

# **REPORT OF INVESTIGATION**



**Complaint Number 12-036**

## **NOTICE CONCERNING CONFIDENTIALITY**

This report of investigation concerns an alleged violation of Chapter 112, Part III, Florida Statutes, or other breach of public trust under provisions of Article II, Section 8, Florida Constitution. The Report and any exhibits may be confidential (exempt from the public records law) pursuant to Section 112.324, Florida Statutes, and Chapter 34-5, F.A.C., the rules of the Commission on Ethics. Unless the Respondent has waived the confidentiality in writing, this report will remain confidential until one of the following occurs: (1) the complaint is dismissed by the Commission; (2) the Commission finds sufficient evidence to order a public hearing; or (3) the Commission orders a public report as a final disposition of the matter.

STATE OF FLORIDA  
COMMISSION ON ETHICS  
Post Office Drawer 15709  
Tallahassee, Florida 32317-5709

## REPORT OF INVESTIGATION


**TITLE:** TONY CAPELA  
Street Superintendent  
City of Palm Coast Public Works  
Palm Coast, Florida

**COMPLAINT NO.:** 12-036  
Exhibits A and B

**INVESTIGATED BY:**   
Ronald D. Moalli

**Distribution:** Commission on Ethics  
Respondent  
Advocate  
File

**Releasing Authority:**   
Executive Director

  
Date

\* \* \* \*

**REPORT OF INVESTIGATION  
COMPLAINT NO. 12-036**

(1) The complaint in this matter was filed by Terry Geigert of Palm Coast, who alleges that Tony Capela, while serving as the City of Palm Coast Street Superintendent, violated the Code of Ethics for Public Officers and Employees.

(2) Ms. Geigert alleges that the Respondent is a personal friend of the owner of RoadTek, LLC, a City contractor, and that the Respondent showed favoritism to RoadTek by setting contract limits below \$15,000, so that no bidding by other contractors would be required. Ms. Geigert also alleges that the Respondent allowed RoadTek to use City labor and equipment and to store its equipment on City property, while other contractors were not allowed to do so. She further alleges that the Respondent fostered a hostile work environment in order "to divert anyone from questioning his favoritism with . . . RoadTek." Ms. Geigert claims that Mr. Capela told her he could lie about her in order to have her fired and also claims he had her transferred to a different work crew "setting her up to fail," because she lacked the experience to perform required tasks. Ms. Geigert further alleges Mr. Capela used cash paid to the City for scrap metal to finance office parties, and that he hired, as Public Works Chief Operator, a friend who was not qualified for the position. She also claims that photographs of the Respondent, taken with a City-owned camera, depict the Respondent helping his friend remodel a private residence and relaxing on a boat, when he allegedly was being paid by the City to attend a hurricane conference in South Florida. Finally, Ms. Geigert alleges the Respondent sold his house to the owner of RoadTek, who is a personal friend.

(3) The Executive Director of the Commission on Ethics noted that based upon the information provided in the complaint, the allegations were sufficient to warrant a preliminary investigation to determine whether the Respondent's actions violated Section 112.313(6), Florida Statutes (Misuse of Public Position), and Section 112.313(7), Florida Statutes (Conflicting Employment or Contractual Relationship).

**RoadTek Contracts and Favoritism**

(4) Ms. Geigert alleges that Mr. Capela is a friend of the owner of RoadTek, a City contractor, and that he showed favoritism to RoadTek by ensuring that RoadTek received "all the contractor work and then some." He achieved this, she continued, by setting the contract limits below \$15,000 so no bidding by other contractors would be required. She added that there was no reason to hire this contractor, because the work performed by RoadTek could be accomplished by City employees. Ms. Geigert also alleges that despite the fact that three companies, including RoadTek, were awarded Public Works continuous construction services contracts, RoadTek received most of the work. Ms. Geigert further alleges that Mr. Capela allowed the owner of RoadTek to store his equipment on City property, and allowed RoadTek to use City personnel and equipment, something she claims other contractors were not allowed to do. She cited RoadTek's use of City-owned form boards the company used when it was hired to pour concrete driveways, and the company's use of the City's asphalt roller when the company was hired to lay asphalt. Concerning her allegation that RoadTek was allowed to use City employees, Ms. Geigert claims that the City's concrete crew would do

preparation and cleanup work for a project and RoadTek would come in and pour the concrete, a job the City crew was capable of accomplishing. Ms. Geigert further alleges that Mr. Capela instructed City inspectors not to inspect RoadTek's work, while similar work by other contractors was inspected.

(5) According to the Florida Department of State, Division of Corporations' website, RoadTek registered with the State as a Limited Liability Company (LLC) in February 2008. The business' mailing, principal, registered agent, and manager/member addresses were located in Palm Bay, Florida. State records reflect that in 2010, the company changed its business address to 2 Edge Lane, Palm Coast, Florida, and that Rui and Jenevieve Ferreira are the corporation's officers. Records further reflect that the purpose for which the LLC was organized is: "Road patchwork, guardrails, sign installation."

(6) This Investigator established through a review of City documents and interviews with City personnel, that RoadTek was first hired by the City in March 2008. From March through August 2008, RoadTek performed work for the City through purchase orders, which were described as "on-going work orders." Because of the amount of work generated in the Public Works Department, and the related expense and time involved in constantly creating Purchase Orders, in August 2008, City personnel decided to publish a Request for Proposal (RFP), for a contract for continuing construction services. This contract was for specified work such as guardrail repair, smaller asphalt patch work and small concrete pours. This RFP was designed to allow the City to contract with multiple private contractors on an hourly basis for a specific need the City could not perform because of the lack of manpower, expertise, or equipment.

(7) Between March 2008 and August 2008, RoadTek received work pursuant to 11 purchase orders for projects throughout the City, totaling \$103,415. The company also received 31 projects that were under the purchasing threshold of \$750, which did not require a purchase order. These projects totaled \$21,144.

(8) The City's first contract/purchase order with RoadTek on March 13, 2008, reflects that the purchase order is a "Non-Competitively Bid (Sole Source)" for services including asphalt patch work, road shoulder repair, concrete repair work, catch basin clean out and repair, swale regrading, and tree removal, for a total of \$14,999. The "Request for Approval to Purchase (RAP)" was completed by Public Works Chief Operator Renee Shevlin, signed by Department Head Richard Adams, and approved by Chief Procurement Officer Brian Rothwell. In the document, RoadTek's address was listed as 1818 Hazelton Street N.W., Palm Bay, Florida, and 1818 Hazelton Street N.W., Palm Beach, Florida (the business address registered with the State at the time was the street address in Palm Bay). Palm Bay is approximately 120 miles south of Palm Coast.

(9) Of the remaining ten Purchase Orders, five were less than \$3,000, which, pursuant to the City's Purchasing Policy, required one verbal quote; three were for more than \$3,000, but less than \$15,000, which required three verbal quotes; and two were for more than \$15,000, but less than \$25,000, which required three written quotes. The City's purchasing policies and sole source purchase procedures are appended as composite Exhibit A.

(10) According to City documents from the Public Works Department, during this same March through August 2008 time frame, ten other construction companies, performing the same type of work as RoadTek, were awarded a total of \$1,016,430 in contracts. This information, which is being retained in the investigative file, reflects numerous contracts/purchase order prices set just below the next category level in the City's purchasing policy (i.e. \$2,999 instead of \$3,000).

(11) As previously reported, from mid-August 2008 forward, RoadTek performed work for the City under a construction services contract. RoadTek, along with numerous other companies, submitted bids for "construction services" contracts the City published in order to eliminate the need for City departments to continuously create purchase orders. RoadTek submitted proposals in three RFPs for continuous construction services contracts, and was awarded work in two of the three contracts. The first, RFP-PW (Public Works) -08-06 was on August 19, 2008, and was for construction services related to the Public Works Department. Records reflect that four companies, including RoadTek, submitted proposals, which were reviewed by a selection committee. The committee participants included the Respondent, Public Works Chief Operator Renee Shevlin, and Public Works supervisor Dale Gebhard. This contract was awarded to RoadTek and one other company, Carpe Diem, and was for three years with two additional one year options. City records also reflect that in May 2010, prior to the first contract's expiration, the City published RFP-PW-10-09, which contained the same scope of work as the previous contract (PW-08-06). In September 2010, RoadTek, along with Environmental Land Services of Flagler County (ELS), and 4 C's Trucking & Excavation, were awarded contract PW-10-09. The review committee for this contract was comprised of Ms. Shevlin and Public Works Supervisors James Nicoles and Tom Wormuth. This contract had no pre-determined amount of budgeted funds: as reflected in the construction services contract, the company hired for a specific project was hired on an as-needed basis. The company hired charges the City by the hour, at a rate already agreed upon from that company's bid response to the RFP.

(12) Purchasing Manager Brian Rothwell explained that RFP-PW-10-09 was published prior to the expiration of the 2008 RFP because Carpe Diem's work product did not meet the City's standards, and its services to the City were discontinued. He said the City published the second RFP before the first expired because the City wanted access to more than one contractor.

(13) Mr. Rothwell provided records of the City's expenditures from 2008 through 2012 to the four construction contractors under the 2008 and 2010 continuous construction contracts.

	<u>2008 – 2009</u>	<u>2009 – 2010</u>	<u>2010 – 2011</u>	<u>2011 - 2012</u>
<u>4C's</u>	(no contract) \$0	\$40,399	\$48,242	\$0
<u>ELS</u>	(no contract) \$0	\$0	\$125,070	132,588
<u>RoadTek</u>	\$1,196,664	\$1,254,073	\$931,183	631,918
<u>Carpe Diem</u>	\$84,491	(no contract) \$0	(no contract) \$0	(no contract) \$0

(14) Mr. Capela, interviewed in the company of his attorney, Jeffrey Weiss, reported that he was hired in November 2006 as the City of Palm Coast's Public Works Street Superintendent.

(15) Addressing his alleged relationship with Mr. Rui Ferreira, owner of RoadTek, Mr. Capela said that before he moved to Florida in 2006, he and Mr. Ferreira worked for the same construction company in Massachusetts, although in different divisions and in different parts of the state. He reported that it was a work relationship and they did not socialize. Mr. Capela stated that in 2005, while living and working in Massachusetts, he and his wife purchased a house in Palm Coast as an investment. In 2006, he recalled, his wife informed him of a job posting from the City of Palm Coast, and because they had been contemplating relocating to Florida, he applied for the job. He noted that he was not chosen for the position at that time, but later, received a call from a City of Palm Coast representative asking if he was still interested in the position. He said he interviewed for the position and was chosen.

(16) Mr. Capela related that Mr. Ferreira had relocated to Palm Bay approximately two years previous to his (Capela's) move to Florida. Aware of this, he continued, they conversed occasionally because he did not know many people in Florida. They did not socialize often, he added, because Mr. Ferreira and his wife, lived in Palm Bay, approximately 120 miles away.

(17) Mr. Capela related that he was hired by then-Public Works Director Bill Gilley, and that three supervisors and their crews reported to him. Mr. Capela said that sometime in 2008, Mr. Gilley resigned and he (Capela) was given more responsibility by his new supervisor, Public Works Director Richard Adams, and City Manager Jim Landon. Currently, he related, six supervisors and their crews report directly to him.

(18) Mr. Capela recalled that when he was first hired, Public Works Department employees had a lax attitude concerning their work. He cited employees sleeping on the job, long lunch breaks, employees having no goals or tasks, employees spending long periods of time in the break room reading the newspaper, and employees attending barbeques on City time as some of the behaviors former Director Gilley allowed to take place. He explained that after he was hired, this behavior stayed "status quo," and despite his repeated inquiries, Mr. Gilley would not allow him fix the problem. When Mr. Gilley retired in 2008, Mr. Capela explained, Mr. Landon and Mr. Adams gave him more responsibilities and instructed him to not only change the work ethic problems in the Public Works Department, but to implement procedures that would improve the department.

(19) Mr. Capela related that when he was tasked by the City Manager to "clean up" the Public Works Department, he started by evaluating his work crews. He stated that he quickly realized that he had employees who claimed to be proficient in their jobs, but really were not. He noted that because he was new to the area and he did not know the area's vendors, and because employees lacked expertise for certain essential tasks, there was a sharp learning curve for him and his staff.

(20) Mr. Capela explained that the City was incorporated in 1999, six or seven years prior to his hiring, and it still was "evolving." He recalled that because of a lack of maintenance throughout the years, the City was "a mess." As examples, he talked about guardrails being in a state of disrepair, and swales creating stagnant water in residential areas, which resulted in complaints from residents.

(21) He recalled that there was a list nicknamed "the 800 list," which named 800 residents who had complained about standing water in swales in front of their homes. These residents were told that because of a backlog, the City would attend to their problem within three or four years. This was unacceptable to the new City Manager, he reported. Mr. Capela determined that City crews who repaired and maintained the swales did not have the expertise to properly complete the task. He stated that he and his supervisors had a difficult time finding a contractor who was able or willing to complete this work for the City. Mr. Capela said he knew Mr. Ferreira had started a concrete business in Palm Bay, and because he knew of Mr. Ferreira's abilities, he believes he asked Public Works Supervisor Tom Wormuth to contact Mr. Ferreira to see if he would be interested in work in Palm Coast. Mr. Capella recalled that because business was slow in Palm Bay, Mr. Ferreira came to Palm Coast and provided services including, but not limited to, specialty concrete and guardrail work for the City.

(22) Mr. Capela maintains that his training and personnel changes, along with hiring outside contractors to assist the crews with specialties they did not have, allowed Public Works to carry out its tasks, such as "the 800 list," in a more proficient manner. Mr. Capela advised that RoadTek's ability to perform its tasks in a proficient and trustworthy manner was a major component in this transformation.

(23) Ms. Geigert alleged that Mr. Capela set contract limits below \$15,000 in an effort to avoid a requirement to solicit bids by other contractors.

(24) According to the City purchasing policy, Public Works Director Adams, and Mr. Capela, purchase orders between \$3,000 and \$14,999 required three verbal quotes and approval of the Public Works Director and the City's Purchasing Department. Any purchase order above \$15,000 requires three written quotes and the City Manager's approval. Purchasing Manager Brian Rothwell confirmed that each purchase order in question, between March and August 2008, complied with the City's purchasing policy, including those requiring verbal or written quotes.

(25) Mr. Caapela noted that of the 11 purchase orders RoadTek received between March and August 2008, three were for a department other than Public Works. He made note of this because Mr. Ferreira's company impressed other City departments as a dependable and trustworthy company.

(26) Mr. Capela said he could not explain why RoadTek's first purchase order on March 13, 2008, was a sole source contract, when the company was based 120 miles away, or why the cost of the work to be completed was \$14,999. Mr. Capela contends that he was not involved in the process. He explained that then-Supervisor Wormuth evaluated the scope of

work and estimated that it would cost the City \$14,999. Mr. Wormuth then met with Chief Operating Officer Shevlin, who produced the purchase order and passed it on to Public Works Director Adams. Mr. Capela explained that prior to the first 2008 RFP for continuing services, this was how Mr. Wormuth hired RoadTek as a contractor. He would estimate a cost for certain tasks, create a purchase order, obtain the required approvals, hire the contractor until funds from that purchase order expired, and then start the process over. Mr. Capela maintains that he had no role in the matter. He noted that each purchase order reflected the City's purchasing policy's required signatures for approval.

(27) Former Street Supervisor Wormuth, no longer a City employee, disputed Mr. Capela's testimony that he, at Mr. Capela's suggestion, contacted Mr. Ferreira to ascertain his interest in working for the City. He maintains that Mr. Capela did not ask him to contact Mr. Ferreira. Mr. Wormuth believes that because they were friends, it was Mr. Capela who made the initial contact with Mr. Ferreira. Concerning his role in creating a purchase order, Mr. Wormuth stated that he informed Public Works Chief Operator Renee Shevlin of the scope of work and was not involved in decisions concerning a purchase order. He said Ms. Shevlin completed the purchase order requirements, including the first sole source purchase order.

(28) Ms. Shevlin recalled that under the Public Works Department's prior leadership, the Department's work product was "really shoddy" and the supervisors were not experienced. She stated that in the beginning of Mr. Capela's tenure as Street Superintendant, he bid out smaller concrete and asphalt, and other smaller jobs, instead of having one continuing services contract. Ms. Shevlin said that a supervisor would inform her of his need for a specific job and she would create the purchase order, after informing Mr. Capela. She stated in some instances Mr. Capela suggested obtaining a quote from RoadTek, because the City did not have the ability to perform a particular task. Ms. Shevlin noted that Mr. Capela was not involved with purchase orders, other than being informed that one would be created, and that they were signed by others in the chain of command. She also recalled that Public Works was informed by the Purchasing Department that because of the amount of work being generated through purchase orders, a continuing construction services contract was required. Although she did not know how RoadTek came to work for the City, Ms. Shevlin believed it was the result of Mr. Capela's knowledge of Mr. Ferreira and his work product, as well as his (Capela's) difficulty in finding a company that could provide the quality work product that he demanded. She believes Mr. Capela initially contacted Mr. Ferreira.

(29) Mr. Ferreira recalls receiving a call from Mr. Wormuth asking if he would be interested in doing work for the City. Because there was not much construction work in Palm Bay, he continued, he traveled to Palm Coast. When he started working in Palm Coast, he continued, he was living in Palm Bay, traveling to Palm Coast during the week. He said he rented a house in Palm Coast and stored his equipment in the same storage facility he currently uses.

(30) Public Works Director Adams contends that there is "no way" Mr. Capela could manipulate the cost of purchase orders to contract solely with, or show favoritism to, one contractor, as is alleged by Ms. Geigert. He referred to the City's purchasing policy and its approval requirements as the City's "check valve" that would not allow this to occur. Mr.



Adams explained that purchase orders between March and August 2008, prior to implementing the construction services contracts, were "on-going" work orders. The purchase orders he said, would be used for smaller jobs such as asphalt patch work or small concrete pours on an "as needed" basis. He explained that the purchase order would be set at a price, and the supervisors would have the contractor complete the scope of work described in the purchase order until funds from that specific order were exhausted. They then would produce another purchase order. Mr. Adams advised that the City's Purchasing Department determined that the construction services contract was a better tool because of the amount of work generated by the Public Works Department.

(31) Mr. Adams reviewed the purchase orders in question, paying special attention to RoadTek's first purchase order/contract on March 13, 2008, and opined that they were completed properly. Mr. Adams confirmed that he approved the sole-source purchase order; as did the Purchasing Department, pursuant to the City's purchasing policy. He expressed no concern that the amount of the purchase order was \$14,999 and that it went to a sole source. He did not consider that a "red flag" indicating contract manipulation, because it occurs in other departments as well. He opined that the purchase order was purposely kept at his (Adams') level to avoid it moving to the next level, which would take longer to get it approved.

(32) Mr. Capela denied that favoritism toward RoadTek is the reason the company receives a majority of the work from the construction services contract. He reported that the 2008 construction services contract was awarded to two companies: RoadTek and Carpe Diem. He could not recall specifics, but said he believed his involvement was gathering information for the contract's scope of work, and he was one of three members of a review committee formed to evaluate and score each company's response to the RFP. He could not remember the review committee's process. However, he believes each member of the committee received an evaluation packet and scored each company independently. Mr. Capela reported that he was not involved in the decisions concerning which company to use on a specific project. He maintains that the decision was and still is made by his supervisors. He said his only advice to his supervisors is to use the company that does the best job because the work is a reflection on the supervisors. Mr. Capela added that one of his supervisors found Carpe Diem employees not working when they should have been, and noted they did not have a quality work product. He remarked that RoadTek received the majority of the work because he and his supervisors believed they produced a better work product.

(33) Concerning RFP-PW-10-09, Mr. Capela recalled that the Purchasing Department decided to rebid the 2008 construction services RFP because the City was not using the services of Carpe Diem, which left only RoadTek to fulfill the contract's services. The City rebid the contract after deciding that more than one contractor's services should be available to the City. Mr. Capela stated he was not involved in this RFP and did not serve on the review committee, and did not attempt to influence any decisions made by those employees on the review committee. Mr. Capela reported that three companies, including RoadTek, were awarded this contract. He reiterated that the supervisors on a specific City project are responsible for deciding which contractor receives the work.

(34) Section 6: "General Provisions," of RFP-PW-10-09 reflects, "The CONTRACTOR acknowledges that the CITY may retain other contractors to provide the same type of services for CITY projects. The CITY reserves the right to select which Contractor shall provide services for CITY projects."

(35) Public Works Director Adams did not deny that RoadTek received the majority of the work from contract RFP-PW-10-09, but said this was because RoadTek does quality work and is reliable and therefore is the staff's preference on City projects. He reported that although the City could possibly complete much of the work that private contractors, including RoadTek, perform, the City uses private contractors to augment the City's staff on an as-needed basis. He cited workload, resource availability, and City manpower shortages as some of the reasons the City uses private contractors.

(36) City Manager Jim Landon, Contract and Risk Manager Diane Torino, and Purchasing Manager Brian Rothwell confirmed that it would be "impossible" for Mr. Capela to manipulate purchase orders or contracts to favor one private contractor over another. Each referred to the City's purchase order approval requirements, and stated that the requirements had been met for each of the purchase orders in question as well as the construction services contract work.

(37) Public Works Supervisor Jim Nicoles reported that he uses RoadTek to replace driveways he digs up when he replaces or repairs swale pipes. He stated that he uses RoadTek because the city does not have a crew that is properly trained for this task. He related that the City has done this work in the past, but the finished product was not of good quality. He also reported that having an outside contractor helps his workload. Mr. Nicoles confirmed that he is the person who decides which contractor to use and that although he has the choice of three different companies, he usually chooses RoadTek because of its professionalism, good work product, and trustworthiness. Mr. Nicoles maintains that Mr. Capela does not dictate or even suggest which contractor he should use.

(38) Public Works Supervisor Joe DiMattina, who supervises the City's pipe and ditch crews, also reported that he uses RoadTek because of the quality of its work. He added that he uses RoadTek for asphalt work because the City does not have an asphalt crew. Mr. DiMattina stated that although he has a choice of contractors, he prefers to use RoadTek and that Mr. Capela has had no involvement in this decision. He noted that Mr. Capela has reminded Department supervisors that there are other contractors and that the Department is not tied exclusively to RoadTek.

(39) Former Public Works Supervisor Tom Wormuth related that, prior to Mr. Capela's employment, replacement of driveways was performed by City crews. When Mr. Capela took over, he continued, he (Capela) was dissatisfied with the Public Works' work product. He recalled that the Respondent said the crews were not properly trained, worked too slowly, and had a poor work quality. Although Mr. Wormuth disagreed with Mr. Capela's evaluation of his crew's work product, Mr. Wormuth related, Mr. Capela "brought on" RoadTek for the driveway work. He reported that RoadTek supplemented City crews because there was so much work to be completed, and with the assistance of RoadTek, work was completed faster.

Mr. Wormuth related that he chose RoadTek over the other contractors because its work product was better. He explained that RoadTek only came to the jobsite to pour the concrete; City crews prepared the job and cleaned up.

(40) Ms. Geigert alleges that Mr. Capela allowed the RoadTek crew to use City equipment when other contractors were not permitted to do so.

(41) Mr. Capela acknowledged that RoadTek uses City equipment, but maintains RoadTek and other contractors are allowed to use City equipment. As an example, Mr. Capela related that although RoadTek has its own roller for asphalt work, if there is a City job RoadTek is working on that is bigger than what its roller is designed to do, or if its roller is not working, RoadTek uses the City's roller. The company also uses the City's form boards when "forming-up" a concrete job, he added, because it is a cost savings to the City. He explained that if the contractor supplies form boards, it is an added expense, which the contractor would then charge to the City, plus ten percent.

(42) Public Works Director Adams and City Manager Landon also approved RoadTek's use of City equipment on City projects when necessary. They each verified that other companies are allowed to do so.

(43) Ms. Geigert also alleges that RoadTek is allowed to use City personnel on City projects while other companies are not permitted to do so.

(44) Mr. Capela denied that RoadTek uses City personnel to augment its work crew. He explained that the City uses RoadTek to supplement City crews, and that RoadTek works in conjunction with City crews on City projects.

(45) Supervisors DiMattina, Nicoles, and former Supervisor Wormuth each confirmed that RoadTek has its own employees and does not use City employees to supplement its work crew.

(46) In Section 14, "City Rights and Responsibilities," of the 2010 "Contract for Construction Services (RFP-PW-10-09)," notes, "The City shall make City personnel available where, in the City's opinion they are required and necessary to assist the CONTRACTOR. The availability and the necessity of said personnel to assist the CONTRACTOR shall be determined solely at the discretion of the City." As previously reported, this contract was awarded to three companies, RoadTek, Environmental Land Services of Flagler County, and 4C's Trucking & Excavation.

(47) City Contract and Risk Manager Diane Torino, and Purchasing Manager Brian Rothwell, each stated that the aforementioned City Right and Responsibility is standard language in City contracts and is not exclusive to RFP-PW-10-09.

(48) Ms. Geigert also claimed that RoadTek's work was not inspected, while the City required that other contractors' work to be inspected.

(49) City Inspector Gary LaLima confirmed that RoadTek's work was never inspected until approximately three months prior to his interview for this investigation. Mr. LaLima reported that when another City employee brought the lack of RoadTek inspections to his attention, he brought it to Mr. Capela's attention. He said he instructed Mr. Capela to have Mr. Ferreira request an inspection at the conclusion of RoadTek's work on a specific project. According to Mr. LaLima, Mr. Capela informed him that inspections were not necessary and that he needed to "mind his own business." Currently, Mr. LaLima reported, because of a change in policy, RoadTek's work is inspected.

(50) Former City inspector Kevin Howell also reported that RoadTek's work was not inspected. He maintains that when he questioned RoadTek's lack of inspections, both Mr. Capela and Howell's former supervisor, Jim Nicoles, instructed him not to inspect RoadTek's work because RoadTek was working for the City. Mr. Howell contends that when it was decided to require RoadTek to acquire a permit and an inspection, he was instructed by Mr. Capela to just drive by and "sign off" on the inspection. When he attempted to discuss this matter with his last supervisor, Joe DiMattina, Mr. DiMattina instructed him to pass the inspection and not to worry about RoadTek's work.

(51) Mr. Capela related that until approximately two years ago, the Public Works Department did not "pull permits" to do City swale work when replacing driveways. The objective of a permit, he continued, is to regulate a private contractor to confirm that the job is being completed to City standards. The City has a duty to the resident to make sure that "Joe Contractor" is completing his work correctly. Mr. Capela reported that in the past, City projects were not required to have permits and inspections, and concrete pours were not required to be inspected. Mr. Capela reasoned that the contractors, such as RoadTek, were working on City projects and supplementing City crews and were not working on a private project that required a permit.

(52) In the past, Mr. Capela maintains, the Building Department inspected stormwater projects for which the Department had no expertise. As an example, he said during construction of new homes City building inspectors allowed swale pipes that were installed incorrectly under residential driveways by private contractors to pass inspection. He related that because the Public Works Department was not included in these inspections, eventually the City was required to "rip out" numerous residential driveways to correct the problem. As a function of reorganization, Mr. Capela insisted that Public Works be involved in the new construction inspections of swale pipes. He believes it was at this time that two inspectors were assigned to Public Works – Mr. LaLima and Mr. Howell. Their duties at that time, he continued, were to inspect the new private construction driveways and swales, and to respond to citizen complaints concerning standing water in their swales.

(53) Mr. Capela related that these inspectors reported to the very supervisors who supervised the crews working on the swale projects. He explained that when his crews were tasked with repairing a swale, and the project included ripping up a residential driveway to correct the elevation of a swale pipe under that driveway, the on-site supervisor supervised and inspected the work as it was being completed. Mr. Capela said the important part of the job was the placement and elevation of the pipe under the driveway, not the concrete pour.

All RoadTek was doing, he confirmed, was pouring concrete and finishing it. He reported that not only was the concrete pour not required to be formally inspected, but at that time the whole project was not inspected. There were no permits required to start a City job, he said, and permits are the catalyst for inspections. Mr. Capela also questioned the logic of a City inspector inspecting a project that had been overseen by the inspector's own supervisor. Despite that, he continued, because there were questions as to why the City did not inspect its own work, the City Manager decided that permits and inspections would be required. He noted that RoadTek currently gets permits prior to pouring residential driveways on City projects.

(54) Mr. Nicoles, Mr. DiMattina, and former City supervisor Wormuth all confirmed that RoadTek's work was not inspected. However, they each said, RoadTek's work was being completed in conjunction with a City project, which also was not being officially inspected. Mr. Nicoles was not aware of any specific instructions from the Respondent to preclude inspections of RoadTek's work, and Mr. DiMattina denied that he ever instructed anyone not to inspect RoadTek's work. Mr. Wormuth and Mr. DiMattina also reported that as supervisors of a specific project, it was their responsibility to inspect the job.

(55) Mr. Ferreira reported that although in the past he was not required to obtain a permit and a formal inspection, the supervisors always inspected his work. Currently, he added, he is required to pull a permit and the supervisors inspect his work before and after his company pours the concrete. He stated that now, at a job's completion, a City inspector inspects the work.

(56) City Manager Landon and Public Works Director Adams each stated that although the City is not required to have a permit and an official inspection of its swale work, they have instituted, as a formality, a final inspection including the concrete pour to insure that the work was completed properly. Mr. Landon explained that this matter was brought to his attention by his staff because RoadTek completed work for the City as a subcontractor and its work was not being inspected. He confirmed that RoadTek's work was inspected by the supervisor on the job, but without a formal inspection report. Mr. Landon stated that the City has always said City projects must meet the same standard as private work. Because it was brought to his attention that the City was not formally inspecting its own work, he said he changed the process even though there was nothing intentionally being done wrong.

(57) Finally, Ms. Geigert alleges that RoadTek is allowed to store its equipment on City property when other contractors are not allowed to do so. She presented photos of RoadTek's equipment in the City's Public Works' yard where the City stores its equipment. These photos are being retained in the investigative file.

(58) Mr. Capela contends that he has no knowledge of Roadtek storing its equipment on City property and that he never gave RoadTek permission to store its equipment on City property. He maintains that if RoadTek was allowed to leave its equipment on City property, it was short-term and through an agreement with a Public Works Department supervisor.

(59) Public Works Chief Operator Renee Shevlin reported that she has never seen RoadTek equipment stored on City property. She related that she often walked the City yard in the morning, before employees arrived, and never witnessed RoadTek's equipment on the property.

(60) Public Works Supervisor Joe DiMattina stated that he has never seen RoadTek's equipment in the City yard and that he has never given RoadTek employees permission to store equipment in the City yard.

(61) Public Works Supervisor Jim Nicoles reported that he has never seen RoadTek's equipment being stored on City property. He said that he knows Mr. Ferreira stores his equipment at a storage facility, because he has witnessed RoadTek's equipment at this location.

(62) Former City Supervisor Wormuth reported that he has witnessed RoadTek equipment being stored in the City yard, including a trailer and a mini excavator. He opined that it was being stored there because at the time, Mr. Ferreira had no other place to store his equipment.

(63) Mr. Ferreira denied that he ever left his equipment in the City yard overnight. He did not deny that his equipment was in the yard during the day, when his crew was either picking up or dropping off equipment, form boards or the City's asphalt roller. When asked about the photo of his trailer with the asphalt roller on it in the yard by itself, Mr. Ferreira believes that he was borrowing the roller and it was loaded on the trailer and he or one of his employees left to perform another duty and went back and picked up the trailer with the roller later the same day. Mr. Ferreira insists that he has never stored his equipment on City property overnight and that from the beginning of his work in Palm Coast, he has rented space from a storage facility.

### **Ms. Geigert's City Employment and Termination**

(64) Ms. Geigert stated that she was hired by the City of Palm Coast in November 2004 in the Public Works Department. Ms. Geigert alleges that she was transferred to other City departments because she was a "whistleblower." She related that when she started mentioning to other employees the favorable treatment RoadTek received from the City, she was transferred to less desirable locations. She reported that she was terminated in February 2010, and that she was "set up to fail" because the work required a skill set she did not possess.

(65) Ms. Geigert reported that she discussed the RoadTek situation with her fellow employees, including her supervisors, and was told to either "look the other way," or keep quiet about the matter, if she wanted to stay employed. She reported that in conversations with Mr. Capela he bragged about being like a god, that City Hall loves him, and that he can do no wrong. According to Ms. Geigert, Mr. Capela told her that he could make up a lie about her to get her fired and the staff at City Hall would believe him.

(66) Ms. Geigert claims that because she questioned RoadTek's use of the City's resources, Mr. Capela orchestrated, through her supervisors, her transfer to different departments within

Public Works, each with either a reduction in pay or requiring a skill set that she did not possess, "setting her up to fail," and eventually leading to her termination.

(67) Mr. Capela denies that he "set Ms. Geigert up to fail," recalling that upon his hire, Ms. Geigert already had a reputation as a complainer. Mr. Capela related that when he was first hired, Ms. Geigert's then-supervisor, Dale Gebhard, was not allowed by then Director Gilley, to properly supervise her because she alleged discrimination and threatened to sue the City. Mr. Capela said that upon being tasked to make changes, he instructed Mr. Gebhard to properly supervise Ms. Geigert instead of "letting her do her thing." He also reported that Ms. Geigert was constantly in his office complaining about never getting an opportunity to improve herself. One of Ms. Geigert's complaints, Mr. Capela added, was that she was not promoted because she was a woman.

(68) Mr. Capela noted, and Ms. Geigert's employment records confirm, that on August 15, 2005, she was promoted from Equipment Operator I to Equipment Operator II, and that on August 29, 2005, she declined this promotion.

(69) Mr. Capela recalled that in 2008 the Parks Maintenance Division was brought under his supervision. He reported that the personnel in this division had a reputation for not working. Mr. Capela said that he took approximately six employees from other divisions and exchanged them with six employees in Parks Maintenance and inserted a new supervisor. He added that Ms. Geigert was one of the employees moved to Parks Maintenance, a lateral move. Mr. Capela related that Ms. Geigert believed that the transfer was punishment and was at first reluctant to make the move. He told her, "I am giving you an opportunity to start fresh, create a new image of yourself, a new reputation, and as the Parks team grows become a leader. . . . Now it is up to you." Although she was initially enthusiastic, he recalled, over time, Ms. Geigert's supervisor, Ken Dawson, had many occasions in which he "wrote her up" because she did not want to perform the tasks she was assigned. Mr. Capela stated that Mr. Dawson was "fed up" with Ms. Geigert and discussed her termination with him. Mr. Capela stated that as a result of a suggestion from supervisor Tom Wormuth, he agreed to a transfer of Ms. Geigert to a new position under Mr. Wormuth's supervision, her third supervisor.

(70) Mr. Capela stated that Mr. Wormuth reported to him that he believed Ms. Geigert lied to him about her computer skills, and "failed miserably" at an assigned computer task. Next, he continued, Mr. Wormuth transferred Ms. Geigert to his concrete crew, where she failed again. Mr. Capela stated that Mr. Wormuth consulted with the Human Resources Department, and Ms. Geigert was placed in an evaluation program. According to Mr. Capela, because Ms. Geigert could not properly perform assigned tasks, Mr. Wormuth decided that she should be terminated.

(71) Mr. Capela maintains that the decision to terminate Ms. Geigert was Mr. Wormuth's, with the assistance of the Human Resources Department. His only involvement, he explained, pursuant to City policy, was to sign her termination letter.

(72) Mr. Capela denied that he set Ms. Geigert up to fail by transferring her to the concrete crew because she was a "whistleblower" concerning his alleged relationship with the owner of RoadTek. He argued that it would not make sense for him to allow Ms. Geigert to be

transferred to the concrete crew where she could observe the very conduct concerning RoadTek she was concerned about.

(73) Addressing the allegation that he orchestrated her termination, Mr. Capela explained that he does not get involved with daily activities between supervisors and their crews. He also stated that he does not involve himself in annual employee evaluations other than reviewing evaluations and inquiring about anything he believes needs to be addressed. Otherwise, he continued, he "signs off" on them pursuant to City policy.

(74) Finally, Mr. Capela denies Ms. Geigert's allegation that he told her that he could lie about her and get her fired, and he denies all other inflammatory remarks that she claims he made.

(75) Interviews were conducted with supervisors, management, and Human Relations personnel concerning the Complainant's allegation that she was transferred from crew to crew because she was a whistleblower and that Mr. Capela fostered a hostile work environment to divert anyone from questioning his favoritism toward RoadTek. Public Works Supervisors Dale Gebhard and Ken Dawson, as well as former Supervisor Tom Wormuth, were interviewed separately and each reported that Ms. Geigert's work product was not good, and that she created a lot of her own problems.

(76) Mr. Gebhard reported that Ms. Geigert had a poor work ethic, was a constant complainer, was not productive, and was very talkative. Mr. Gebhard also reported that he "wrote up" Ms. Giegert for disciplinary actions three or four times. He said that he wanted to terminate her during her probationary period, but his then-supervisor, Public Works Director Gilley, would not allow it because she was female and the Department had only a few female employees. Mr. Gebhard related that when there was a reorganization and Mr. Capela gave him a choice of personnel to move to another crew, he chose Ms. Geigert because of problems she caused. Mr. Gebhard confirmed that Mr. Capela does not get involved with his daily supervisory interactions, and that Mr. Capela did not instruct or order him to treat Ms. Geigert any differently than he (Gebhard) treated any other employee. He recalled having conversations with Mr. Capela concerning Ms. Geigert's non-productivity.

(77) Mr. Dawson reported that Ms. Geigert was assigned to his Parks Maintenance crew as a result of the Department's reorganization. He recalled that Ms. Geigert's duties included landscaping and mowing parks. He reported that her work product was not good and that he "wrote her up" for damaging equipment and because of poor job performance. He said she left his crew after she was given an opportunity to work on another crew. Mr. Dawson opined that the City went out of its way to help Ms. Geigert keep her employment, and denied that she was "singled out" and transferred because she was a whistleblower. Mr. Dawson contends that Mr. Capela did not instruct him to set Ms. Geigert up to fail or treat her differently, and he confirmed that Mr. Capela is not involved with his daily supervisory activities. However, he continued, they discussed Ms. Geigert's substandard work product.

(78) Mr. Wormuth advised that Ms. Geigert's work product was poor. He stated he considered himself a friend of Ms. Geigert, and when he learned she was being considered for



termination while she worked for Mr. Dawson, he asked Mr. Capela to transfer her to one of his crews to help her stay employed. He said he wanted to assist her because she was a single mother and a "good person." Mr. Wormuth recalled that Ms. Geigert told him that she was good with computers, and he had a computer-based project in the sign shop with which she could assist him. Mr. Wormuth reported that he discovered her computer skills were not as good as she claimed. He also noted that because she could not get along with staff in the shop, he was forced to move her to a different area. Eventually, he continued, he removed her from that position because her computer skills were not as she reported, and her relationship with the other staff did not improve. As a last effort to help her, Mr. Wormuth said, he assigned her to his concrete crew. (City records reflect that this was a "voluntary" demotion with less pay.) Mr. Wormuth recalled that because she was constantly making mistakes, he placed her in a 45-day evaluation program. Mr. Wormuth reported that because it was obvious that she could not do the job, he made the decision to terminate her. He confirmed that this was not Mr. Capela's decision. He also confirmed that Mr. Capela did not interfere with his supervisory relationship with Ms. Geigert or other crew members, noting that he did not ask Ms. Geigert to do more than any other employee. He maintains that Ms. Geigert was not harassed, and he contends that he did not advise his crew to avoid communicating with her. Finally, Mr. Wormuth opined that Ms. Geigert's termination was fair and just.

(79) Each of the above referenced supervisors reported that Mr. Capela's management style was harsh and brash, but that this did not translate to their control of their respective crews. Each supervisor reported that although Mr. Capela was aware of Ms. Geigert's problems, he did not interfere with their supervisory roles. They stated that Mr. Capela was supportive and helped her to be a productive employee, even though, as reported by Mr. Wormuth, there was "friction" between Mr. Capela and Ms. Geigert.

(80) Ms. Sandra Bolzer, a former City of Palm Coast employee, recalled that when she worked in the Human Resources Department (HR), Ms. Geigert was constantly reporting anything she thought was wrong in the Public Works Department. She continued, "Anything could be an issue for Terry [Geigert]." Ms. Bolzer recalled that although Ms. Geigert claimed to be the spokesperson for the staff, she also had issues with coworkers, supervisors, and the Respondent. Ms. Bolzer reported that when Ms. Geigert was pushed to make a specific complaint, she refused. Ms. Bolzer opined that Ms. Geigert was her own worst enemy, "never knowing when to stop." She further opined that Ms. Geigert is a smart person and she could be a good worker. Ms. Bolzer stated that she believed Ms. Geigert was moved to different work crews as a "way of getting rid of her," and she recalled Mr. Capela saying that everything should be documented "so she does not have a leg to stand on when they get rid of her."

(81) Public Works Chief Operating Officer Renee Shevlin stated that she and Mr. Capela counseled Ms. Geigert, and claimed that if Ms. Geigert had been a man, she would have been terminated earlier. She opined that Ms. Geigert was lazy, talked too much, and spent more time trying to get out of work than actually doing work. Ms. Shevlin confirmed that because Mr. Wormuth felt sorry for Ms. Geigert, he tried to help her and had her transferred to one of his crews. She related that the move to Mr. Wormuth's crew was voluntary and that Ms. Geigert knew she would have a reduction in pay. Ms. Shevlin confirmed that it was Mr.

Wormuth's decision to terminate Ms. Geigert, and that Mr. Capela was involved only because the City's process dictated his involvement.

(82) Human Resources Director Wendy Cullen recalled that Ms. Geigert was often in her office discussing her problems with supervisors and her job performance, especially when she got a bad evaluation. Ms. Cullen stated that she liked Ms. Geigert, but Ms. Geigert always believed she knew a better way of doing something and was very vocal about it.

(83) Ms. Cullen reported that after Mr. Capela was introduced into Ms. Geigert's chain of command, she realized that there would be a "culture shift" and that it would take some employees time to acclimate. Ms. Cullen related: "We tried really hard with Terry, we really did. We have spent long hours with Terry counseling her." She recalled that she and Mr. Wormuth placed Ms. Geigert in a 45 day improvement plan, and Ms. Geigert claimed that she was singled out because she was female. Ms. Cullen denied this accusation. Ms. Cullen reported that because of Ms. Geigert's failure with the improvement plan, Mr. Wormuth decided that she should be terminated.

(84) City Manager Jim Landon and Public Works Director Richard Adams each stated that they reviewed Ms. Geigert's termination and each stated that they agreed with the action because of her poor work performance.

(85) Ms. Geigert's employee file confirms that she was hired in November 2004 as an Equipment Operator I. In July 2005 she applied for a position as an Equipment Operator II, and in August 2005 was offered the position, which was a promotion. However, on August 29, 2005, Ms. Geigert authored a letter to her new supervisor declining the job offer and promotion to Equipment Operator II. According to her letter, there was some "miscommunication and confusion" about the new position's pay scale. Ms. Geigert wrote, "I have had the opportunity to think about what would be the best fit for my skills and abilities and for the worker teams of Public Works and to understand more about the needs and team dynamics of the Storm Water team." She continued, "So, at this time, I believe that the Public Works Department and I would both better be served if I decline this job offer to EO2."

(86) A review of Ms. Geigert's performance evaluation forms reflect that in 2005, she scored a "3.6, Meets Standards" out of a total of "5.00, Outstanding." This evaluation noted that she should use the "chain of command more often," and work on her "interpersonal skills." In February 2006, Ms. Geigert received an "Employee Disciplinary Report" concerning "equipment abuse," in which she received a warning and retraining on the equipment. Ms. Geigert's 2006 evaluation reflects that she scored a "2.80, Improvement needed." The evaluator wrote that she had the potential to be a model employee, but she needed to improve by accepting assignments without arguments and questions as to why she was given the assignment. This evaluator wrote that Ms. Geigert did good work but worried about what other employees were doing and did not concentrate on her assignments. In 2007, Ms. Geigert received a complimentary performance letter from a Palm Coast citizen and another from the Flagler County Sheriff. In February 2007, she received a score of "3.4, Meets Standards" on an evaluation, performed 60 days after her 2006 evaluation; it reflected her improvement in communication skills. In her 2007 evaluation, Ms. Geigert received a

score of "3.6, Meets Standards." Comments in this evaluation suggest that her interpersonal skills were improving and that she accepted assignments without argument.

(87) In May 2008, Ms. Geigert received another Employee Disciplinary Report concerning a complaint from a realtor who was showing a house to potential buyers. The realtor reported that Ms. Geigert interjected herself into a conversation with the clients and informed the potential buyers of two registered sexual offenders in the area. The realtor contended that she lost a potential sale because the potential buyers immediately lost interest in the house. Ms. Geigert received a warning. In 2008, Ms. Geigert's score on her evaluation was "2.10, Improvement Needed." The review cites her poor interaction with the public, and states she needs to follow directions. In March 2009, she received an Employee Disciplinary Report for substandard work, lack of cooperation/teamwork, and failure to follow instructions. In June 2009 she received an Employee Disciplinary Report for the same reasons. For this report, Ms. Geigert received both a verbal and written warning. In July 2009 she received another Employee Disciplinary Report citing carelessness and destruction of City property, for which she received a warning.

(88) Ms. Geigert's personnel file contains a letter from her, addressed to Mr. Capela, asking to be transferred to Mr. Wormuth's crew. As a result of this September 2009 voluntary move, she was demoted from "Equipment Operator I" to "Maintenance Worker," which resulted in a reduction in pay and a new six-month probationary period. The next document in her file is a November 2009 letter from Mr. Wormuth to Ms. Geigert informing her that because her work was not up to required standards she was to be paired with a fellow employee for 45 days for immediate direction and training. The letter informs Ms. Geigert that if she is not able to meet the requirements of the position after the 45 day period, her "status as a probationary employee of the City of Palm Coast shall be reviewed." The next document in her file is a January 2010 letter from Ms. Geigert's attorney notifying the City of the filing of a grievance related to her transfer to Mr. Wormuth's crew. The next two documents in her file are a March 2010 letter documenting Ms. Geigert's "Pre-termination hearing," and a March 26, 2010 letter from the City Manager to Ms. Geigert titled, "Appeal from Termination of Employment," informing her that he was upholding her termination.

### **The Use of Scrap Metal Cash to Finance Office Parties**

(89) Ms. Geigert alleges that the City's recycled scrap metal funds were used to finance office parties instead of being turned in to the City's Finance Department. She explained that when a City employee took scrap metal to a local scrap yard and received cash in exchange for the scrap metal, that money went to Mr. Capela or, more often, to Ms. Shevlin. Instead of submitting the money to the Finance Department, she continued, the funds were kept in the Public Works Department and used to finance Department parties and barbeques. She related that there could be as much as \$800 turned in to the Department. Ms. Geigert reported that former Public Works employee Sandra Bolzer told her how the money was used. Ms. Geigert did not allege that Mr. Capela used the funds for private use.

(90) Ms. Bolzer stated that she was an Administrative Assistant in the Public Works Department until she left the City's employ in 2011. She alleges that scrap metal funds were

used for office parties and that Mr. Capela knew the money should have been turned in to the Finance Department, but chose not to follow this policy. She said that she knew it occurred as recently as the 2010 Department Christmas party, because she assisted in shopping for that event. She believes the activity began prior to Mr. Capela being hired. She stated that the practice stopped when Mr. Adams advised Mr. Capela to turn the funds in to Finance.

(91) Mr. Capela reiterated that when he first was hired by the City in 2006, he was not allowed to change the lax work environment of the Department and that there were many events/parties held during work hours. He stated that every Friday there was a Department barbeque. He contends that at that time he did not know where the funds originated to finance the events. He said it was not until much later, after Public Works Director Bill Gilley retired, that he became aware that the events were funded with the scrap metal funds. He stated that when he was given more responsibilities after Mr. Gilley retired, he sought Mr. Adams' advice as to what to do with the funds from the scrap metal. Mr. Capela reported that Mr. Adams advised him to transfer the funds to the City's Finance Department.

(92) Public Works Director Adams related that he was aware of the scrap metal funds allegation, but never witnessed the practice. He believes that the practice was allowed by the prior Public Works Director. He confirmed that Mr. Capela sought his advice concerning the funds, and because it was bad policy, he advised Mr. Capela to submit the funds to the Finance Department. Mr. Adams reported that the Department still has employee appreciation events, but that, the funds now "are funneled through Finance."

(93) Ms. Shevlin confirmed that since Mr. Adams' directive, Mr. Capela has been transferring the money from the scrap metal recycling to the Finance Department. She stated that after Mr. Gilley's retirement, she overheard Mr. Capela discussing the matter with Mr. Adams and Mr. Adams advising Mr. Capela to transfer the funds to Finance.

(94) City Manager Landon confirmed that previous Public Works Director Gilley allowed the practice of using scrap metal funds for Department events, which he described as unacceptable because it contributed to a lax work ethic. He maintains that this was one of the practices Mr. Capela was tasked to "clean up" and one of the reasons the former Director was terminated.

(95) Finance Director Chris Quinn advised that although the funds generated from scrap metal recycling were supposed to be transferred to the Finance Department, there was, and still is, no written policy related to the matter. He stated that he cannot recall being specifically aware that the funds were used for parties, but he believes it was brought to his attention during a conversation with an unknown employee, many years in the past. He recalls informing the employee that the funding of Department events through scrap metal money was not allowed. Although he could not be specific concerning the Public Works Department, Mr. Quinn recalled having conversations with personnel from numerous City departments about not creating a "slush fund" from scrap metal cash. He reported that currently he receives cash and receipts from the Public Works Department. He attributes the new tighter controls to the current City Manager.

### **Hiring of a Person Not Qualified for the Position**

(96) Ms. Geigert alleges that Mr. Capela hired his friend Renee Shevlin as the Public Works Chief Operator when she was not qualified for the position. Ms. Geigert related that the position's posting stated a requirement of a minimum of five years of experience in city government and a bachelor's degree, and that Shevlin had neither. She claims that Mr. Capela requested her as his second in command, and that Ms. Shevlin was hired because she was a friend of Mr. Capela, who would assist him in fostering a hostile work environment.

(97) A copy of the January 4, 2008, posting of the Public Works Chief Operator position states:

Required: Bachelor's in Public Administration or closely related field, to include 5 years exp. within a supervisory/management position; or an equivalent combination of education, training, and exp. (Public Works preferred). Valid FL DL. Will be responsible for administrative and professional work assisting Streets Superintendent with planning, organization and management of Public Works activities.

(98) According to Human Resources documents, 22 people applied for the position. Twelve applicants were not interviewed because they were disqualified by an employee in the Human Resources Department, and seven other applicants were not interviewed because they were disqualified by Mr. Capela. These documents reflect that Mr. Capela interviewed three applicants, including Ms. Shevlin. After their interviews, two of the applicants were not hired because Mr. Capela believed that these applicants' experience made them better suited for either a "Project Manager" position or a "Facilities Supervisory role." Ms. Shevlin's "Applicant Rating Form" reflects that she was interviewed by Mr. Capela and Mr. Dale Gebhard. In a summary of the interview, Mr. Capela wrote;

Applicant maintains a professional attitude and appearance. She posses [sic] the communication and interpersonal skills I feel are needed for this position. After working with her for two years, I am confident she has the skills and knowledge of policies and procedures for the City of Palm Coast to successfully interact with employees, residents, and other city departments. Applicant posses [sic] all the qualities I feel are needed to be successful in this position.

(99) Ms. Shevlin's application reflects that she graduated from high school, but did not have a college degree. Her application documents that she had one year of experience with the City of Palm Coast as a Purchasing Technician, with some of that time spent in the Public Works Department. Prior to that she worked in a California grocery store for approximately 25 years as "Store Manager/Customer Service Manager".

(100) Ms. Shevlin reported that although she did not have a college degree, she had years of managerial and human resources experiences from her 25 years of employment at the grocery

store in California. She stated that she also worked in Palm Coast's Public Works Department for approximately one year as an Administrative Assistant, and she worked in Palm Coast's City Offices as a Purchasing Technician prior to being hired as the Chief Procurement Officer. Ms. Shevlin related that she met Mr. Capela when she was employed at Public Works, but denied being a "friend" of his. She stated that they were "friendly" because her husband and Mr. Capela's wife were friends, sharing a mutual interest in real estate. If her husband met with Mrs. Capela concerning real estate, she explained, she would accompany him and she and Mr. Capela would "talk shop." She stated that they did not socialize. Ms. Shevlin noted that their relationship changed when her husband died. She related that Mr. and Mrs. Capela "babysat" her for a period of time, assisting her in her grief. As an example, she reflected, they would take her out to dinner. Ms. Shevlin contends that she was qualified for the position because she worked many years in managerial and human resources positions, and had work experience at the Public Works Department and at City Hall as a Purchasing Technician. She also noted that she had computer skills related to the position.

(101) Mr. Capela stated that he first met Ms. Shevlin at work in November 2006. He said she was a "staff assistant" at the time. He explained that on his first day of work, he was simply handed keys, a cell phone, given an office and a truck, and was told to "have a nice day," with no instruction on how to conduct business. He said that although he had a lot of field experience, he had no office knowledge. He stated that Ms. Shevlin helped to train him and was one of a few people in the Department who did not approve of its lax work ethic at the time. When the City Manager reorganized the Department and gave him more responsibilities, Mr. Capela explained, Ms. Shevlin was transferred to the City's Purchasing Department. This left him, he continued, with a person in "retirement mode," and another administrative person who knew nothing about the Department. He reiterated that he was a "field guy" with no office skills, adding that he was "left on a raft" by himself.

(102) Mr. Capela acknowledged that he lobbied his superiors and others for Ms. Shevlin's return to the Public Works Department. He stated that he needed someone who was familiar with the Public Works office system and, along with her work ethic, Ms. Shevlin was that person. Mr. Capela reported that he first attempted to recruit one of his supervisors, Dale Gebhard, to fill the position, but because it would be a salary decrease, Mr. Gebhard declined the offer. Mr. Capela advised that City policy obligated him to post and advertise the position, which he did.

(103) Mr. Capela contends that Ms. Shevlin's employment in Public Works, direct knowledge of the office, 20 years of management and human resources experience from a past employment, respect she garnered from the employees, and, the fact that she could "hit the ground running," led to his conclusion that she was the most qualified person for the position.

(104) Public Works Director Adams said that he was involved in the hiring process "to some extent," and opined that Ms. Shevlin was more than qualified for the position and has been doing a "tremendous job."

(105) Former Assistant City Manager Oel Wingo opined that Ms. Shevlin was "well qualified" for the job of Chief Operator. She related that although she was not under Ms. Wingo's direct supervision, Ms. Shevlin had been working in Purchasing and because she had been doing a good job there, Ms. Wingo initially did not want her to return to the Public Works Department. She stated that she relented and allowed Ms. Shevlin to apply for the position. Ms. Wingo also explained that Mr. Capela was hired to take over a department that was a mess and he needed someone with Public Works experience to handle the office while he dealt with crews in the field.

### **Conducting Personal Business While on City Time**

(106) Ms. Geigert said she was informed by former City employee Sandra Bolzer that while she (Bolzer) was employed at Public Works, Ms. Shevlin asked her to assist her in "downloading" some photos from a City-owned camera onto her (Bolzer's) computer and then e-mail them to her (Shevlin). Apparently, Ms. Shevlin did not know how to transfer photos from a digital camera to a computer. According to Ms. Geigert, Ms. Bolzer told her there were photos on the camera that were not of City-related business. Ms. Geigert reported that there were photos of Mr. Capela and others at Ms. Shevlin's condominium assisting her with a remodeling project. She stated that there were also photos of Mr. Capela and others in South Florida on a boat while he (Capela), as a City representative, was attending a hurricane conference. Ms. Geigert had no knowledge and could offer no evidence that Mr. Capela took the photos that were on the City-owned camera and she could offer no evidence or had no knowledge that the photos of Mr. Capela at Ms. Shevlin's condominium were taken while Mr. Capela was on City time. She advised that Ms. Bolzer knew the photos of Mr. Capela on the boat were taken while he was attending a hurricane conference because she (Bolzer) attended the conference also.

(107) Ms. Bolzer confirmed Ms. Geigert's testimony concerning the photos on the camera. She stated that she did not believe the photos taken at Ms. Shevlin's condominium occurred while the respondent was on-duty with the City. Concerning Mr. Capela renting a boat during one day of a hurricane conference, Ms. Bolzer reported that she saw the photos of Mr. Capela on the boat when she was downloading them from the camera. She said Ms. Shevlin told her that Mr. Capela had rented the boat for a day when they were attending the conference in Ft. Lauderdale. Although Ms. Bolzer said she attended the same conference, she had no first-hand knowledge of this matter.

(108) Mr. Capela confirmed that he rented a boat while attending the conference in South Florida. He said that he personally financed the boat rental and cruised around the canals of Ft. Lauderdale. He contends that the conference schedule for that day was for one half day and that, after he concluded his commitments related to the conference for that day, he spent the rest of the afternoon on the boat.

(109) Ms. Shevlin also confirmed that Mr. Capela rented a boat, but disagreed that it occurred at the 2011 conference because she did not attend that conference. She reported that Mr. Capela personally rented the boat and that it was not done in order to avoid the

conference. Ms. Shevlin contends that she witnessed Mr. Capela attending conference-related meetings.

### **Sale of Mr. Capela's Home**

(110) Ms. Geigert reported that Mr. Capela sold his house to RoadTek's owner, Mr. Ferreira. She wrote, "I am not sure if Tony Capela holds the mortgage for this home, but I cannot find the lender in any documents I have searched so far." In an interview, Ms. Geigert stated that there was "no mortgage" on the property listed on the County's Property Appraiser's website, and the "rumor all over the yard" was that Mr. Capela was holding the mortgage for Mr. Ferreira, which was why he was showing RoadTek the favoritism she alleges. Ms. Geigert offered no evidence to support her allegation.

(111) The Flagler County Property Appraiser's website confirms that on June 6, 2009, Jenevieve and Rui Ferreira purchased the home in question from Pamela and Antonio Capela and that there is no recorded note/mortgage related to the sale. The website also documents that the Capelas purchased the property in 2005 for \$460,600 and sold the home to the Ferreras in 2009 for \$380,000.

(112) Trey Corbett, Vice President of Client Relations, Sales, and Marketing of America's Choice Title Company, the title company that handled the sale of the property, reported that upon his review of the file, "I find no record of a private mortgage noted in any of the correspondence on the file." Mr. Corbett explained that if there is a private mortgage associated with the sale of a property, a title company or an attorney draws it up and has it executed and recorded with all documents associated with the closing.

(113) Mr. Capela reported that he is not holding the mortgage/note on the property he sold to the Ferreras. As a result of the sale, and although he lost money on the sale because of the economic downturn, Mr. Capela advised that he was able to pay off his mortgage on the home. (Note: County documents confirm this statement.) Mr. Capela stated that the house was on the market for more than one year prior to its sale and it sold for the appraised amount.

(114) Mr. Ferreira denied that Mr. Capela held a note on the sale of the property. He stated that by using funds from the sale of his home in Palm Bay, and with funds he had available to him, he paid the full amount of the sale price at the closing. He recalled that the property had been on the market for more than a year, and the sale price was the exact amount for which the home was appraised.

NOTE: The sale of the property occurred in June 2009. RoadTek started working in the City of Palm Coast through a purchase order in March 2008, 15 months prior the sale of the home. The first contract for services was signed in August 2008, ten months prior to the sale of the home.

(115) Finally, City documents obtained from the City's Human Resources Department reflect that in July 2009, the City conducted an internal investigation concerning Mr. Capela's alleged conflict of interest regarding the allocation of work to contractors and his possible relationship to principals in those companies. As documented in a July 23, 2009, report by



Personnel Manager Wendy Cullen, and appended as Exhibit B, three of the four allegations concerned Mr. Capela's alleged relationship with the owner of RoadTek, Mr. Ferreira. As stated in the report, the investigation found that he did not act inappropriately, but he was cautioned about refraining "from participation in the evaluation process of vendors with whom you may have an outside relationship."

**END OF REPORT OF PRELIMINARY INVESTIGATION**

# **EXHIBIT A**

CITY OF PALM COAST ORDINANCE NO. 2002- 06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA; PROVIDING FOR THE PURCHASE OR PROCUREMENT OF PURCHASES AND CONTRACTUAL SERVICES; PROVIDING FOR THE ADOPTION OF PURCHASING POLICIES; PROVIDING FOR PURCHASING REQUIREMENTS; PROVIDING FOR EMERGENCY PURCHASING; PROVIDING FOR COOPERATIVE PURCHASING; PROVIDING FOR SOLE SOURCE PURCHASES; PROVIDING FOR SURPLUS PROPERTY DISPOSAL; PROVIDING AUTHORITY FOR THE CITY MANAGER TO IMPLEMENT ADDITIONAL POLICIES; PROVIDING FOR CONFLICTS, CODIFICATION SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the overall goal of the City's purchasing and procurement policies shall be to provide the most appropriate quality of goods and services needed by City departments to provide agreed to services to its' citizens at the least total public expense considering, as a minimum, initial cost, operating and maintenance costs, and estimated useful life; and

WHEREAS, it is the desire of the City Council of the City of Palm Coast to adopt certain policies of the City in order to provide safeguards for maintaining a procurement system of quality and integrity; and

WHEREAS, the purchasing policy of the City of Palm Coast should provide a method for cost-effective purchases in the competitive marketplace, as well as ensuring fairness and impartiality in the City's dealings with vendors; and

WHEREAS, it is also the desire of the City Council of the City of Palm Coast to authorize the City Manager to adopt additional administrative policies and procedures of the City that support the policies outlined in this Ordinance order to provide additional and supplemental safeguards for maintaining a procurement system of quality and integrity.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

SECTION 1. QUOTES/BIDS/PROPOSALS.

(a) Except as otherwise provided in this Ordinance, procurement of goods or contractual services (including leases) with an estimated value greater than Twenty-Five Thousand and no/ 100 Dollars (\$25,000.00) shall not be awarded without a formal solicitation process occurring. Solicitations may be in the form of an Invitation To Bid, Request For Proposals, Request For Statement Of Qualifications, or Request For Information.

(b) Except as otherwise provided in this Ordinance procurement of goods or contractual services (including leases) with an estimated value greater than or equal to

Fifteen Thousand and no/100 Dollars (\$15,000.00) but less than or equal to Twenty-Five Thousand and no/100 Dollars (\$25,000.00) shall not be awarded without obtaining a minimum of three (3) written quotes. The City shall include all qualified vendors who have expressed a desire to do business with the City in its solicitations, in accordance with the procedures adopted by the City.

(c) Except as provided in this Ordinance procurement of goods or contractual services (including leases) with an estimated value greater than or equal to Three Thousand and no/100 (\$3,000.00) but less than Fifteen Thousand and no/100 Dollars (\$15,000.00) shall not be awarded without obtaining a minimum of three (3) verbal quotes, which verbal quotes shall be documented by the appropriate City personnel. The City shall include all qualified vendors who have expressed a desire to do business with the City in its solicitations, in accordance with the procedures adopted by the City.

(d) In case of any emergency the City Manager, or designee may authorize emergency purchases. An emergency occurs when certain conditions might adversely affect the life, health, safety and welfare of City employees or citizens of the City, or when City property or equipment are endangered, or when it is necessary to maintain or restore vital services, or situations which may cause major financial impact to the City should immediate action not be taken. It shall be the responsibility of all authorized personnel to ensure each emergency purchase is accomplished in accordance with City policy and that emergency purchase procedures shall not be used to abuse or otherwise purposely circumvent the regular established purchasing procedures. Those delegated the authority to implement emergency purchases are also authorized to waive the bid process within their authority level in the event of an emergency. A report listing all emergency purchases and the circumstances of the emergency shall be submitted to the City Council at the next Council meeting after the purchase and the termination of the emergency.

(e) (1) The City may forego the Quote/Bid/Proposal procedure by using a "State Contract," by "Joint Utilization," or by "piggybacking."

(2) Purchasing or procurement by "State Contract," "Piggyback" or "Joint Utilization" is a procedure of procuring goods or services without formal bid procedures by means of utilizing other public entities' award of an Invitation for Bids or Request for Proposals. This procedure also includes piggybacks of the State of Florida, Department of Management Services, and Division of Purchasing State Contracts, SNAPS Contracts, and Federal GSA contracts.

(3) The award will be in accordance with all the terms and conditions, prices, time frames, and other criteria as included in the Invitation for Bids or Request for



Proposals. Additional options may be included in a procurement unless the total dollar value of the options is in excess of the City's bid limit. Expired bids cannot be piggybacked.

(4) The City Manager or designee may make purchases/awards in any amount utilizing other public entity bids regardless of dollar value, provided they are City Council approved budgeted items and are made in the best interests of the City.

(f) Item(s) whose aggregate purchase price in any one (1) year may reasonably be expected to exceed one (1) of the aforementioned thresholds may not be purchased in divided quantities to avoid the requirements of this Ordinance.

## SECTION 2. SOLE OR PROPRIETARY SOURCE PURCHASES.

(a) Purchases of goods and/or services from a "sole source" or "proprietary source" are exempt from the requirement to obtain quotes or competitive bids.

(b) The following criteria must be met in order to procure goods and services that are a sole source or proprietary source.

(1) It is the only item that will produce the desired results (or fulfill the specific need).

(2) The item is available from only one (1) source of supply.

(3) The item is available from more than one (1) vendor but due to extreme circumstances only one (1) vendor is suited to provide the goods or services.

(c) Purchases of supplies, equipment and contractual services from a sole source or proprietary source are exempt from competitive requirements upon written approval of the City Manager, or designee, to include the Finance Director and other appropriate City personnel within their expenditure authority as set forth in this ordinance.

(d) The request for sole source/proprietary source purchases shall set forth the purpose and need, in addition to why the item will exclusively produce the desired results (or fulfill the specific need). Compatibility to existing equipment shall be an acceptable justification for waiver of bidding requirements, provided the item is only available from a sole source of supply.

(e) The user Department and/or the buyer shall attempt to locate competition (alternate sources of supply).

(f) The Purchasing Coordinator shall keep a log of sole source/proprietary purchases, which includes the vendor name, the amount, item description, justification, and the purchase order number, which shall be filed with the City Manager and reported promptly to the City Council.

(g) The Purchasing Coordinator shall conduct negotiations, as appropriate, as to price, delivery, and terms.

### SECTION 3. APPROVAL REQUIREMENTS.

(a) City Council approval shall be required for all contracts and bid awards in excess of Thirty Thousand and no/100 (\$30,000.00), except as provided in Section 3 (b) (1), or as required by the "Consultant's Competitive Negotiation Act."

(b) The City Manager or the City Manager's designee shall have approval authority as follows:

(1) All purchases of capital items as set out in the annual budget as adopted by the City Council, where the bid award price is not greater than ten percent (10%) above the budgeted amount.

(2) Contracts for services up to Thirty Thousand and no/100 Dollars (\$30,000.00), where such services are part of a budgeted project or program, provided that the "Consultant's Competitive Negotiation Act," Section 287.055, Florida Statutes, has been fully complied with when appropriate.

(3) All purchases of supplies and/or materials as provided for in the adopted annual budget, where the bid award amount does not exceed Thirty Thousand and no/100 Dollars (\$30,000.00) in a single award.

(c) Department heads or their designee shall have authority to approve purchases up to Fifteen Thousand and no/100 (\$15,000.00), where such purchase does not exceed the item and/or department budget limit.

(d) Emergency purchases shall be accomplished in accordance with Section 1 (d) of this Ordinance.

(e) The solicitation of competitive bids or proposals for any City construction project that is projected to cost more than \$200,000 shall be accomplished in accordance with the provisions of Section 255.0525, Florida Statutes.

(f) City utility projects that are regulated by the provisions of Chapter 180, Florida Statutes, shall be accomplished in accordance with the provisions of Chapter 180, Florida Statutes.

(g) Awards will be made to bidders or proposers from Flagler County or the State of Florida, if all costs to the City are essentially equal. The City Council hereby finds that it serves a public purpose to, whenever practicable, to provide for a reasonable preference to local and Florida businesses which contribute to the local and Florida economy and enhance the tax base and tax revenues of the City.

### SECTION 4. ADDITIONAL PROCEDURES/POWERS OF CITY MANAGER.

The City Manager is hereby granted authority to adopt any and all such additional administrative policies and procedures supplemental to the provisions of this Ordinance that are in the best interests of the City, and not inconsistent with the intent of this Ordinance.

**SECTION 5. DISPOSAL OF SURPLUS PROPERTY.**

Surplus property may be disposed of by trade, sealed bid, or sold at auction depending on the item, its value, or other factors all as may be in accordance with law and City policy. The City Council shall be advised of the items and rationale for disposal no less than two (2) weeks prior to such disposal.

**SECTION 6. CONFLICTS.**

All ordinances or part of ordinances in conflict be and the same are hereby repealed.

**SECTION 7. CODIFICATION**

This Ordinance shall be codified in the City of Palm Coast Code. The Code codifier is granted authority to change the words "Ordinance" and other words to reflect the Part, Section, Article, etc., assigned in the Code, except that Section 6, 7, 8 and 9 shall not be codified.

**SECTION 8. SEVERABILITY.**

If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or unconstitutional.

**SECTION 9. EFFECTIVE DATE.**

This Ordinance shall become effective immediately upon its passage and adoption.

ADOPTED on first reading the 3rd day of, December 2002.

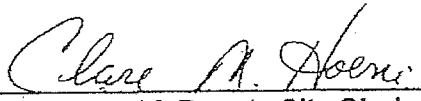
ADOPTED on second reading after due public notice and public hearing the 17th day of, December 2002.

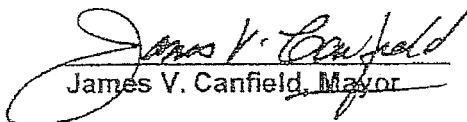
ATTEST:

CITY COUNCIL  
CITY OF PALM COAST,  
FLORIDA

By:

By:

  
Clare M. Hoeni, Deputy City Clerk

  
James V. Canfield, Mayor

### SECTION III--THE PURCHASING PROCESS – STEPS & RESPONSIBILITIES

The purchasing function begins with a "need" by a using department. For everyone, the user, the vendors and the Purchasing Manager, to function efficiently and effectively, the user must **plan** his/her needs as far in advance as possible. Each need must be thoroughly reviewed as to the type of purchasing process that will best facilitate the delivery of the commodity or service required. It is recommended that users review the adopted budget at the beginning of each fiscal year to plan purchasing strategy and timetables. Planning should include coordination with other departments as necessary and with the Purchasing Manager. Purchasing requirements should be prioritized by time of need. The Purchasing Manager will work closely with each department providing whatever level of service is required to ensure the purchase is made in a timely manner, including obtaining quotes, writing the specifications and developing the Formal Bids and Requests for Proposal.

#### A. Purchasing Requirements

The following procedures should be used depending on the amount of the purchase. The estimated value of the purchase determines what steps must be completed before a purchase order can be issued for the request.

#### QUICK REFERENCE GUIDE

TOTAL CONTRACT VALUE	QUOTE REQUIREMENTS (Minimum)	AWARD APPROVAL
\$ 0 - \$749.99	Single Quote Purchasing Card	Department Director or Designee
\$750 - \$2,999.99	Single Quote Purchase Order	Department Director
\$3,000 - \$14,999.99	3 Verbal Quotes Minimum Purchase Order	Department Director
\$15,000 - \$24,999.99	3 Written Quotes Minimum Purchase Order	City Manager or Designee
\$25,000.00 - \$30,000	Formal Invitation or Bid Contract or Purchase Order	City Manager or Designee
\$30,000.01 and Above	Formal Invitation or Bid Contract or Purchase Order	City Council

#### B. Vendors

##### 1. Vendor/Bidders List

- a. The Purchasing Manager maintains a database of vendors with whom the City has done business in the past and a list of firms who have expressed interest in submitting quotes and bids to the City. Any firm wishing to register to do business with the City can request a



"Vendors Registration Form," complete it, and return it to the City. The firm will then be assigned a vendor number and assigned to commodity categories by the Purchasing Manager.

- b. User Departments may suggest to the Purchasing Manager any potential bidders they would like to receive an invitation, request for quote or bid and should encourage the vendor to register

## **2. Vendor Relations**

- a. One of the functions of the Purchasing Manager is establishing and maintaining relations with firms who request to do business with the City and with firms who regularly do business with the City. Any user that develops a problem with a vendor and cannot satisfactorily resolve that problem should contact the Purchasing Manager. It is City policy to be fair with all bidders and vendors while still protecting the interests of the City.
- b. Any problem should be documented immediately in writing giving all details such as date, nature of problem, person contacted, conversations between the City and the vendor, etc. This can be done using a "vendor complaint" form that can be obtained from the Purchasing Manager or can be done simply by keeping a written log of the issue and passing it along to the Purchasing Manager. The Purchasing Manager has the authority to take action against any vendor including possible banning from doing business with the City for a specified length of time or forever. This is a very drastic action and will not be done without proper documentation. Documentation must be very detailed and immediately recorded. A simple complaint such as "last week my uniform delivery was late" is not acceptable.

## **3. Surveys / Testimonials / References**

City employees shall refrain from completing surveys or providing testimonials or any other type of reference for any contractor without prior approval from the City Manager who will consult with the City Attorney or the Purchasing Manager as needed. There may be legal and contractual consequences when these things are done without approval.

## **C. Requesting a Purchase**

The Department shall input a Requisition in Munis and attach a completed Request for Approval to Purchase form (RAP) with the required backup (quotes or if applicable, existing contract, Resolution and Agenda Item). Departments must follow the quote process to ensure that quotes meet all the purchasing requirements.

After receipt of quotes, Departments shall complete Part II of the RAP sheet indicating the quotes received for stipulated Scope of Work. The formal bid, proposal or quote process will be followed as outlined for all quotes over \$25,000. The formal process will be administered solely by PCMD.

## **D. Obtaining Quotes**

**While it is the Purchasing Manager's responsibility to obtain quotes for all purchases,** PCMD may allow departments to acquire initial quotes for those purchases requiring departmental approval, under \$15,000. The process will be strictly enforced by PCMD and NO requisitions will

be approved without completion of Part I and II of the RAP sheet. Furthermore, neither Departments nor PCMD shall solicit quotes prior to approval of the RAP sheet and the Scope of Work and authorization to proceed.

All quotes must be for identically the same quantity and quality and under the same terms and conditions. Even if the user provides quotes with the requisition, a complete description of the item or service needed, including required delivery time, and all special conditions must be clearly written on the requisition or attached as a memo. If the user does not provide quotes, it is imperative the user write a complete and accurate description to assist PCMD in obtaining quotes and filling the order promptly and accurately. **Regardless, the Purchasing Manager always reserves the right to obtain additional quotes.**

1. Estimated Value under \$750.00: Use the purchasing card for this type of purchase.
2. Estimated Value under \$3000.00—Single Quote: This only requires a single quote, but a general check of the marketplace should be made to ensure the best value. If there is a preferred vendor, provide complete name and address, description of the commodity or service, and how much it will cost including freight and/or shipping on the requisition form. PCMD will review the requisition. PCMD agrees with the recommendation for purchase, the requisition will be processed. If PCMD questions whether the commodity can be purchased from another vendor, for a better price, or is available from another source or contract, the department will be contacted to discuss the change.
3. Estimated Value \$3,000 - \$14,999.99—Three (3) VERBAL Quotes:  
Requisition forms for purchases for this dollar value are completed in the same manner as above. However, minimums of three (3) VERBAL quotes are required. The User Department may obtain the necessary quotes and furnish them with the requisition form, or, provide sufficient specifications so that PCMD can obtain the quotes. User obtained quotes should be listed either on the requisition or on a separate page: Firm name, telephone number, name of contact person, and each unit price including any freight costs.
4. Estimated Value \$15,000 - \$24,999.99 —Three (3) WRITTEN Quotes:  
Requisition forms for purchases for this dollar value are completed in the same manner as above. However, minimums of three (3) WRITTEN quotes are required. The user may obtain the necessary quotes and furnish each written quote with the requisition form, or, provide sufficient specifications so that PCMD can obtain quotes.
5. Estimated Value Over \$25,000—Formal Invitation

#### **E. Formal Invitations--Over \$25,000**

If the estimated value is greater than \$25,000, the Purchasing Manager must prepare and solicit formal, sealed, advertised invitations (Invitation to Bid, Request for Proposals, Request for Statements of Qualifications, or Request for Information).

If available, specifications for the requested purchase shall accompany the requisition. The Purchasing Manager will review the specifications to see if they are adequate for bid or will work with the requesting department to write specifications, terms and conditions for the invitation. The Purchasing Manager will coordinate all of the details of the invitation such as a pre-proposal

# **EXHIBIT B**



## PERSONNEL MANAGEMENT

July 23, 2009

Mr. Antonio Capela  
49 Cool Water  
Palm Coast, FL 32137

Re: Investigation into Alleged Conflict of Interest

Dear Mr. Capela:

As you are aware, earlier this week an allegation was made that there may have been a conflict of interest with regards to the allocation of work to contractors and your possible relationship to principals in those companies. Specifically, it was alleged that:

- The owner of a company called Road Tek was a relative of yours, specifically your sister-in-law. It was alleged that Road Tek received considerable funds from the assignment of work, to the detriment of other contractors under the continuing service contracts.
- The owner of Road Tek purchased the home you recently had on the market.
- You enjoyed a personal relationship, dating back many years, with the principal(s) of Somerset.
- You were on the evaluation committee of both companies, thereby possibly influencing the awarding of the continuing service contracts to these companies.

These allegations were researched with not only your assistance, but with the assistance of the Finance and Purchasing & Contracts departments. My findings are as follows:

- You did serve on the evaluation committee for both Somerset and Road Tek.
- You have no familial relationship with any principals of Road Tek.
- Road Tek may have been awarded a disproportionate amount of work through the continuing service contract but that is due to documented performance deficiencies of the other contract holder, Carpe Diem.
- A principal of Road Tek did, in fact, purchase your home. However, although there are many homes on the market in the Palm Coast area, your home was on



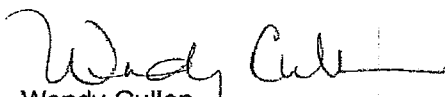
the market for approximately 18 months and the sale price of the home is in line with the current market.

- By your own admission, you are related by marriage to a principal of Somerset and that you participated in the evaluation committee of Somerset at the request of Engineering & Stormwater. However, our research indicates that from March 2007 through June 2009 there were 15 purchase orders to Somerset Contracting that were initiated by Engineering & Stormwater and 1 in October of 2008 that was initiated by Recreation. There were no purchase orders initiated by Streets but there were 6 invoices approved by Public Works that were under the \$750.00 threshold and did not require a purchase order.

Mr. Capela, as a result of our research I find that you did not act inappropriately as you did not direct the work of Somerset Contracting and that there are valid business reasons for the assignment of work to Road Tek. I would caution you, however, to remember that as the City of Palm Coast is a public entity, allocation of funds receive more scrutiny than expenditures would in the private sector. In the future, you should refrain from participation in the evaluation process of vendors with whom you may have an outside relationship

I would like to take this opportunity to thank you for your cooperation in this process. At this time, I consider the matter closed. If you have questions, please do not hesitate to contact me.

Cordially,



Wendy Cullen  
Personnel Manager

cc: Richard Adams, Director, Public Works/Utility