

MINUTES
KEY COLONY BEACH
CITY COMMISSION REGULAR MEETING
Thursday November 14, 2019 9:30 a.m.
City Hall Auditorium

1. **Call to Order, Pledge of Allegiance, Prayer, and Roll Call:** The regular meeting of the Key Colony Beach City Commission was called to order by Vice Mayor Sutton at 9:30 a.m. followed by the Pledge of Allegiance and Prayer.

Present: Vice Mayor Ron Sutton, Secretary/Treasurer Patti Trefry, Commissioner April Tracy and Commissioner Kimmeron Lisle. *Also Present:* City Clerk Rebecca Todd, City Attorney Tom Wright, Building Official Gerard Roussin, Police Chief DiGiovanni, Building Inspector Greg Lawton, and Assistant City Clerk Debbie Nickel. City Administrator Chris Moonis attended by phone. Excused: Mayor John DeNeale, City Administrator Chris Moonis, and Fire Chief Johnson. Public – 8.

2. **Approval of Minutes:** The minutes of the October 24, 2019 Regular Commission Meeting were approved by acclamation.

3. **Agenda Additions, Changes, Deletions:** Vice Mayor Sutton requested moving Agenda Item K under City Administrator to the first item for discussion as City Administrator Moonis is currently on the phone but has a scheduled meeting at 10:00.

1.Agreement with Livs Associates (draft): Vice Mayor Sutton stated at the last meeting he requested the agreement include a completion time set in the documents and a clause if they didn't comply. It is not in the current packet but will be included once the bid is accepted and a pre-construction meeting has been held. It will be in the documents of that meeting where they must sign. Commissioner Lisle stated concern regarding Section 4.2.3 Item 2 only providing for 6 visits to the site by the Architect and the possibility of it costing the City more money if additional visits are required. Commission requested it be amended to once a month. It need not be enforced if a visit is not necessary but would cover the City from incurring additional costs. Commissioner Lisle addressed concern regarding Section 4.2.3 Item 3 providing for only 2 inspections for any portion of the work to determine whether certain portions of work are substantially complete and that it could cost the City more if additional inspections are necessary. City Administrator Moonis stated he could ask them to increase it. He doesn't think more than four inspections would be needed. Commissioner Tracy inquired if the correct interpretation would be 2 inspections per portion of work. Building Official Roussin stated usually milestones are set up in this type of project and he would expect the Architect to want to review each milestone step whatever that may be. They would break it down in the pre-construction meeting. Usually milestones include things such as foundation, block roof work, and interior rough-in. Commissioner Lisle requested the verbiage of Item 3 be more specific in terms of their visits per milestone. Attorney Wright stated subsection 2 refers to visits to the site but subsections 3 and 4 refer to inspections so it's not clear that these inspections would necessitate additional visits or if the visits override enough with the requested increase in the number of visits. He doesn't think it will be a problem. The way he reads it the Architect can do an inspection while he's here on a visit.

Commissioner Lisle addressed concern regarding Section 4.2.5 providing if the project extends beyond 18 months the Architect's services shall be compensated as additional services. Her concern is the entire project may take longer than 18 months. Building Official Roussin stated that could be discussed in the pre-construction meeting. He suggested adding verbiage stating they are still available throughout the time frame of construction. Attorney Wright stated the way it is worded, if they're not done within 18 months the City will be charged a second time. For instance, if the Architect says he'll do two inspections that determine final completion which it says in 4.2.3 and 4 and they're not done in 18 months he'll charge again. He suggested deleting Section 4.2.5 entirely. The Commission concurred.

Commissioner Trefry inquired if Attorney Wright saw any issues during his review of the contract. Attorney Wright stated his only issue is the arbitration clause but he was hesitant to bring it up. There aren't any arbitrators in Monroe County so the procedure moves to Miami rather than the local circuit court. He's been told it's more expensive than litigation. After further discussion it was decided the first option of choice is binding mediation, which is the least expensive. The second option would be litigation and the third option is arbitration.

Commissioner Lisle addressed Section 9.3 on page 19 addressing if the owner suspends the project for more than 90 days. Her concern is if there is a natural disaster that caused a necessity for the project to be suspended for more than 90 days. Attorney Wright suggested adding to the beginning of the section "For reasons other than force majeure,". The Commission concurred.

Commissioner Lisle addressed Section 11.8.2 on page 22 – for reimbursable expenses the compensation shall be the expenses incurred by the Architect and Architect's consultants plus 10 percent of the expenses incurred. She stated she is not very familiar with architect contracts and questioned if the 10% addition is standard. Building Official Roussin stated usually a contractor/architect on a normal cost-plus job charges cost plus 15 to 18% so on a project of this scope that is probably a normal percentage.

Attorney Wright stated returning to the dispute resolution discussion, there is a provision in the agreement calling for mediation but if it can't be resolved by mediation then it goes to arbitration. His suggestion is to change that to binding mediation and delete this section about going to arbitration if it can be resolved at mediation. Section 8.2 on page 17 should have the word binding wherever there is the word mediation and delete the entire Section 8.3.

Commissioner Lisle requested clarification regarding supplemental services Section 4.1.1.26 on page 12 regarding multiple bid packages. Administrator Moonis explained it is a provision for them to provide a second bid package if the first bid package failed for whatever reason.

MOTION: Motion made by Commissioner Lisle, seconded by Commissioner Trefry to approve the agreement with changes discussed as follows: Section 4.2.3 item number 2 the number of visits to be once a month and item number 3; change in Section 4.2.5 eliminating the 18 months to include the language until completion of the contract; to include in Section 9.3 insert at the beginning of that sentence for reasons other than force majeure; in Article 8 amend Section 8.2 to provide for binding mediation and eliminate Section 8.3 and all subs under that relating to arbitration

ON THE MOTION: Roll Call Vote. Unanimous Approval.

4. **Special Requests:**

A. Request from Havana Jacks for Extended Music Hours on December 31st: Josh Francisco, representing Havana Jacks, presented a request to play music until 1:00 am on December 31st as was granted last year.

MOTION: Motion made by Vice Mayor Sutton, seconded by Commissioner Lisle to extended hours on December 31st until 1:00.

ON THE MOTION: Roll Call Vote. Unanimous Approval.

5. **Committee and Staff Reports:**

A. Marathon Fire/EMS: No Report

B. Recreation Committee: No Report.

C. Beautification Committee: No Report

D. Disaster Preparedness Committee: Building Official Roussin reported all preparations are in place.

E. Planning & Zoning Board: No Report

F. Utility Board: No Report

G. Police Department:

1. Approval of MCSO Hold Harmless Agreement for use of facilities: Chief DiGiovanni presented a request for approval to have Attorney Wright sign the MCSO Hold Harmless Agreement for the Police Department to use their Firearms Training Center. Attorney Wright stated the agreement holds the owners of the facility harmless from any liability to the City. He stipulated policy should only allow the officers to use the range and no other employees, spouses or other such persons. Chief DiGiovanni confirmed the use is only for active officers.

MOTION: Motion made by Commissioner Tracy, seconded by Commissioner Trefry to approve the MCSO Hold Harmless Agreement.

ON THE MOTION: Roll Call Vote. Unanimous Approval.

Chief DiGiovanni stated since the last meeting there has been 1 report: an information report. They responded to 2 medical calls and alarms, provided backup to MCSO 24 times, and received 16 miscellaneous calls. Along with road patrol, boat patrol and vacation watch program there will be a spelling bee in Marble Hall Friday night from 6:00 until 10:00 hosted by the Habitat for Humanity. The installation of the vehicle camera systems in the four SUV's has been completed. Chief DiGiovanni recognized Officer Buxton for observing a pedestrian whom didn't seem quite right and getting him medical attention. He was taken to Fishermen's Hospital and later transferred to Miami Hospital. Department of Family Services has been notified to investigate his well being. Vice Mayor Sutton requested the Chief extend thanks to Officer Buxton from the Commission.

H. Building Department/Public Works:

Building Official Roussin reported receiving a partial set of plans for Key Colony Beach Club. He is waiting for the architectural and structural plans so it can be provided to the Planning & Zoning Board for review. Public Works completed the ditches at the Causeway Entry for the electrical irrigation for the proposed mounds. Public Works has scheduled Christmas decorations for next week.

I. City Secretary/Treasurer: No Report.

J. City Clerk: City Clerk Todd reported the accountant has completed the year end journal entries booking fixed assets and depreciation. She will be meeting Auditor Julio Buzzo in the beginning of next week to begin the annual audit process. She stated Administrative Assistant Janice Scheel gave two weeks notice of resignation yesterday. Due to personal circumstances she has decided to return to Missouri.

K. City Administrator: No Report.

6. Commissioners Open Discussion: None.

7. Items for Discussion /Approval: None.

8. Approval of Warrant: Warrant 1019 in the Amount of \$584,604.85

MOTION: Motion made by Commissioner Lisle, seconded by Commissioner Trefry to approve Warrant 1019 in the amount of \$584,604.85.

ON THE MOTION: Roll Call Vote. Unanimous Approval.

9. Ordinances and Resolutions: None

10. Commissioner Reports: No Report

12. City Attorney Report: No Report.

13. Citizen Comments and Correspondence: None

The meeting adjourned at 10:13 a.m.

Respectfully submitted,



Rebecca Todd, City Clerk