Surrender of Premises.** County represents that the premises are in fit condition for use as a food service concession. Vendor agrees to accept the premises on possession as being in a good state of repair and in sanitary condition. Vendor shall surrender the premises to County at the end of the Contract term, if the Contract is not renewed, in the same condition as when Vendor took possession, allowing for reasonable use and wear, in damages by acts of God, including fire and storm. Vendor shall remove all business signs or symbols placed on the premises by it before redelivery of the premises to County, and to restore the portion of the premises on which they were placed in the same condition as before their placement.

**15. Partial Destruction of Premises.** Partial destruction of the premises shall not render this Contract void, or terminate it except as herein provided. If the premises are partially destroyed during the term of this Contract, County shall repair them, when such repairs can be made in conformity with local, state, and federal laws and regulations, within sixty (60) days of the partial destruction. Rent for the premises will be reduced proportionately to the extent to which the repair operations interfere with the normal conduct of Vendors business on the premises. If the repairs cannot be so made within the time limited, County has the option to make them within a reasonable time and continue this Contract in effect with proportional rent rebate to Vendor as provided for herein. If the repairs cannot be so made in sixty (60) days and if County does not elect to make them within a reasonable time, either party hereto has the option to terminate this Contract. If the building in which the leased premises are located is more than one-third destroyed, County may at its option terminate the Contract whether the premises are injured or not.

**16. County's Entry for Inspection and Maintenance.** County reserves the right to enter onto the premises at reasonable times to inspect them, to perform required maintenance and repair, or to make additions or alteration to any part of the building in which the premises under contract are located, and Vendor agrees to permit County to do so. County may, in connection with such alterations, additions, or repairs, erect scaffolding, fences, and similar structures, post relevant notices, and place moveable equipment without any obligation to reduce Vendors' rent for the premises during such period, and without incurring liability to Vendor for disturbance of quiet enjoyment of the premises, or loss of occupation thereof.

**17. Vendor's Exclusive Right to Operate Food Service Concession.** County hereby agrees to permit Vendor to operate the food service concession on property of County, at the location described herein. Vendor will be the sole food service operator, and County will not allow any other food concerns to operate out of the Government Center, Viera, or the Harry T. and Harriette V. Moore Justice Center during the term of this contract.

**18. Signs, Awnings, Marquees, Etc.** Vendor will not construct or place, or permit to be constructed or placed, signs, awnings, marquees, or other structures projecting from the exterior of the premises without County's written consent thereto. Vendor further agrees to remove signs, displays, advertisements or decorations it has placed, or permitted to be placed on the premises which in County's opinion, are offensive or otherwise objectionable. If Vendor fails to remove such signs, displays, advertisements or decorations within ten (10) days after receiving a written notice from County to remove same, County reserves the right to enter the premises and remove them at Vendors expense.

**19. Operation and Maintenance.** Vendor agrees as follows:

- a. To hire and utilize only personnel of satisfactory qualifications.
- b. To cooperate with County officials in all matters pertaining and relating to the operation of the concession.
- c. To keep the building and immediate premises clean and orderly in accordance with Florida State Sanitation or any applicable laws, regulations or ordinances. County reserves the right to perform, or have performed, periodic inspections of the cleanliness and sanitation conditions maintained on the premises.
- d. To provide and adequately arrange to offer the public a satisfactory concession in the nature of food and beverage consistent with good business management during all periods of the year.

A schedule of food items offered to the general public shall be subject to the approval of the Facilities Director or designee, and shall be posted at all times in full view of the public. Vendor agrees that the fees charged for goods and services will be competitive with commercial establishments within the central Brevard county area, and that such fees will not exceed the average retail prices of the same or comparable items charged by commercial establishments within the County

- e. Maintain the following operating hours:

Monday through Friday (excluding holidays)

8:00 a.m. until 4:00 p.m.

Board Meeting Dates

8:00 a.m. until 4:00 p.m., or until Board Adjournment, at the discretion of Vendor

Night Board Meeting Dates

8:00 a.m. until 4:00 p.m., or after 4:00 p.m. at the discretion of Vendor.

- f. That all improvements and any changes made by Vendor to the building shall be at the cost of Vendor and subject to prior approval by the County.
- g. To install and maintain at Vendors expense all required equipment, including coolers, stoves, sinks and such other equipment as is needed to operate the concession, including customer seating to accommodate at least forty (40) customers at each location. This is to include any required safety or fire prevention equipment necessary for proper operation. Vendor should be aware that the premises are not ventilated to handle equipment such as deep fat fryers, etc.
- h. Vendor realizes that this concession is in a public facility and that its staff will be dealing with the public, and as such, their demeanor must be appropriate.
- i. To keep food source in sound condition and no spoilage.
- j. To properly maintain product temperature.
- k. To have no unwrapped and potentially hazardous food being re-served.
- l. To keep personnel with infections restricted.
- m. To have personnel use good hygienic practices.
- n. To have food equipment and utensils properly cleaned and sanitized.
- o. To use a safe water source.
- p. To provide accessibility to toilet and hand washing facilities.
- q. No presence of pests.
- r. Properly store and label toxic items.
- s. Properly install and maintain safety items such as fire extinguishers, exiting system, adequate electrical wiring and any gas appliances.
- t. To adequately pick up and dispose of garbage for the concession operation, including the furnishing of containers for trash. Vendor shall meet all standards of franchise garbage and disposal collection specifications. County will not be responsible for any rubbish or waste disposal not acceptable to the franchise rubbish or waste disposal company/contractor.

Any violation of these provisions will constitute a breach of the conditions of this lease and may result in the cancellation of same. In the event of cancellation or termination of this Contract Vendor shall remove its personal property from the premises. Any personal property not removed within ten (10) days of the effective date of termination of the Contract shall become the property of the County.

**20. County Obligations.** County agrees as follows:

To provide for electrical service capabilities, water and sewer services to the shell of the specific area described as the leased premises.

To provide maintenance of the exterior of the buildings, interior hallways, and restrooms.

**21. Accounting and Auditing Procedures.** All food sales shall be registered on a cash register with the amount of sale visible to the public. Daily cash register tapes shall be dated and kept as a permanent record. In the performance of this Agreement, the Tenant shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of the Agreement shall be open to inspection during regular business hours by an authorized representative of the Office and shall be retained by the Tenant for a period of three years after termination of the Agreement. All records, books and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Agreement shall be subject to copyright by Tenant in the United States or any other country. food sales shall be registered on a cash register with the amount of sale visible to the public. Daily cash register tapes shall be dated and kept as a permanent record. All transactions of Vendor shall be subject to audit upon reasonable notice, and all necessary records for said audit shall be available, upon reasonable request, for audit purposes to Brevard County and its auditors. Sales tax reports made to the State of Florida will be provided to the County as prepared.

**22. Tenants Assignment, Sublease or License for Occupation by Other Persons.** Vendor agrees not to assign or sublease the leased premises, any part thereof, or any right or privilege connected therewith, or to allow any other person, except Vendor's agents and employees, to occupy the premises or any part thereof, without first obtaining County's written consent. County expressly covenants that such consent shall not be unreasonably or arbitrarily refused. One consent by County shall not be a consent to a subsequent assignment, sublease, or occupation by other persons. Vendor's unauthorized assignment, sublease or license to occupy shall be void, and shall terminate the Contract at County's option. Vendor's interest in this Contract is not assignable by operation of law, nor is any assignment of its interest herein, without County's written consent.

**23. Contract Breached by Tenant's Receivership Assignment for benefit of Creditors, Insolvency, or Bankruptcy.** Appointment of a receiver to take possession of Vendor's assets (except a receiver appointed at County's Request as herein provided), and its general assignment for benefit of credits, or in Vendor's insolvency or taking or suffering action under the bankruptcy act is a breach of this Contract.

**24. County's Remedies on Tenant's Breach.** If Vendor breaches this Contract, County shall have the following remedies in addition to its other rights and remedies in such event:

- a. County may re-enter the premises immediately, and remove all Vendor's personal property therefrom. County may store the property in a public warehouse or at another place of its choosing at Vendor's expense or to Vendor's account.
- b. Termination. After re-entry, County may terminate the Contract on giving fifteen (15) days written notice of such termination to Vendor, re-entry only without notice of termination will not terminate the Contract.
- c. Re-letting Premises. After re-entering, County may relet the premises or any part thereof, for any term, without terminating the Contract at such rent and on such terms as it may chose. County may make alterations and repairs to the premises.
  1. Liability of Tenant on re-letting. Vendor shall be liable to County in addition to its other liability for breach of the Contract for all expenses of the re-letting, and of the alterations and repairs made, which County may incur. In addition Vendor shall be

liable to County for the difference between the rent received by county under the re-letting and the rent installments that are due for the same period under this Contract.

2. Application of rent on re-letting. County at its option may apply the rent received from re-letting the premise as follows:
  - a) To reduce Vendor's indebtedness to county under the Contract, not including indebtedness for rent;
  - b) To expenses of the re-letting and alterations and repairs made;
  - c) To rent due under this Contract;
  - d) To payment of future rent under this Contract as it becomes due.

If the new Vendor does not pay a rent installment promptly to County, and the rent installment has been credited in advance of payment to Vendor's indebtedness other than rent, or if rentals from the new Vendor have been otherwise applied by County as provided for herein, and during any rent installment period are less than the rent payable for the corresponding installment period under this Contract, Vendor agrees to pay County the deficiency separately for each rent installment deficiency period, and before the end of that period.

County may at any time after such re-letting terminate the Contract for the breach because of which it re-entered and re-let.

County may recover from Vendor on terminating the Contract for Vendor's breach all damages approximately resulting from the breach, including the cost of recovering the premises, and the work of the balance of this Contract over the reasonable rental value of the premises for the remainder of the Contract term, which sum shall be immediately due County from Vendor.

- d. Appointment of Receiver. After re-entry, County may procure the appointment of a receiver to take possession of and collect rent and profits from Vendor's business. If necessary, to collect such rents and profits the receiver may carry on Vendor's business and take possession of Vendor's personal property used in the business, including inventory, trade fixtures, and furnishing, and use them in the business without compensating Vendor therefore. Proceedings for appointment of a receiver by County, or the appointment of a receiver and the conducting by him of Vendor's business shall not terminate this Contract unless County has given Vendor written notice of such termination as provided herein.

**25. Animals.** Vendor shall not keep or allow domestic or other animals (except service animals) on or about the premises.

**26. Entire Contract:** This contract, together with any exhibits, task assignments and schedules constitute the entire contract between the County and Vendor and supersedes all prior written or oral understandings. This contract and any exhibits, task assignments and schedules may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto.

**27. No Waiver of Covenants or Conditions.** The failure of either party to insist on strict performance of any covenant or condition hereof, or to exercise any option herein contained, shall not be construed as a waive of such covenant, condition, or option in any other instance. This Contract cannot be changed or terminated orally.

**28. Subordination of Contract.** This contract shall be subject and subordinate to all underlying leases and to mortgages and trust deeds that may now or hereafter affect such leases or the real property of which the premises form a part, and also to all renewals, modifications, consolidations and replacements of such underlying leases, mortgages, and trust deeds. Although no instrument or act on the part of Vendor shall be necessary to effectuate such subordination, Vendor will, nevertheless, execute and deliver such further instruments confirming such subordination of this Contract as may be desired by the holders of such



mortgages and trust deeds or by any of the County's under such underlying leases. Vendor hereby appoints County as its attorney-in-fact, irrevocably, to execute and deliver any such instrument for Vendor. If any underlying lease to which this Lease is subject terminates, Vendor shall, on timely request attorn to the owner of the reversion.

**29. Subordination of Security Interest.** This contract shall be superior to any security interest any third party may have under the Uniform Commercial Code as adopted by the State of Florida or any other security interests document, in Vendors equipment, property or fixtures located on the premises. Vendor hereby covenants and represents that the equipment, property or fixtures of Vendor located at the premises are not subject to any security interest or liens superior to that of the County's.

**30. Successors in Interest.** This contract and the covenants and conditions hereof apply to and are binding on the heirs, successors, legal representatives, and assigns of the parties.

**31. Severability.** In the event a court of competent jurisdiction determines any sentence, provision, paragraph, or section of this Contract to be null and void, the remaining parts of this agreement shall continue in full force and effect as though such sentence, provision, paragraph or section had been omitted from said Contract.

**32. Venue.** Venue for any legal action brought by any party to this Contract to interpret or construe this Contract shall be in a court of competent jurisdiction in and for Brevard County, Florida.

**33. Additions, Deletions, or Modifications of Services:** The County reserves the right at its sole discretion to increase, decrease, or delete any portion of this agreement/contract at any time without cause, and if such right is exercised by the County, the total fee shall be adjusted on a prorated basis.

**34. Attorney's Fees:** In the event of any legal action to enforce the terms of this contract each party shall bear its own attorney's fees and costs, and any trial shall be non-jury.

**35. Governing Law:** This agreement shall be governed, interpreted and construed according to the ordinances and laws of Brevard County and the State of Florida.

**36. Compliance with Statutes:** It shall be Vendors responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, state, and federal agencies as applicable.

**37. Assignments:** Vendor shall not assign any portion of this agreement.

**38. Termination:** The County retains the right to terminate the contract, in part or in its entirety, with good cause, upon thirty (30) days prior written notice or as stated herein. In the event of termination by either party, the awarded vendor shall be paid for services performed through the date of termination. If either party refuses to perform any of the provisions of this contract or otherwise fails to satisfy the contract provisions, the performing party may notify the other party in writing of the non-performance and terminate the contract or such part of the contract as to which there has been delay or a failure to properly perform. Such termination is effective upon the party's receipt of the Notice of Termination.

**39. Independent Contractor:** Vendor shall perform the services under this agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this agreement shall be interpreted or construed to constitute Vendor or any of its agents or employees to be the agent, employee or representative of the County.

**40. Right to Audit Records:** In the performance of this Agreement, the Grantee shall keep books, records, and accounts of all activities, related to the agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this agreement shall be open to inspection during regular business hours by an authorized representative of the Office and shall be retained by the Grantee for a period of three years after termination of this agreement. All records, books and accounts related to the performance of this agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this agreement shall be subject to copyright by Grantee in the United States or any other country.

**41. Federal Tax ID Number:** Vendor shall provide to the County their Federal Tax ID Number or if Vendor is a sole proprietor, a Social Security Number.

**42. Employment:** Vendor shall not engage the services of any person or persons now employed by the County, including any department, agency, board or commission thereof, to provide services relating to this contract without written consent from the County.

**43. Construction of Agreement:** The parties hereby acknowledge that they have fully reviewed this agreement, its attachments and have had the opportunity to consult with legal counsel of their choice, and that this agreement shall not be construed against any party as if they were the drafter of this Agreement.


**44. Notice:** Notice under this agreement shall be given to Brevard County Facilities Department, 2725 Judge Fran Jamieson Way, Melbourne, FL 32940. Notice shall be given to Vendor by mailing written notice, postage prepaid to 4230 Woodhaven Dr., Melbourne, FL 32935

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

As approved by the Board on 5-4-2004

Reviewed for legal form and content:

  
(Assistant) County Attorney

  
Nancy N. Higgs, Chair  
Board of County Commissioners  
Brevard County, Florida

  
Scott Ellis, Clerk of Court

 4-19-04  
Vendor date