



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE July 19, 2005

SUBJECT: Extension of Hunting Lease with Smokey Hunt Club.

DEPARTMENT: Public Utilities

RECOMMENDED MOTION: Approve a one (1) year extension of the current Hunting Lease with Smokey Hunt Club, and authorize the Mayor and City Manager to execute contract documents on behalf of the City.

SUMMARY: The Smokey Hunt Club currently has a lease agreement with the City for hunting rights on a portion of City and jointly owned wellfield property. This lease was granted under City bid #01-17. The current extension of this lease expires on July 31, 2005. Within the lease agreement is the option to renew the lease on an annual basis if mutually agreeable to both parties. Smokey Hunt Club has expressed their desire, in writing as required by the terms of the lease, to exercise this option.

Staff recommends that Smokey Hunt Club be granted a one (1) year extension of their existing hunting lease under the terms and conditions specifically detailed in the original lease agreement.

ATTACHMENTS: Ordinance Resolution Budget Resolution

Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD *RMS* Richard E. Skeens *Richard E. Skeens* Date *7-1-05*

FINANCE DEPARTMENT *BR* *JNA* Approved as to Budget Requirements Date *7-6-05*

CITY ATTORNEY N/A Approved as to Form and Legality Date

CITY MANAGER *[Signature]* Approved Agenda Item For: *7/19/05*

COUNCIL ACTION: Approved as Recommended Disapproved Tabled Indefinitely
 Continued to Date Certain Approved with Modification:

HUNTING LEASE

THIS LEASE, made this **1st** day, of **August 1, 2005**, by and between the COUNTY OF VOLUSIA, a political subdivision, with its primary office in DeLand, FL, whose mailing address is 123 W Indiana Ave, DeLand, Florida 32720, and the CITY OF DAYTONA BEACH, an incorporated Florida municipality, whose mailing address is 301 South Ridgewood Avenue, Daytona Beach, Florida 32114 as their respective interest apply to the leased premises: and the CITY OF PORT ORANGE, FLORIDA a chartered municipality, whose mailing address is 1000 City Center Circle, Port Orange, 32129, hereinafter called the "Managing Agencies" for the lands described in Section 1 below,; and **SMOKEY HUNT CLUB** whose address is: **C/O Robert Thomas , 840 Gray Road, Cocoa, Florida 32926**, hereinafter called the "Lessee."

WITNESSETH:

1. Description of Premises. In consideration of the covenants herein contained on the part of the Lessee to be kept and performed, the Managing Agencies do hereby lease and demise unto the Lessee and the Lessee does hereby rent from the Managing Agencies that certain real property located in Volusia County, Florida, and known as a portion of the **Var-gal property** and as more particularly described on "**Exhibit A**" attached hereto.
2. Lease Term. The term of this lease shall commence on the **1st day of August, 2005**, and shall terminate at the hour of midnight, Eastern Standard Time, **July 31, 2006**. The term of this lease agreement is subject to an option to renew, more particularly set forth in Section 3, and to sooner termination as provided below.
3. Option to Renew. The Lessee shall have the option to renew this lease agreement for four consecutive 12-month terms; provided that at a time not later than 60 days prior to the expiration of any lease term hereunder, Lessee shall serve a written notice on the City of Port Orange, Florida indicating Lessee's desire to extend the term of the agreement. The rental fee shall be subject to increase based upon accounting practices utilized by the City of Port Orange, Florida which will be established at seventy-five percent (75%) of published Consumer Price Indexes as published and in effect at the time the option to renew is exercised by the Lessee. The option to renew is, and shall remain, subject to the provisions of Section 10 of this agreement concerning termination by the Managing Agency, City of Port Orange, Florida.
4. Rental. The Lessee shall pay to the Managing Agencies an annual rental of **\$133,346.66 (a 2.91%)** or such greater or lesser amount as may otherwise be determined herein. The rental for the initial term was for 10 months and was based upon an annual rent, prorated to the 10-month term, and was paid in full upon the execution of this lease. Subsequent annual rental fees, which are for twelve months period of time, shall be paid in full upon exercise and acceptance of each renewal option. All amounts due from Lessee under this lease agreement shall be paid as follows: 50% to the County of Volusia for jointly owned parcel and 50% to the City of Port Orange.

It is the understanding of the parties that the rental shall be computed at the rate of **\$11.6858** per acre of land that is available to the Lessee under this lease. The number of acres initially assumed to be available is **11411+**. The legal description and map of the

acreage is attached hereto as “**Exhibit A**”. An adjustment will be made in the initial annual rent if either party shall show, within sixty (60) days after the execution of this lease, that the acreage involved is more or less than the 11411+ acres.

If any land is subsequently excluded from this lease by sale or partial cancellation, the rent shall be adjusted accordingly and the Lessee shall receive a pro rata refund for any rent that has been paid in advance for the portion excluded. Any said refund shall be equally divided between County of Volusia and the City of Port Orange. A determination of this amount shall be made by prorating any prepaid rent on a daily basis at the lease term rate of \$.0311 for each acre excluded from the lease.

4. The Port Orange City Forester and the County Of Volusia Land Manager shall be designated to oversee lease activities on-site.
5. Acceptance and Use of Premises: The Lessee hereby acknowledges that it has inspected the premises and accepts the land as is. The Lessee covenants to use the same in accordance with all applicable laws with respect to the use or occupancy of the property. The Lessee agrees to make no illegal, unlawful or improper use of said land. The Lessee shall not construct any improvements on the rental property without the written consent by the Managing Agencies. If such construction is approved by the Managing Agencies, the Lessee covenants that it shall promptly pay any materialman or contractor performing any work upon the rental premises and covenants and agrees to hold the Managing Agencies harmless for any obligation or expense associated with such improvements. The Lessee covenants and agrees to use said premises for hunting, picnicking and recreation by its members and their guests. The Lessee will neither use nor suffer the same to be used for any other purposes. The Lessee will hold harmless and indemnify the Managing Agencies at all times against any loss, cost, damage or expense by reason of any accident, loss, casualty or damage resulting to any person or property through any use or misuse of said property or by reason of any act or thing done or undone on or about said property. The Lessee shall do nothing to interfere in any way with the Managing Agencies' use of the property for forestry, silviculture and wetland mitigation. In addition, the Lessee is expressly prohibited from allowing the operation and use of motorcycles, mopeds and all-terrain vehicles on any part of the leased premises for racing or contests of any type, by its club members. Such vehicles may be used by the Lessee's members and their guests for purposes of transportation around the leased premises so long as they are used in a manner not to damage the property.
6. Code Compliance: Within the first 60 days of the lease term, the Lessee shall apply to the Zoning Enforcement Official, County of Volusia for a review of its hunting camp as established on the leased premises by Lessee. The Lessee shall request the Zoning Enforcement Official to issue a written decision of compliance (or noncompliance, as the case may be) for use of the leased premises as a hunting camp and customary accessory uses as defined and allowed under Ord. Nos. 98-25, 94-4, 86-16, and 92-6, Volusia County Code of Ordinances. The Lessee shall request the County Zoning Enforcement Official to provide a copy of the written decision, when issued, to the City of Port Orange.
7. Indemnification and Insurance: The Lessee agrees to indemnify and hold harmless the Managing Agencies, its officers, employees and agents as to any acts or omissions by the

Lessee, its employees, agents, members, guests or invitees. The Lessee agrees to purchase and maintain at its expense public liability insurance, insuring Managing Agencies and Lessee against claims for personal injury or property damage, with limits of not less than \$2,000,000.00-\$2,000,000.00 for bodily injury and \$500,000.00 for property damage occurring to any person or property upon or about the premises during the lease term, and further agrees that the Managing Agencies shall be specifically named as additional insured in such policy as applicable to the lands herein described. The coverage and form of said insurance policy must be satisfactory to the Managing Agencies. All insurance policies provided for in this lease shall contain a provision that the policies cannot be canceled without thirty (30) days written notice to the Managing Agencies and all such insurance shall be effected under enforceable policies issued by insurers of recognized responsibility, licensed to do business in the state of Florida. At least fifteen (15) days prior to the expiration date of any policy, the original renewal policy for such insurance shall be delivered by the Lessee to the Managing Agencies. Within fifteen (15) days after the premium on any policy shall become due and payable, the Managing Agencies shall be furnished with satisfactory evidence of its payment. The Lessee shall provide the Managing Agencies with a complete copy of the insurance policy in force during any period of this lease.

8. Assignment and Subletting: The Lessee may not assign this lease nor sublet any part of said premises.
9. Alterations and Improvements: The Lessee may make such additions and improvements to the property as are first approved in writing by the Managing Agencies. All such improvements shall be at the sole expense and risk of the Lessee and be in compliance with all applicable land development, zoning, building and other laws, ordinances and codes. In the event of the termination of this lease for any reason, the Lessee shall have thirty (30) days from the date of its receipt of notice of lease cancellation to remove any improvements it has placed upon the property. Any such Lessee improvements not so removed shall become the property of the Managing Agencies with no obligation to compensate the Lessee therefor.
10. Options to Terminate Lease:
 - (a) The Managing Agencies may terminate or cancel this lease for a violation of its terms by the Lessee, a member of the Lessee, a guest or an invitee of a member. This lease may be terminated or canceled if the leased premises becomes permitted as a mitigation bank by the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, THE ARMY CORP.'S OF ENGINEERS, or the DEPARTMENT OF ENVIRONMENTAL PROTECTION and these governing agencies deem that hunting, or such other activities as are allowed under this agreement, is not compatible with the mitigation bank.
 - (b) The Lessee may terminate this lease for the following causes:
 - (i) If during the first six (6) months of the lease, it ascertains that the game is being seriously depleted by poachers and trespassers;
 - (ii) If by reason of a sale of a portion of the premises, the remainder of the

property will no longer serve the Lessee's intended purpose.

(c) To exercise the above options, the Lessee shall give written notice to the Managing Agencies, which notice shall specify the reason or reasons for the exercise of the option.

(d) A cancellation or termination under this Section 9 shall become effective ninety (90) days after the mailing or hand delivery of the notice of termination.

(e) In the event of termination under this Section 9, any unused, advance rents shall be refunded to the Lessee in accordance with the terms of Section 3 but no compensation shall be payable by the Managing Agencies for any improvements made by the Lessee.

(f) All other provisions notwithstanding, upon termination of this lease agreement whether pursuant to the terms of Sections 2, 10, 11, or otherwise, the Lessee, its members, guests, and invitees, shall have vacated the leased premises and shall have removed all items of personal property on or before the last date of the lease term. Failure to vacate the leased premises shall constitute a breach of this lease agreement and the Managing Agencies shall be entitled to all remedies as more particularly set forth in Section 12.

11. Termination in the Event of Sale: In the event a Managing Agency enters into a contract to sell all or any part of the property, the Managing Agency shall promptly advise the Lessee thereof in writing and, upon the closing of the sale, this lease shall terminate as to the portion of the leased premises sold—provided; however, the buyer of the property may assume that portion of the lease terms applicable to this leased premises. In the event of termination under this Section 10, any unearned rent shall be refunded to the Lessee in accordance with the terms of Section 3; however, no compensation shall be payable by the Managing Agencies for any improvements made by the Lessee.

12. Default of Lessee: The failure of the Lessee to pay any of the sums herein provided or to keep, fulfill and perform any of the terms and provisions of the lease on the part of Lessee to be kept and performed, time being of the essence hereof, shall constitute a breach of this lease at the option of the Managing Agencies, so as to terminate all rights, privileges and interests of the Lessee herein. In the event of a breach of this lease, the Lessee will pay to the Managing Agencies all costs and other expenses, including attorneys' fees, which may be incurred by the Managing Agencies in enforcing its rights hereunder, together with such other actual damages as the Managing Agencies may sustain by reason of said breach, and the Managing Agencies may, in such event, declare the term ended and may reenter and take possession of said premises.

All rights, remedies and privileges of the Managing Agencies shall be cumulative, and in the event of a breach, the election or enforcement of one or more shall not be deemed to be a waiver of any or all others.

13. Quiet Enjoyment and Right of Use: The Managing Agencies covenant that, if the Lessee shall pay the rents and fees provided for under this lease and otherwise perform all of the agreements herein, the Lessee shall peaceably and quietly have, hold, possess and use the

leased premises for and during the term hereof without any hindrance by the Managing Agencies. The Managing Agencies shall have the right of access, ingress and egress to enter upon the leased premises and to occupy the property for all purposes necessary to meet their designated responsibilities, including protection of the property. The Managing Agencies shall have authority and shall, through their respective agents and employees, take all reasonable measures to provide security against property damage, property degradation, and unauthorized uses or any use thereof not in conformance with this lease. The Lessee acknowledges that the Managing Agencies may grant other persons, organizations, or entities the right to use the leased premises for any purpose, provided that such use is not inconsistent with this lease.

14. Notices: All notices required or permitted shall be in writing, mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to the other party at the address as stated herein, or to such other address as any party may designate by notice complying with the details of giving notice. Each such notice shall be deemed delivered on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable.
15. Hunting: This lease specifically includes to the Lessee the full hunting and fishing privileges on said property. The hunting and fishing privileges herein granted are to be exercised in strict accordance with the laws of the State of Florida and the United States of America and the rules and regulations of the Florida Fish and Wildlife Conservation Commission, or any other duly constituted body having authority to make rules and regulations pertaining to the hunting, taking or catching of game birds, game animals and fish. All hunting shall be in accordance with the Lessee's hunting rules and regulations.
16. Lessee's Hunting rules and regulations: At a minimum the Lease shall embrace the following Bylaws or Hunting rules and regulations;
 - (a). Dogs- Dogs will not be allowed other than for bird hunting until the opening of dog season. All dogs shall be vaccinated for rabies prior to being brought onto the premises and shall display valid rabies tag at all times.
 - (b). Wildlife Biologist- The lessee shall, at its sole expense, retain a Wildlife Biologist once a year to complete a statistical analysis and compute the current estimated game population for the white-tailed deer and turkey within the leased acreage. Based on the population estimates, the wildlife biologist will provide a written report addressing, at a minimum, habitat management, protection, herd and flock monitoring and hunting recommendations to the lessee and the managing agencies.
 - (c). Membership- Membership will be limited to a maximum of one (1) member for every 175 acres of the leased premises. Membership applications will require the applicant to fill out a questionnaire of whether he/she has ever been charged or convicted of any violation of any laws, rules or regulations of the Florida Fish and Wildlife Conservation Commission or its predecessors or successors, or any violation of any law, rule, ordinance or regulation related to possession of firearms or weapons, hunting, wildlife preservation, fishing, or game laws. Membership application form is attached as "**Exhibit B**". The Lessee will use this information for denial or approval for membership. Applicants for membership

shall not be discriminated against on the basis of race, color, religion, sex, disability, age or national origin.

- (d) Guests- Members can only have one (1) guest at a time per day and no hunting guest shall be allowed to hunt more than a total of six (6) days per season. All guests will be required to sign liability releases and this is the responsibility of the member and must be witnessed by the member. Attached hereto as “**Exhibit C**”.
 - (e) General rules of all hunts:
 - 1. Hunter orange must be worn during deer season. This is during the deer season only, not in bow or spring gobbler season.
 - 2. Turkey beards must be retained for sex evidence in spring gobbler season.
 - 3. All game, deer, turkey, and hogs are required to be weighed, photographed and recorded on game harvest reports. Game harvest reports are to be attached hereto as “**Exhibit D**”. The game harvest reports will be submitted to the Managing Agencies and the Wildlife Biologist after each hunting season for review and to determine if the populations are sustainable and healthy. Also, for the Wildlife Biologist’s annual report stipulated in paragraph (b) above.
17. **Ecosystems Management**: The parties understand that the Managing Agencies are engaged in the preparation of a Management Plan and interlocal agreement which may include, but not limited to, forest silviculture activities, wetland mitigation, wetland enhancement/restoration, prescribed burning, habitat enhancement/restoration and reforestation. The hunting and fishing rights granted to the Lessee are on condition that the Lessee will so exercise said rights as not to interfere with these stipulated activities upon said lands. All prescribed burning will be conducted under the supervision of the Managing Agencies or their designated representatives.
- No timber, plants, minerals, sand or forest products may be removed from said premises by the Lessee without the express written consent of the Managing Agencies excluding legal game and fire wood for camp fires.
18. **Care of Premises and Best Management Practices**:
- (a) **Maintenance**: The Lessee shall, at its sole expense, keep and maintain all fences and gates in their present condition or as subsequently repaired or replaced by the Managing Agencies. If, in the opinion of the Managing Agencies, it becomes necessary to replace said fences or gates, then the Managing Agencies shall furnish the materials and the Lessee shall furnish the labor necessary to replace such fences or gates promptly and without delay. It is understood, however, that upon the inception of this lease the Managing Agencies shall install all fences the Managing Agencies deems necessary and place existing fences in good condition.
 - (b) **Safeguarding**: The Lessee will provide oversight and reasonable patrolling of the leased premises in order to exclude trespassers; observe and report to the Managing Agencies any forestry operations; and be on the lookout at all times for any fire which may occur on the premises. In the event of a fire on the premises, the Lessee or any of its members having knowledge of the fire will immediately notify the Managing Agencies, the State Forestry Service, and such other

governmental agencies as may be able to afford assistance.

19. **Right of Entry:** The Managing Agencies, its agents, officers and employees, may at any time enter the leased premises for the purpose of inspecting the same or showing the leased premises to prospective buyers, and shall have the right to use the property for any purpose not inconsistent with this lease. The Lessee shall give to the Managing Agencies keys to all locks installed by the Lessee.

20. **Liability of Members and Guests:** All members, guests and invitees of the Lessee entering the leased premises for any purpose shall, before entering said premises, sign an agreement on the form attached hereto as "**Exhibit C**" agreeing to comply with the terms of this lease and to indemnify and hold harmless the Managing Agencies against any and all claims, demands, causes of action, suits or judgments and all expenses and fees incurred in connection therewith for death or injuries to persons, or loss or damage to property, arising out of or in any manner connected with the occupancy or use of the premises by such member, guest or invitee of the Lessee. In the event of any such claim, demand or suit, notice shall promptly be given to the Managing Agencies and the Managing Agencies shall have the right to defend or settle the same in its discretion. This release shall further provide that the member, guest or invitee relinquishes and releases all claims of every nature which he or his heirs, successors or assigns shall have arising out of any occurrence upon or related to the premises. Each signature on the agreement shall be notarized.

The Lessee shall provide the Managing Agencies with copies of its membership list and its rules and regulations which shall be updated on an annual basis.

21. **Successors and Assigns:** This lease shall be binding upon and inure to the benefit of the successors and assigns of the Managing Agencies. This lease is executed in triplicate, either of which may be considered an original. Each member, guest or invitee of the Lessee who is permitted to use the demised premises shall agree to be bound by the terms of this lease which the Lessee is obligated to perform.

22. **Recording:** This lease shall not be recorded. If it is recorded, the Lessee shall, upon demand, execute and deliver a quit claim deed to the Managing Agencies. If the Lessee fails to do so, the Lessee shall pay all expenses of a suit to expunge the lease from record, including reasonable attorney's fees.

IN WITNESS WHEREOF, the parties hereto have executed this Lease, by and through their duly authorized representatives, on the respective dates below.

Witnesses:

City of Port Orange, Florida
a chartered municipality

By: _____
Allen Green, Mayor

By: _____
Kenneth W. Parker, City Manager

Date: _____, 2003

County of Volusia
a political subdivision of the State of Florida

By: _____
Cynthia A. Coto, County Manager

Attest: _____
Deputy Clerk

Date: _____, 2003

Carl A. Haver
Violet Y. Revsler
James R. Kay
Patricia B. Thomas

SMOKEY HUNT CLUB INC.
(Name of Hunt Club), a Florida Corporation

By: Robert B. Thomas
President/Chairman

Attest: _____

Date: JUNE 27, 2005.

EXHIBIT C

AGREEMENT: The undersigned member, guest or invitee of _____, hereby agrees to comply with all the terms of the lease of said CLUB with the CITY OF PORT ORANGE, FLORIDA, and the COUNTY OF VOLUSIA, as the Managing Agencies, and to indemnify and hold harmless said Managing Agencies against any loss or liability that may be incurred by said Managing Agencies because of any act or omission of the undersigned, or a guest or an invitee of the undersigned, upon the demised premises. The undersigned, for himself and his heirs, successors and assigns, further agrees to relinquish and release the Managing Agencies, its officers, employees and agents, from all claims which the undersigned may have or may hereafter accrue arising out of any occurrence upon or related to the premises described in said lease.

Signature

Printed Name

Date

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of ____, 2003,

by _____ .

Notary Public, State of Florida at Large

My Commission expires: