

Palmetto City Council
Minutes
June 16, 2003

Elected Officials Present:

Larry Bustle, Mayor
Shirley Bryant, Vice Mayor
Tamara Cornwell, Council Member
Mary Lancaster, Council Member
Brian Williams, Council Member

Elected Officials Absent:

Charlie Grace, Council Member

Staff and others present:

Attorney Jim Dye
J. E. Free, Jr., City Clerk
Chief Garry Lowe
Mick Hickey, Public Works Director
Jessica McCann, Planning & Zoning Administrator
Bob Schmitt, Interim Planning & Zoning Administrator
Diane Ponder, Administrative Assistant

Mayor Bustle called the meeting to order at 6:00 pm announcing a Section 286.011(8), Florida Statutes, litigation meeting would be held, estimated to last one hour. Attending the meeting was Mayor Larry Bustle; Shirley Bryant, Vice Mayor; Tamara Cornwell, Council Member; Mary Lancaster, Council Member; Brian Williams, Council Member; and Jim Dye, City of Palmetto attorney. Mayor Bustle announced the City attorney is seeking advice regarding settlement of the Creel v. City of Palmetto litigation, Case No. 2001CA-1655. The meeting was continued in private.

Mayor Bustle reconvened the public meeting to order at 7:00 p.m.

Rev. William DeSue, Sr., Word of Life Fellowship Church, gave the invocation followed by the Pledge of Allegiance to the United States Flag.

Mayor Bustle read a proclamation honoring the life of Peter S. Harllee, Sr. The proclamation was accepted by his children Peter S. Harllee, Jr. and Mary Lou Powell.

1. APPROVAL OF AGENDA

MOTION: Ms. Bryant moved, Mr. Williams seconded and motion carried 4-0 to approve the agenda as amended by the removal of item #5, Fiscal Year-End 2003 Audit Presentation, and relocation of the Terra Ceia Bay Country Club Master Development Plan Amendment to item #3.

2. CONSENT AGENDA

- A) Minutes: June 2, 2003 City Council Meeting
- B) Minutes: June 9, 2003 City Council Workshop Meeting
- C) Dye, Deitrich, Prather, Petruff & St. Paul, PL billing through April 30, 2003
Professional Services - \$11,248.25 Litigation Services - \$9,585.21
- D) A.J. Jim Spalla, PA billing through 5/30/03 - Creel Litigation -\$2,122.34
- E) May Check Register
- F) Special Function Permit - 4th of July Celebration

MOTION: Ms. Bryant moved, Mrs. Lancaster seconded and motion carried 4-0 to approve the Consent Agenda.

3. TERRA CEIA BAY COUNTRY CLUB MASTER DEVELOPMENT PLAN AMENDMENT

Mayor Bustle opened the public hearing.

Stephen Thompson, representing Tract 2 owners, voiced opposition to a continuation of the public hearing, stating his opinion the Master Development Plan amendment must take place prior to the Site Plan review. The two must not be heard simultaneously as it takes away the ability of the applicant to react and incorporate any concerns heard in the planning process.

Mr. Pat McGraff, 504 Ten Downing St., questioned why the City is the petitioner in the zoning for Tract 2 when a developer is involved. He stated if the issue moves forward the 50 units and 38 in Ten Downing St. equals over 10% of the PUD zoning tract available in approximately four acres.

MOTION: Ms. Bryant moved, Ms. Cornwell seconded and motion carried 4-0 to continue the public hearing to August 4, 2003 at 7:00 p.m.

4. RESOLUTION NO. 03-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMETTO, FLORIDA, AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY COUNCIL, TO EXECUTE THE NECESSARY DOCUMENTS TO CONCLUDE CREEL V. CITY OF PALMETTO LITIGATION.

Attorney Dye stated the topic was a continuation of the shade meeting held at 6:00 p.m., where final action has to be taken in the sunshine. The Creel v. City of Palmetto litigation involves property owned by Mrs. Creel located at the quadrant of US 301 and US 41, where a City sewer and water pipe runs through a portion of the property, allegedly without permission of the owner. Mr. Dye discussed the mediation conference held June 4, 2003, which resulted in the Mediated Settlement Agreement attached hereto and made a part of these minutes. Mr. Dye reviewed the items contained in the agreement as follows:

The City agrees to pay Mrs. Creel \$99,000 in settlement of all attorney & consultant costs, for which the City will receive a permanent easement for the water and sewer pipes. The City will, within the next ten years, if the property develops, contribute up to \$40,000 for the construction of a sewage lift station at the site to serve the 13.5 acre parcel

Mr. Dye recommended approval of the settlement. Mr. Dye also informed Council the settlement, if approved, also settles any federal claims Mrs. Creel may have had.

MOTION: Ms. Bryant moved, Mr. Williams seconded and motion carried 4-0 to adopt Resolution No. 03-13.

Mr. Dye recommended the \$99,000 settlement amount should be inserted into Section 1 of Resolution No. 03-13. He also advised the necessity of Council approving the Mediated Settlement Agreement. Ms. Bryant amended her motion to contain Mr. Dye's recommendations and Mr. Williams seconded the amendment. The motion carried 4-0.

5. CHARTER REVIEW COMMITTEE UPDATE

RESOLUTION NO. 03-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMETTO, FLORIDA, AUTHORIZING THE EXECUTION OF DOCUMENTS TO EXTEND THE CONTRACT OF STANSBURY RESOLUTIONS BY DESIGN, INC.

Charter Review Committee Chairman Ron Witt discussed the process the Charter Review Committee has made to date, describing the contribution Mr. Jim Stansbury has made as facilitator. Mr. Witt concluded his presentation stating the Charter Review Committee will present a report identifying issues and recommendations for solutions. He requested City Council extend

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the ability to contract with Jim Stansbury through the fall months for a total of \$3,400. Mr. Witt also complimented the aid provided by City staff.

MOTION: Ms. Bryant moved, Mr. Williams seconded and motion carried 4-0 to adopt Resolution No. 03-09.

6. CARR DRAIN FUNDING AGREEMENT

MOTION: Ms. Cornwell moved, Mrs. Bryant seconded and motion carried 4-0 to approve and authorize Mayor Bustle to execute the Carr Drain Funding Agreement between the City and Manatee County.

7. SPECIAL FENCE PERMIT 1519 12TH STREET DRIVE WEST

MOTION: Ms. Cornwell moved, Ms. Bryant seconded and motion carried 4-0 to approve the Special Fence Permit for 1519 12th Street Drive West.

8. LINCOLN PARK LEASE, USE AND MAINTENANCE AGREEMENT

Grants Coordinator Tanya Lukowiak informed Council Manatee County now maintains Lincoln Park and inquired if the City, as owner of the Lincoln Park property, would be willing to use a FRDAP Grant to offset the County's expense in adding lights, bleachers and update of the soccer and football fields. The grant funds will reimburse Manatee County \$150,000 of the approximate \$300,000 expense of the project.

MOTION: Ms. Cornwell moved, Mrs. Lancaster seconded and motion carried 4-0 to approve and authorize the Mayor to execute the Addendum to the Lincoln Park Lease, use and Maintenance Agreement.

9. RESOLUTION NO. 03-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMETTO, FLORIDA, GRANTING CONSENT AND APPROVAL OF RENEWAL OF SUBLEASE.

Mr. Dye informed Council there are two pieces of property, the island and the submerged land under the marina, and the causeway to the island. Mr. Dye stated the sublease under discussion is only for the island, expires 2007 and contains an option to extend the lease for 25 years. Council's approval of the resolution grants the 25-year extension to 2032.

Scott McKay, McKay Law Firm, representative for Century Bank and North River Holdings, Inc., concurred with Mr. Dye's synopsis of the sublease term. He stated the purchaser of the restaurant is seeking an assurance from the City the restaurant's sublease will be extended for the additional 25-year period before expending funds in renovation.

Discussion ensued on the current annual rent paid the City. The City will be able to renegotiate the lease payment in 2032.

MOTION: Ms. Bryant moved, Ms. Cornwell seconded and motion carried 4-0 to adopt Resolution No. 03-12.

10. RESOLUTION NO. 03-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMETTO, FLORIDA, AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER LEASE/PURCHASE AGREEMENT WITH BANC OF AMERICA LEASING & CAPITAL, LLC; AUTHORIZING A LEASE OF APPROVED EQUIPMENT THEREUNDER; AUTHORIZING THE EXECUTION OF SUCH OTHER DOCUMENTS AS MAY BE NECESSARY TO COMPLETE THE TRANSACTION CONTEMPLATED HEREBY; AND PROVIDING AN EFFECTIVE DATE.

Mr. Free informed Council the resolution, as provided by Florida League of Cities, has not been conformed by the attorney. The resolution authorizes the Mayor to enter the Florida League of Cities Master Lease Program; the agreement is a continuing document that allows addition of equipment at later dates; the term of the lease is based on each piece of equipment's life expectancy; the interest rate is fixed for the duration of the lease term for each piece of equipment added to the lease/purchase program. The authority to acquire equipment in the future will require Council approval.

MOTION: Ms. Cornwell moved, Ms. Bryant seconded and motion carried 4-0 to adopt Resolution No. 03-10.

11. RESOLUTION NO. 03-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALMETTO, FLORIDA, AUTHORIZING ACQUISITION OF OPERATING EQUIPMENT FOR FISCAL YEAR 2002-2003.

Mr. Free informed Council the list of equipment on Exhibit A was submitted by the department heads, and as noted, some was partially funded in the fiscal year-end 2003 budget, while others were fully funded in the same budget. The balance of the equipment is not contained in the current budget. Discussion ensued on the fact the capital equipment in the Enterprise Funds was put on hold during the current-year budget process. Mr. Hickey advised Council some of the listed equipment is also operational equipment.

Mr. Free stated the equipment contained on Exhibit A will be paid in annual payments equaling approximately one-quarter to one-seventh of the estimated purchase price. The annual payment on the total \$633,312 equipment expenditure would be approximately \$131,000. Mrs. Lancaster voiced concern in obligating the City to an annual expenditure of \$131,000 without a budget. Mr. Williams stated Council needed to know why the equipment was being requested and called for a workshop meeting.

Mr. Free stated the funding source for the noted items on Exhibit A is in the current budget at \$40,000, more than enough to fund the equipment through the lease program for the current year. The parks items are General Fund items and the balance of the equipment is Enterprise Fund items. He stated he believes there are sufficient funds in both the General and Enterprise Funds to fund the items, but he would have to look at the collective revenue to confirm his statement.

Discussion ensued on moving forward with the funded and partially funded equipment and then pursuing funding for the balance of the equipment. Mr. Free requested Council proceed with items one, two and twenty-one on Exhibit A. He stated items six, seven and eight can be separately acquired with the fully budgeted funds. Discussion ensued on leasing items six, seven and eight rather than purchasing. Mayor Bustle suggested a workshop for the balance of the equipment, but Council concurred to include all the equipment listed on Exhibit A once Mr. Free assures them through written communication the funding sources available to lease the entire list of equipment. Council instructed Mr. Free the Contingency Fund is not a source of funding for the lease program.

Ms. Cornwell discussed the need for the Police Department to plan so the City does not have to purchase seven cars during one fiscal year.

Attorney Dye stated Resolution 03-11 could be used, but Council should articulate how the funding of the lease is to occur. He advised the language of Section 2 of the resolution should be amended.

MOTION: Mr. Williams moved, Ms. Bryant seconded and motion carried 4-0 to adopt Resolution No. 03-11 and that the second Section 2 of the resolution be amended to read that funding for the lease payments shall be provided from

appropriate accounts, those being the General Fund that will fund the police cars and the building department truck, and the Enterprise Funds, that will fund the balance of the equipment lease purchase. Items six, seven and eight on Exhibit A shall be funded from the Enterprise Funds. The City Clerk shall provide Exhibit A, listing the equipment and the General and Enterprise Funds funding sources, to the Mayor for approval prior to executing lease documents.

Mayor Bustle recessed the meeting at 8:40 p.m. The meeting was reconvened at 8:50 p.m.

12. PUBLIC HEARING - ORDINANCE NO. 03-780

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALMETO, AMENDING ORDINANCE NO. 387, THE ZONING ORDINANCE OF THE CITY OF PALMETTO, FLORIDA, BY CHANGING THE ZONING OF THE PROPERTY DESCRIBED IN SECTION ONE OF THIS ORDINANCE FROM RM6 TO PDH (PLANNED DEVELOPMENT HOUSING); PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. (Z0304 Habitat for Humanity, 502-610 11th St. Dr. W. and 510-613 12th St. W., approximately 5.78 acres)

Interim Planner Bob Schmitt reviewed the proposed project. Current RM6 zoning requires platting of single-family lots to conform to RS4 district standards, which require minimum lot size of 5,000 sq. ft. and a minimum frontage of 50 feet. The proposed project will not meet the district standards, thus the request for the zoning change to planned development housing (PDH). Staff is recommending approval of the zoning, with the condition a privacy fence is erected along the western property adjacent to the commercial property. Approval is based on the fact CRA awarded the project to Habitat for Humanity and the superior design of the project.

Bob Lombardo presented the conceptual general development/preliminary plat for the proposed project. The following waivers are being requested:

- Landscaping buffer along perimeter of the project
- A ten foot front yard setback
- Internal roadway width of 40 feet
- Reduced lot size - minimum 47 foot frontage, 4,550 square feet

Mr. Lombardo discussed the placement of the homes on the lots. Parking will be at the rear of the homes. Gary Taylor, Habitat for Humanity, stated the Florida Coalition for Affordable Housing guidelines for the future were used when developing the placement of the homes. Density is lower than zoning allows at 6.2 units per acre.

Discussing the front setbacks, planned streets will have Miami curb and gutter. Habitat for Humanity agreed to install conventional curbing that will result in greater front yard setbacks and inhibit parking streetside. Council discussed the parking issues of the project. When posted parking restrictions were discussed, Mr. Taylor advised the Homeowner's Association will also monitor the project. Council concurred that no parking on the streets is to ensure access of emergency vehicles; one solution is parking only on one side of the street.

Suzy Walters, Habitat for Humanity, discussed the Homeowner's Association, and how it will govern any subsequent renters of the houses. She also stated that applicants will undergo a homeowner's training, which can include parking issues.

Mr. Lombardo discussed the construction of the retention pond, stating its construction would meet all requirements. Mr. Taylor stated the board of Habitat for Humanity has committed to fence and landscape the buffer around the pond, even though it is not required.

Mayor Bustle opened the public hearing.

Robert Jones, 1104 3rd Ave. W., spoke about the project creating problems.

Charles Smith, 1701 4th Ave. W., spoke about the need to ensure the project's infrastructure is sufficient, need to review front yard setbacks and parking issues.

MOTION: Mr. Williams moved, Mrs. Lancaster seconded and motion carried 4-0 to adopt Ordinance No. 03-780, with the variances in Article VIII, Section 8.5, along with recommendations from Planning regarding the privacy fence along the west side, conventional curbing and the fence around the pond.

13. DEPARTMENT HEAD'S COMMENTS

Chief Lowe

Requested Corporal Mike Johnston, who received his promotion May 21, 2003, be compensated and moved to Grade 10, Step 4.

MOTION: Ms. Cornwell moved, Ms. Bryant seconded and motion carried 4-0 to move Corporal Mike Johnston from Grade 6, Step 8 (approximately) up to Grade 10, Step 4.

A meeting was held with Rita Mooney, Manatee County Code Enforcement Division Chief. Several items will be brought to City Council regarding the Code Enforcement Board and how to fill vacant code enforcement positions from the applications for the positions.

Mr. Free

Informed Council a voting delegate to the Florida League of Cities conference needed to be appointed.

MOTION: Ms. Bryant moved, Mr. Williams seconded and motion carried 4-0 to name Tamara Cornwell to be the voting delegate for the City of Palmetto.

Mr. Hickey

Attended the Manatee County water rate meeting. An email will be sent with pertinent dates.

Bob Schmitt

Informed Council the 1600 Pennsylvania issue site plan will be coming to the City for review. Requested Council concurrence to have the first reading of the ordinance August 4, 2003, review by the P&Z Board August 11, 2003 and public hearing August 18, 2003. Council had no objection.

14. MAYOR'S REPORT

Attending the Mayor's meeting. Mayor Poston has not returned to work yet but is doing well.

A meeting is being scheduled with Ernie Padgett, Commissioner Bruce to bring closure to the Jackson Park issue.

Council may receive complaints because Bank of America has notified the City it will no longer cash pay checks free of charge - a \$5 fee will be assessed. The Bank has offered employee options to avoid the check cashing fee.

Announced he will be on vacation July 5 through July 19, 2003.

15. COUNCIL MEMBER'S COMMENTS

Mrs. Lancaster

Announced she will be on vacation July 5 through July 19, 2003.

Commended the Mayor on his diligence regarding Jackson Park.

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Ms. Cornwell

Informed Council she had received a call from Chuck King regarding the Terra Ceia issue and cautioned Council they are under constraints as to discussing forthcoming items for review.

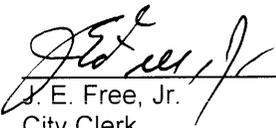
Mayor Bustle discussed the fact the City is not the applicant, it was entered into on behalf of the developers. Mr. Dye reminded Council any letters received should be entered into the record and if a Council Member is personally contacted they should disclose when someone has spoken with them. He advised the best approach is to stay out of issues.

Mr. Williams

Reminded staff Council did not like receiving information at the last minute.

Meeting adjourned at 10:00 p.m.

Minutes approved: August 4, 2003



J. E. Free, Jr.
City Clerk

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIRCUIT CIVIL

JEANETTE M. CREEL,

Plaintiffs,

Case No.: 2001-CA-1655

v.

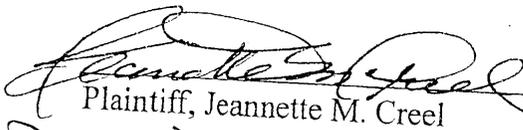
THE CITY OF PALMETTO, a political
subdivision of the State of Florida,

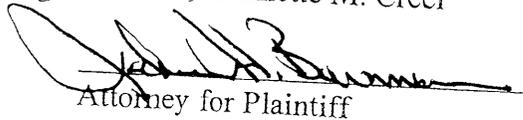
Defendant.

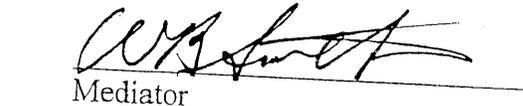
MEDIATED SETTLEMENT AGREEMENT

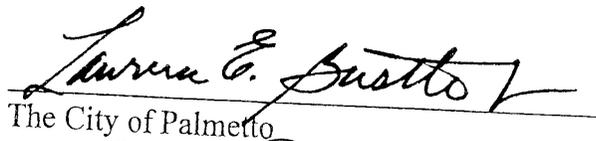
At a Mediation Conference held on the 4th day of June, 2003, the parties reached the following Settlement Agreement:

1. Defendant, The City of Palmetto, will pay to Plaintiff, Jeanette M. Creel, the sum of \$ 99,000. ~~including~~ ^{AND ALL FEDERAL CLAIMS, IF ANY.} ~~including~~ all fees and costs. This Settlement Agreement is subject to review and approval by The City of Palmetto City Council. CITY WILL USE BEST EFFORTS TO REVIEW THIS AGREEMENT AT THE JUNE 16, 2003 CITY COUNCIL MEETING.
2. Counsel for Plaintiff and Defendant will jointly submit to the Court for signature a mutually approved form of final disposition of this matter as soon as practical hereafter.
3. This Agreement, dated June 4, 2003, and the attached addendum, if any, contain(s) all of the agreements of the parties.


Plaintiff, Jeannette M. Creel


Attorney for Plaintiff


Mediator


The City of Palmetto

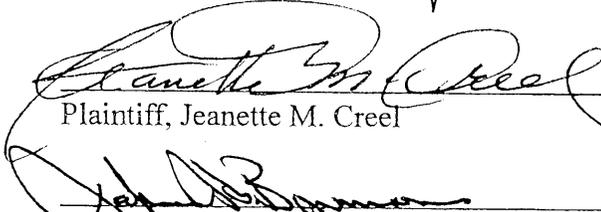

Attorney for The City of Palmetto

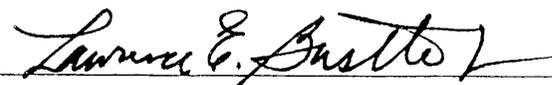
ADDENDUM TO MEDIATED SETTLEMENT AGREEMENT

This settlement is made subject to the following additional conditions:

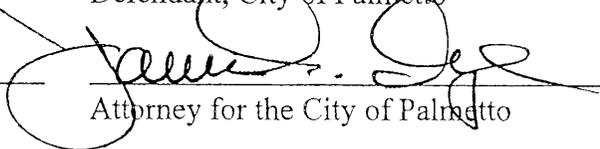
1. CREEL AGREES TO GRANT TO THE CITY
A PERPETUAL WATER AND SEWER UTILITIES
EASEMENT ON THE 1.27 ACRE PORTION OF
THE SUBJECT PROPERTY DESCRIBED IN THE 11/18/99
SURVEY BY LEO MILLS & ASSOCIATES, INC. (EXHIBIT 1)
SAID EASEMENT WILL RESERVE THE RIGHT
TO THE PROPERTY OWNER TO PAVE THE
EASEMENT AREA FOR PURPOSES OF
INGRESS, EGRESS AND PARKING. SAID
EASEMENT WILL INCLUDE LANGUAGE
PROVIDING FOR REASONABLE NOTICE TO
THE PROPERTY OWNER PRIOR TO ENTRY
ON THE EASEMENT AREA FOR
MAINTENANCE.

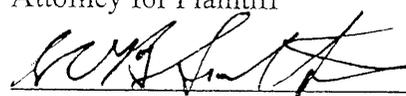
2. THE CITY WILL PAY THE \$99,000.-
SETTLEMENT PROCEEDS IN TWO EQUAL


Plaintiff, Jeanette M. Creel


Defendant, City of Palmetto


Attorney for Plaintiff


Attorney for the City of Palmetto


Mediator

ADDENDUM TO MEDIATED SETTLEMENT AGREEMENT

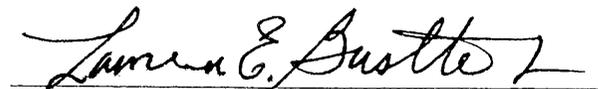
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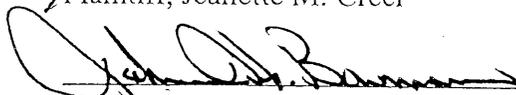
PAYMENTS OF \$49,500.- The FIRST
PAYMENT WILL BE MADE WITHIN THIRTY
DAYS OF ENTRY OF THE FINAL JUDGMENT.
The SECOND PAYMENT WILL BE MADE
ON OR BEFORE DECEMBER 31, 2003.

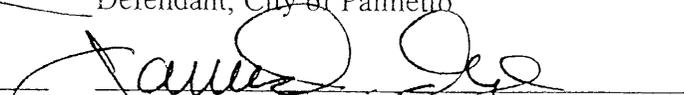
3. The CITY AGREES TO pay up TO
\$40,000.- TOWARD THE CONSTRUCTION
OF A LIFT STATION UPON APPROVAL OF
AN INITIAL SITE DEVELOPMENT PLAN FOR
THE 13.5 ACRE SUBJECT PROPERTY
WITHIN TEN YEARS FROM THE DATE
OF ENTRY OF THE FINAL JUDGMENT.

4. CREEEL'S ATTORNEY WILL PROVIDE
THE CITY WITH A LETTER CONFIRMING
THE APPROXIMATE NUMBER OF HOURS


Plaintiff, Jeanette M. Creel


Defendant, City of Palmetto


Attorney for Plaintiff


Attorney for the City of Palmetto


Mediator

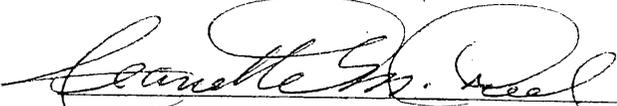
ADDENDUM TO MEDIATED SETTLEMENT AGREEMENT

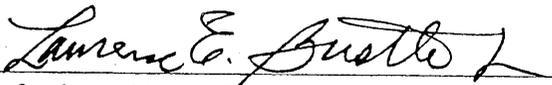
This settlement is made subject to the following additional conditions:

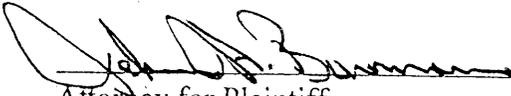
EXPENDED ON THE CASE.

5. THE EASEMENT WILL ALSO INCLUDE LANGUAGE PROVIDING THAT IN THE EVENT MAINTENANCE ACTIVITIES ARE PERFORMED WITHIN THE EASEMENT, THE AREA WILL BE RETURNED TO SUBSTANTIALLY THE SAME CONDITION THAT EXISTED PRIOR TO THE MAINTENANCE ACTIVITIES.

6. The PARTIES AGREE THAT MORE SPECIFIC LANGUAGE WILL BE AGREED TO AND INCORPORATED INTO THE FINAL JUDGMENT REGARDING ALLOCATION OF THE LIFT STATION CAPACITY.


Plaintiff, Jeanette M. Creel


Defendant, City of Palmetto


Attorney for Plaintiff


Attorney for the City of Palmetto


Mediator