

3:30 p.m. April 23, 2012 Winter Park Community Center 721 W. New England Avenue Winter Park, Florida 32789

commissioners			mayor	commissioners			ioners	
seat 1	Steven Leary	seat 2	Sarah Sprinkel	Kenneth W. Bradley	seat 3	Carolyn Cooper	seat 4	Tom McMacken

welcome

Welcome to the City of Winter Park City Commission meeting. The agenda for regularly scheduled Commission meetings is posted in City Hall the Tuesday before the meeting. Agendas and all backup material supporting each agenda item are available in the City Clerk's office or on the city's Web site at www.cityofwinterpark.org.

meeting procedures

Persons desiring to address the Commission MUST fill out and provide to the City Clerk a yellow "Request to Speak" form located by the door. After being recognized by the Mayor, persons are asked to come forward and speak from the podium, state their name and address, and direct all remarks to the Commission as a body and not to individual members of the Commission, staff or audience.

Comments at the end of the meeting under New Business are limited to three (3) minutes. The yellow light indicator will remind you that you have one (1) minute left to sum up. Large groups are asked to name a spokesperson. This period of time is for comments and not for questions directed to the Commission or staff for immediate answer. Questions directed to the City Commission will be referred to staff and should be answered by staff within a reasonable period of time following the date of the meeting. Order and decorum will be preserved at all meetings. Personal, impertinent or slanderous remarks are not permitted. Thank you for participating in your city government.

1 Meeting Called to Order	
Invocation Pastor Eric Doran, Kress Memorial Seventh Day Adventist Pledge of Allegiance	
3 Approval of Agenda	
4 Mayor's Report	
 a. Recognition of Dr. Barbara Jenkins, Orange County Public Schools Superintendent b. Proclamation - WPHS Cheerleading State and National Championships Day c. Proclamation - North American Occupational Safety and Health Week and Occupational Safety and Health Professional Day d. Employee of the Quarter - Craig M. O'Neil, Assistant Director of Communications e. Appointment of 'Wired for Winter Park' Task Force members f. Resolution - Supporting fair trade when possible among merchants in the City of Winter Park 	30 minutes

5 City Manager's Report a. Presentation - Interim report on tree/vegetation management	Projected Time 25 minutes
6 City Attorney's Report a. Tolling agreements	Projected Time 15 minutes
7 Non-Action Items	Projected Time

Citizen Comments | 5 p.m. or soon thereafter (if the meeting ends earlier than 5:00 p.m., the citizen comments will be at the end of the meeting) (Three (3) minutes are allowed for each speaker; not to exceed a total of 30 minutes for this portion of the meeting)

9 Consent Agenda a. Approve the minutes of 4/9/2012.

Projected Time

5 minutes

b. Approve the following:

- 1. Staff to enter into negotiations with the top ranked firms, BASE Consultants, Inc.; Florida Bridge & Transportation, Inc. (RFQ-2-2012) Continuing Contracts for Professional, Architectural & Engineering Services (Discipline: Structural Engineering)
- 2. Staff to enter into negotiations with the top ranked firm, John J. Christie & Associates (RFQ-2-2012) Continuing Contracts for Professional, Architectural & Engineering Services (Discipline: Mechanical & Electrical Engineering)
- 3. Staff to enter into negotiations with the top ranked firm, Universal Engineering Sciences; RFQ-2-2012 Continuing Contracts for Professional, Architectural & Engineering Services (Discipline: Environmental Services)
- c. Approve the Cemetery Disinterment Policy.
- d. Approve the mid-year budget adjustment for the General Fund.
- e. Approve the adjustment to the Waste Pro rates.

10 Action Items Requiring Discussion	Projected Time
a. Approval of the strategic planning session list of priorities	15 minutes
b. Winter Park train station design development update from ACi.	20 minutes

a. Ordinance – Relating to Pain Management Clinics and Pharmacies and repealing the moratorium (Ordinance 2840-11) (2) b. Resolution – Designating 1509 North Orange Avenue, Winter Park as a historic resource in the Winter Park Register of Historic Places c. Request of Mr. Barry Render: Projected Time 5 minutes 5 minutes 20 minutes

- Subdivision approval to split the property at 1200 Howell Branch Road into two single family lots zoned R-1AA. A variance is requested for the respective lot widths of 82.5 feet in lieu of the required 100 feet and lot areas of 6,850 square feet in lieu of the required 10,000 square feet

Regular Meeting April 23, 2012 Winter Park Community Center Page 3

d. Request of CNL Commercial Real Estate:

Conditional Use approval to construct a three story;
 88,366 square foot office building on the former
 State Office Building site at 941 W. Morse Boulevard

30 minutes

12	City Commission Reports	Projected Time
	a. Commissioner Leary	
	b. Commissioner Sprinkel	
	c. Commissioner Cooper	10 minutes each
	d. Commissioner McMacken	
	e. Mayor Bradley	

appeals & assistance

"If a person decides to appeal any decision made by the Commission with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings, and that, for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." (F. S. 286.0105).

"Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office (407-599-3277) at least 48 hours in advance of the meeting."

item type	Mayor's Report	meeting date	April 23, 2012
prepared by department division	N/A	approved by	■ City Manager□ City Attorney□ N A
board approval		yes no	N A final vote

subject

Fair Trade Resolution

motion | recommendation

Recommend Commission approve the resolution supporting fair trade when possible among merchants in the City of Winter Park.

background

The purpose of the Fair Trade Towns USA campaign is to strengthen our local community by connecting with and supporting those in our global community. It is a way to educate local businesses, community organizations and consumers about fair trade. It is also a platform for growing awareness, availability and commitment to fair trade in the United States.

The mission of the Fair Trade Towns Winter Park campaign is to recognize businesses, organizations and consumers that already support fair trade and to encourage others to learn more about fair trade and the difference it makes in the lives of producers in developing countries.

The Fair Trade US movement started in 2007 when Media, PA became the first Fair Trade Town. The Fair Trade Town Campaign for Winter Park began in October 2011 and within five months the local steering committee, along with dedicated business and organizations fulfilled all the requirements to become an official Fair Trade Town. The campaign has been well received by the Winter Park community. There are currently more than ten retailers and cafes that have committed to selling or serving fair trade items. In addition, six community organizations have committed to serving fair trade coffee or tea at their meetings. Many of these retailers, cafes, restaurants and organizations already supported fair trade before the campaign began.

Currently there are 26 Fair Trade Towns in the United States. Based on the support of the local businesses and organizations, the City of Winter Park will be the first to receive the Fair Trade Town designation in the Southeast. This prestigious recognition will allow the City of Winter Park, Florida to be a leader in the Fair Trade community and a role model for other cities and towns in the United States.

fiscal impact

N/A

long-term impact

N/A

strategic objective

N/A

RESOLUTION NO	
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A RESOLUTION OF THE CITY OF WINTER PARK IN SUPPORT OF THE WINTER PARK, FLORIDA LOCAL STEERING COMMITTEE'S INITIATIVE TO BECOME A FAIR TRADE TOWN

- **WHEREAS**, Winter Park, Florida expresses its support for sustainable and equitable commerce and economic development; and
- **WHEREAS**, "Fair Trade" is an innovative, market strategy that promotes fair labor practices and healthy, safe work environments through the production of food and other goods; and
- **WHEREAS**, Fair Trade provides producers with fair prices that translates into truly livable wages; and
- **WHEREAS**, production of Fair Trade goods is achieved through sustainable and ecologically friendly means, thus supporting the future of a healthy planet for all; and WHEREAS, individual consumers and government purchasers all have a responsibility to be aware of the impact of purchasing choices on the communities that produce the goods we buy; and
- **WHEREAS**, consumers have a voluntary choice to make purchases of Fair Trade goods; and
- **WHEREAS**, many local businesses enhance the local economy through sales of Fair Trade products; and
- **WHEREAS**, Winter Park, Florida has the opportunity to lead by example and present a model of social responsibility for other towns and cities to follow;
- **NOW, THEREFORE, BE IT RESOLVED** that when purchasing goods for the city, Winter Park, Florida will commit to procuring local and Fair Trade products when those products are readily available, meet applicable city standards, are competitively priced, are of comparable quality, and procured in accordance with existing procurement policies.
- **BE IT FURTHER RESOLVED** that this City Commission documents the feasibility of working to ensure ongoing education, media exposure and commitment to Fair Trade, and encourages members of our community to use, sell or provide Fair Trade products whenever possible for the wellbeing of producers, consumers and the environment.

	BE	IT FU	RTHER	RESC	DLVED	that the	e Winte	r Park	City	Commiss	sion s	upports
the	Winter	Park,	Florida	Local	Steerin	ng Comi	mittee's	initiativ	ve to	become	a Fai	r Trade
Tov	vn.											

ADOPTED at a regular meeting of the City Commission of the City of Winter Park on this $\underline{23^{rd}}$ day of April, 2012.

	Kenneth W. Bradley, Mayor
ATTEST:	
Cynthia S. Bonham, MMC, City Clerk	



Campaign Overview

The purpose of the Fair Trade Towns USA campaign is to strengthen our local community by connecting with and supporting those in our global community. It is a way to educate our local businesses, community organizations and consumers about Fair Trade. It is also a platform for growing awareness, availability and commitment to Fair Trade in the United States.

The mission of the Fair Trade Towns Winter Park campaign is to recognize businesses, organizations and consumers that already support Fair Trade and to encourage businesses, organizations and consumers to learn more about Fair Trade and the difference it makes in the lives of producers in developing countries.

The Fair Trade Towns US movement started in 2007 when Media, PA became the first Fair Trade Town. The Fair Trade Towns campaign for Winter Park began in October 2011 and within five months; the local steering committee, along with dedicated business and organizations fulfilled all of the requirements to become an official Fair Trade Town.

The campaign has been well received by the Winter Park community. There are currently more than ten retailers and cafes that have committed to selling or serving Fair Trade items. In addition, six community organizations have committed to serving Fair Trade coffee or tea at their meetings. Many of these retailers, cafés, restaurants, and organizations already supported Fair Trade before the campaign began.

There are currently 26 Fair Trade Towns in the US. To date, there are no Fair Trade Towns in Florida or in the Southeast. Because the Fair Trade Towns campaign and Fair Trade in general has been supported by the



Campaign Overview

organizations and businesses listed below, it is with great pride that we announce Winter Park, Florida has fulfilled all the requirements to become a Fair Trade town and will be the first Fair Trade Town in the Southeast once a resolution is passed.

Below is a list of organizations and businesses that are currently selling or serving Fair Trade items:

The Park Avenue Area Association

The Winter Park Chamber of Commerce (Good Morning Winter Park)

Ten Thousand Villages of Winter Park

Earth Inspired Living

Bajalia

Synergy

Barnie's Coffee Kitchen

Starbucks

The Cheese Shop on Park

Whole Foods Market

Chamberlin's

Eat More Produce

Austin's Coffee

Wearable Art/Markdown Marys

The Spice and Tea Exchange of Winter Park

Rollins College and The Crummer Graduate School of Business

Cornell Fine Arts Museum

The Winter Park Garden Club

The First Congregational Church of Winter Park

The First Presbyterian Church of Winter Park



Campaign Overview

This prestigious recognition will allow Winter Park, Florida to be a leader in the Fair Trade community and a role model for other cities and towns in the United States.

Below are testimonials from local businesses and organizations that support the campaign:

"Thank you for reaching out to the Cornell; we are committed to maintaining an inventory of Fair Trade merchandise that encourages our patrons to make thoughtful and meaningful purchases."

Dana Thomas

Donor & Guest Relations Liaison Cornell Fine Arts Museum

'We are excited and humbled by the opportunity to highlight our Fair Trade gift items at Earth Inspired Living. Our earth-friendly product mix includes as much US made product as possible. But when we do gather gift products from overseas, we want to ensure that the product is fairly traded. Winter Park's commitment to this movement is very important to us....thanks for letting us be a part of it!"

Linda Semmler

Co-owner of Earth Inspired Living

"I think it is thrilling that Winter Park is set to become the first Fair Trade Town in the Southeastern United States. This distinction will burnish Winter Park's reputation as a forward-thinking city, and help attract more fair trade businesses and shoppers alike."

Sara Issac

Board President, Ten Thousand Villages of Winter Park

item type City Manager's Report

meeting date April 23, 2012

Below are issues of interest to the Commission and community that are currently being worked on by staff, but do not currently require action on the Commission agenda. These items are being tracked to provide the Commission and community the most up to date information regarding the status of the various issues. The City Manager will be happy to answer questions or provide additional updates at the meeting.

issue	update	date
City Hall Renovation	The mechanical contractor has constructed and installed all 3 of the large air handling units and chiller, as well supply ducting. The individual VAV (variable air volume, which are controlled by the room thermostats) valves have been installed and ducted on the second floor. Work continues on the installing the VAV's on the first floor. All demolition is complete of ceilings, existing lighting, old wall radiators and unnecessary walls. Construction of new walls to create new work spaces is underway on the second floor as well as installation of new ceilings and new light fixtures. Plan is complete for new a/v system in the chambers and conference rooms and acquisition of materials is underway. New painting, carpeting and installation of built in furniture will be completed the first week in June with the June 11th commission meeting being held in the newly renovated chambers.	June 2012
Pensions	Detailed projections provided to Commission on March 6, 2012.	
Lee Road Median Update	FDOT has verbally accepted the City's variance to maintain existing non confirming vegetation and we are awaiting the formal acceptance. Once that is received, a final landscape plan will be submitted and final approval should occur within 4-5 weeks.	
Fairbanks Improvement Project	Project is out for bid. A mandatory pre-bid meeting was held on Friday, April 13 th over 20 contractors attended.	

	T	C. C.
Parking Study Alfond Inn	Traffic counts are complete and the consultant is currently working on alternatives.	Staff is working on the GIS street templates.
Hazardous Waste	Waste Pro has agreed to host four household hazardous waste events per year for the City. The first event will take place on April 21 from 9:00 a.m. to 2:00 p.m. at the Public Works Compound located at 1439 Howell Branch Road.	The first event will be held in conjunction with Earth Day in April 2012.
Dead Tree Removal	All of the tree removals have been completed. Stump grinding is completed and tree replanting (with in-house crews) is underway. Expected completion is May 2012.	May 2012
Wayfinding Signs	A PO has been issued and production of the signs is underway. We are on schedule for the non FDOT signs to be installed in May. Permitting of the FDOT signs in underway and a contractor is being selected for placement.	May 2012
Street Musicians	CRA staff met with merchants and the PAATF about some type of regulations. The general feeling is that there is no regulations needed for this and it is currently not a significant problem on Park Avenue.	April 2012
torth s	Two task force meetings have been held thus far. A 125 th Anniversary logo has been adopted and has been implemented on many city communication tools already, including the Winter Park Update, city employee emails, press release templates, the Winter Park Sidewalk Art Festival Program, the Orlando Philharmonic Orchestra concert program, and various invitations. Each member of the task force will also begin using the logo to remind and prepare the community of this important milestone.	
125 th Anniversary Celebration	The task force is working on ideas to tie in the 125 th anniversary to existing events and also has been discussing events specifically for the anniversary date. The Winter Park Police Department is also celebrating its 125 th anniversary on October 12, and has joined the task force at its regular meetings.	
	Each member is excited and enthusiastic about this milestone and is eager to help the city promote the 125 th anniversary in their various disciplines. This will be done through cooperative marketing, website presence, logo	

	inclusion, special event planning and historical displays. Task force members are: 1. Kenneth Murrah, Winter Park resident 2. Fairolyn Livingston, Hannibal Square Heritage Center 3. Susan Skolfield, Winter Park Historical Association 4. Bob Melanson, Winter Park Public Library 5. Patrick Chapin, Winter Park Chamber of Commerce 6. Cindy Bowman LaFronz, Rollins College 7. Rev. Bryan G. Fulwider, 1st Congregational Church	
MLK Task Force	Results from the first public input meeting will be presented for further discussion at a second public input meeting being held on Tuesday , April 24 , from 7 p.m. to 8 p.m. , at Mount Moriah Missionary Baptist Church located at 421 South Pennsylvania Avenue.	
ULI Fairbanks Avenue TAP	Staff met with ULI staff and is preparing the briefing book materials as well as locating a venue for the TAP. The tentative date is currently May 21 and 22, 2012, but this is subject to change based on venue availability.	May 2012

Once projects have been resolved, they will remain on the list for one additional meeting to share the resolution with the public and then be removed.



BROWN, GARGANESE, WEISS & D'AGRESTA, P.A.

Attorneys at Law

111 N. Orange Ave., Suite 2000 P.O. Box 2873 Orlando, Florida 32802-2873 Phone (407) 425-9566 Fax (407) 425-9596

Usher L. Brown
Board Certified Civil Trial Law
Board Certified Education Law

ulbrown@orlandolaw.net

April 16, 2012

Randy Knight, City Manager Cindy Bonham, City Clerk City of Winter Park 401 Park Avenue South Winter Park, FL 32789

via email & regular U.S. Mail

Re:

Tolling Agreements

Dear Randy and Cindy:

Attached is a letter that I previously sent to Mr. Knight and Mr. Briggs on February 22. I would like to add this topic to the next available agenda under the Attorney's Report. The item will be "Tolling Agreements in light of 2011 amendment to Bert Harris; Update Commission and request termination of tolling agreements that are either inactive or have not resulted in a settlement".

Please include the attached letter in the agenda package. Contact me if you should have any questions or concerns regarding this.

Sincerely

Usher L. Brown

ULB:tla Enclosure

G:\Docs\City of Winter Park\Land Development\Legal Challenge to Land Development Code & Comp Plan\Tolling Agreements\ltr.knight and bonham re agenda item.wpd



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February 22, 2012

Randy Knight, City Manager Jeff Briggs, Director of Planning City of Winter Park 401 Park Avenue South Winter Park, FL 32789 via email & regular U.S. Mail

Re: I

Tolling Agreements in light of 2011 Amendments to Bert Harris

Dear Randy and Jeff:

The purpose of this letter is to provide you with a status update regarding the various 2010 tolling agreements executed by the City and several local property owners prior to the 2011 legislative clarification of the statute of limitations for Bert Harris claims. As you recall, due to the uncertainty associated with the running of the statute of limitations for Bert Harris claims filed pursuant to Section 70.001, *Florida Statutes*, the City and the property owners executed the tolling agreements to provide all parties with the opportunity to investigate and, potentially, resolve claims in advance of litigation.

As I indicated in my September 12, 2011 letter, the July 1, 2011 changes to Section 70.001 now clarify that the one year statute of limitations under Bert Harris begins to run when the regulation is first applied to the real property at issue. As amended, Section 70.001 provides that a regulation is deemed to apply upon enactment of the regulation and written notice to the property owners who may be impacted by the law. Absent written notice, the one year statute of limitations is triggered by a formal denial of a written request for development or variance. The amendments apply prospectively only and, therefore, do not apply to any claim that was pending on the effective date of the Act, July 1, 2011.



February 22, 2012 Page 2

With respect to the three tolling agreements executed by the City, the status of each agreement is as follows:

New England Partners, LLC.

On May 10, 2010, the City and New England Partners entered into a tolling agreement as a result of New England Partners' contention that its ability to develop the real property located at 316 W. Welbourne Avenue, along with the property abutting New England Avenue, had been severely limited by the City's 2009 Comprehensive Plan and 2010 Land Development Code changes. As a result of extensive negotiations between the parties, a Settlement Agreement was executed on February 14, 2011 which resolved all issues which had been, or could have been, raised by New England Partners against the City, thereby completely resolving all Bert Harris claims in connection with these properties. A fully executed copy of the Settlement Agreement is attached hereto as Exhibit "A". By the terms of the Settlement Agreement, the Tolling Agreement terminated upon the parties' approval and execution of the Settlement Agreement.

Dan Bellows

The March 22, 2010 Tolling Agreement between the City and Dan Bellows was terminated by the City by letter dated October 28, 2010 based upon Bellows' failure to provide meaningful or substantive information regarding his potential Bert Harris claims. Upon Bellows' request for reinstatement of the Agreement, the City Commission reinstated the Agreement and extended its term through June 13, 2011. A copy of our correspondence outlining the terms of the reinstatement is attached hereto as Exhibit "B". Therefore, by operation of the reinstatement terms, this Tolling Agreement has expired. My understanding is that there are no ongoing communications with Mr. Bellows regarding his potential Bert Harris claims.

Holler Family

The City and various Holler family owned or controlled entities entered into a Tolling Agreement dated May 10, 2010. A copy of that Tolling Agreement is attached hereto as Exhibit "C". Although the parties engaged in a consistent dialogue from the inception of the Agreement through the first quarter of 2011, we were not able to resolve any of the potential Bert Harris claims.

Given the 2011 clarification to the Bert Harris statute, the purpose of the tolling agreement with the Holler Family is rendered moot. Any Bert Harris claims they may have will begin to run either when formal written notice is provided to them, or upon formal denial of a proposed development or variance. Therefore, I recommend that the City terminate its 2010 tolling agreement with the Holler family. In connection with this matter, I will communicate with Frank Hamner, counsel for the Holler family, explaining the City's basis for proposing the termination.

February 22, 2012 Page 3

Please let me know if you would like to discuss this further.

Sincerely,

Usher L. Brown

ULB:tla

CC:

Mayor Kenneth Bradley City Commissioners



BROWN, GARGANESE, WEISS & D'AGRESTA, P.A.

Attorneys at Law

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September 12, 2011

Randy Knight, City Manager Jeff Briggs, Director of Planning City of Winter Park 401 Park Avenue South Winter Park, FL 32789

via email & regular U.S. Mail

Re: A

Amendment to Bert Harris

Dear Randy and Jeff:

The purpose of this letter is to bring to your attention changes made to the Bert Harris statute. These changes may warrant additional procedures, including notice to property owners who may be affected by land regulations enacted by the City. However, I do not find any violation of Bert Harris in the existing Land Development Code, so in my opinion there is nothing that needs to be amended or repealed in order to bring the City's Code in compliance with the changes made to Bert Harris in the 2011 Session.

The material changes from 2011 in Bert Harris, Section 70.001, Florida Statutes, are the following:

- 1. An inordinate burden on property does not include a temporary impact on development. However, the law is changed so that now a temporary impact that is in effect for longer than one year may constitute an inordinate burden, "depending upon the circumstances". Thus, a moratorium on the development of property that exceeds one year may, depending upon the circumstances, constitute an inordinate burden entitling the property owner to relief under the statute.
- 2. The law was amended to provide that in a lawsuit under Bert Harris, it is relevant to prove the amount of time that elapsed between enactment of the law or regulation and its first application to the subject property. This is actually a helpful provision because it suggests that a property owner who held his land under an existing regulatory scheme for a substantial period of time should have greater difficulty in proving



September 12, 2011 Page 2

that the aged regulation interfered with or burdened his "reasonable investment-backed" expectations.

3. Importantly, the law now clarifies when the one year statute of limitation begins to run. A cause of action under Bert Harris may not be commenced if the claim is presented more than one year after the regulation is first applied to the property at issue. Previously, there was some disagreement in the courts concerning as to when a regulation was deemed to be applied to a property owner. The property may sit for a number of years while the regulation is in force, but some courts have agreed with the property owner that the regulation was not applied to that owner until such time as the owner started the development process.

This ambiguity as to when the one year period starts to run has now been cleared up pretty well as a result of this amendment to the law. As amended, the statute now provides that a regulation is deemed to apply upon enactment of the regulation <u>and</u> written notice to property owners who may be effected by the law. The statute provides that notice must be given by mail to affected property owners at the addresses referenced in the jurisdiction's most current ad valorem tax records. The fact that the regulation could be modified or altered does not preclude the "impact of the ... regulation on a property from being clear or unequivocal".

Notice under this subsection of the statute is provided after the enactment of the regulation and shall inform the property owner or registered agent that the "regulation may impact the property owner's existing property rights and that the property owner may have only one year from receipt of the notice to pursue any rights established under this section." The statute does not require the notice to be mailed by certified mail, but my advice would be mail the notice by certified mail to affected property owners.

This change in the law suggests that we may want to look at changing procedures and possibly amending the Land Development Code to incorporate these new procedures. (As stated above, the Code is not in violation of Bert Harris). There is a great benefit in having the one year period run as soon as possible under the law. Therefore, it would be helpful if the Code required that staff will serve by registered mail each land use regulation upon enactment to all property owners who could claim a burden as a result of the regulation. (The statute requires that the regulation must clearly and unequivocally impact the property).

The law now provides that the one year starts to run also whenever there is a formal denial of a written request for development or variance. Of course, if a regulation was enacted and notice given to a property owner more than one year prior to a request for development or variance, you would not have to rely on this provision because the one year would have already expired.

The reference to serving a registered agent with notice is important. The registered agent of record may be the only easy to find contact person with respect to property owned by a corporation or LLC.

September 12, 2011 Page 3

4. A couple of minor or technical changes include shortening the presuit notification period from 180 days to 150 days, and adding a provision that allows the government to pay compensation in settlement of the Bert Harris claim (in addition to purchasing the property or offering other types of solutions that are already listed in the statute). Additionally, a government's "ripeness decision" (which is made as part of the settlement process during the 150 day presuit notification period) is now referred to as a "statement of allowable uses". The amendment to the law also waives sovereign immunity for causes of action brought under Bert Harris.

Lastly, the amendments apply prospectively only and do not apply to any claim that was pending on the effective date of the Act, July 1, 2011.

Please let me know if you would like to discuss this further.

Sincerely,

Usher L. Brown

ULB:tla

cc: Mayor Kenneth Bradley City Commissioners

G:\Docs\City of Winter Park\Land Development\Bert Harris\tr.knight and briggs re amendment to bert harris act.wpd

Prepared by and return to:
Catherine D. Reichmann, Esq.
Brown, Garganese, Weiss & D'Agresta, P.A.
P.O. Box 2873
Orlando, FL 32802-2873

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this 14th day of February, 2011, between the City of Winter Park, Florida, a municipality, 401 Park Avenue South, Winter Park, FL 32789, ("City"), and New England Partners, LLC, a Florida limited liability company, P.O. Box 2456, Winter Park, FL 32790, ("New England"), as follows:

WITNESSETH

WHEREAS, New England is the owner of certain real property (the "Property") on Welbourne Avenue and New England Avenue in the City, being more particularly described in Exhibit "A" attached hereto.

WHEREAS, for purposes of this Agreement, the Property will be referred to as the property at 316 W. Welbourne Ave. (the "Welbourne Property"), and the property abutting New England Ave. (the "New England Property").

WHEREAS, in the 1991 Comprehensive Plan, the Welbourne Property was designated Multi-Family Residential with R-3 zoning, and this Comprehensive Plan designation allowed either R-3 or R-4 zoning limitation on the location of parking garages. If New England hereceived approval for rezoning the Welbourne Property to R-4

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Page 1 of 15
Settlement Agreement/City of Winter Park and New England Partners, LLC

Comprehensive Plan amendments, then up to 25 units/acre would have been allowed.

WHEREAS, in the 2009 Comprehensive Plan and the 2010 Land Development Code, the Welbourne Property was designated Medium Density Residential and zoned R-3, which allows a maximum of 110% FAR, and a maximum of 17 units/acre. The only compatible zoning is R-3.

WHEREAS, in 2010, the City adopted Land Development Code Sections 58-71(jj) and 58-84(bb), which provide that "any above grade parking garage or parking deck shall be setback at least 100 feet from any property used for single family or low density residential".

WHEREAS, in a 1995 amendment to the Comprehensive Plan, the New England Property was designated Commerce as the future land use designation and under the 1991 Comprehensive Plan, this designation allowed 45% FAR.

WHEREAS, in the 2009 Comprehensive Plan, the New England Property was designated Commercial, which now allows up to 17 units/acre and up to 100% FAR, and C-3 is the only compatible zoning district.

WHEREAS, for the New England Property, in the 2010 Land Development Code, the third floor must be residential.

WHEREAS, the City is unable to determine the actual impact on New England of any of the changes to the Comprehensive Plan and the Land Development Code without the benefit of an actual development application which demonstrates the actual achievable density for the Property.

WHEREAS, on May 10, 2010, the parties entered into a Tolling Agreement, tolling New England's claim under Fla. Stat. 70.001, the "Bert Harris claim", to allow the parties time to discuss possible settlement of the matter.

WHEREAS, New England seeks damages as a result of a burden New England has alleged on its ability to develop the Property as originally contemplated prior to the City's 2009 Comprehensive Plan and 2010 Land Development Code changes. The City denies both the existence of a valid Bert Harris Claim and all liability that may arise from any Bert Harris claims raised by New England.

WHEREAS, the parties, desiring to amicably resolve the issues in the Bert Harris claim, have engaged in settlement negotiations relative to same.

WHEREAS, after having consulted with attorneys and consultants of their choice, the parties desire to amicably resolve their differences to avoid expensive and protracted litigation.

WHEREAS, New England and the City agree to enter into this Agreement as full and complete resolution of all issues regarding the Bert Harris claim and to provide for the mutually acceptable redevelopment of the Property.

WHEREAS, this Agreement is authorized by the Charter and code of the City and by Fla. Stat. 70.001, even though suit has not yet been filed, *Charlotte County Park of Commerce*, *LLC v. Charlotte County*, 927 So. 2d 236 (Fla. 2d DCA 2006).

WHEREAS, the City has determined, with New England's agreement, that the terms of this Agreement protect the public interest served by the City's

Comprehensive Plan and Land Development Code, and this Agreement allows the City to avoid protracted expensive litigation and the possibility of a large judgment, including the payment of New England's attorneys' fees, the cost of which would be a burden on all taxpayers in the City.

WHEREAS, the City has determined, with New England's agreement, that the terms of this Agreement constitute the appropriate relief necessary to prevent the 2009 Comprehensive Plan and the 2010 Land Development Code amendments from inordinately burdening the Property.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the parties agree as follows:

- Incorporation of Recitals: The recitals set forth above are true and accurate and are hereby incorporated herein.
- 2. New England Property Land Use: Regarding the New England Property, the City agrees to process New England's application to change the future land use to CBD, and the zoning to C-2. The parties agree that the application shall follow the standard notice and hearing procedures. The future land use shall be processed first. The City agrees to waive all application fees. The City acknowledges that C-2 is the only zoning category consistent with CBD land use per Table 2, Chapter 1 of the City's Comprehensive Plan.
- 3. <u>Welbourne Property Land Use</u>: Regarding the Welbourne Property, the City agrees to an interpretation of Sections 58-71(jj) and 58-84(bb) of the City's Land Development Code. That Section's reference to "parking garage" shall mean a multi-level parking garage structure designed for

commercial use, and not a parking garage that is one level and part of a residential dwelling.

- 4. Welbourne Property Intensity: Regarding the Welbourne Property, in light of New England's expenditures toward development of the Property prior to the recent Comprehensive Plan Change, the City Agrees, in order to settle the claim, to allow maximum density of 25 units per acre, so long as the R-3 zoning standards are met in all other respects. In other words, the Welbourne Property may develop with R-4 density (25 units/acre) subject to R-3 development standards.
- Comprehensive Plan amendment and rezoning for the New England Property is not granted by the City or is challenged by an independent third party, then this Agreement will be null and void and of no force and effect and the parties shall return to their former positions under the Tolling Agreement. Further, the parties' rights, positions, defenses, and claims in the Bert Harris Claim shall not be affected by having entered into this Agreement or by the Agreement having been voided pursuant to the provisions of this paragraph.
- 6. <u>Tolling Agreement</u>: The Tolling Agreement shall remain in effect during the pendency of the approval process for the New England Property. If the approval is not granted, the Tolling Agreement shall continue in accordance with its terms.
- 7. Release and Waiver: As a material inducement for the City to execute this Agreement, New England, for and on behalf of themselves and their

respective existing, past and/or future partners, managers, employees and independent agents, shareholders, members, officers, directors, including their respective successors and assigns, do hereby now and forever jointly and severally release, relinquish, waive, discharge, acquit, satisfy and forever discharge the City from any and all claims, actions, causes of action, damages and costs and liability whatsoever, in law or in equity whether presently known or hereafter discovered, absolute or contingent, which New England ever had, now has, or hereafter may have against the City based upon, pertaining to, relating to, or arising out of the City's 2009 Comprehensive Plan or the 2010 amendments to the Land Development Code, the application of the plan and code changes to New England's Property, or the validity, constitutionality or enforceability of the City's 2009 Comprehensive Plan or the 2010 amendments to the Land New England acknowledges that it is signing this Development Code. Agreement with full knowledge of any and all rights it may have, and that it is not relying upon any representations or warranties made by the City, and New England hereby assumes the risk of any mistake of fact now known or unknown to New England.

- Effective Date: This Agreement shall become effective as of the 8. date it is approved by the City Commission of the City and is executed by the appropriate official of the City and New England Properties (the "Effective Date").
- Enforcement: In the event of a default of this Agreement, and as a 9. condition of any party exercising any enforcement remedies, the non-defaulting party shall provide written notice of the default to the defaulting party. The

defaulting party shall have ninety (90) days from receipt of such notice to cure such default. If the defaulting party fails to cure within ninety (90) days, then the non-defaulting party shall be entitled to seek specific performance and injunctive relief and shall be entitled to an order of the court to enforce this Agreement and other equitable relief as the court may deem just.

• 10. <u>Notices</u>: All notices and other communication as required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express or similar overnight delivery service, addressed as follows:

If to City: City of Winter Park 401 Park Avenue South Winter Park, FL 32789 Attn: City Manager Telephone: 407-599-3245

With copies to:
Brown, Garganese, Weiss & D'Agresta, P.A.
111 N. Orange Ave., Suite 2000
Orlando, FL 32801
Attn: City Attorney
Telephone: 407-425-9566

If to New England: New England Partners, LLC P.O. Box 2456 Winter Park, FL 32790 Attn: Managing Member

With copies to: Rebecca Furman, Esq. 215 North Eola Drive. Orlando, FL 32801

11. <u>Further Representations and Warranties</u>: New England hereby represents and warrants that: (a) New England and its general partners are each

in good standing under the laws of the State of their formation; (b) New England is duly authorized to transact business in the State of Florida; and (c) New England and its general partners have taken corporate and partnership action necessary to authorize this Agreement. The City hereby represents and warrants that the City has the power to enter into this Agreement. The parties mutually represent and warrant that this Agreement has been duly authorized by the City pursuant to the City Charter, City Code and is in accord with Florida law in effect as of the Effective Date.

12. Miscellaneous:

- a. <u>Construction and Governing Law</u>: This Agreement was drafted by all parties, and therefore any ambiguity shall not be construed against any party. In addition, this Agreement has been executed and delivered in and should be interpreted, construed and enforced pursuant to and in accordance with the laws of the State of Florida.
- b. <u>Counterparts</u>: If multiple counterparts of this Agreement are executed, each shall be deemed an original, but all counterparts together shall constitute one and the same instrument.
- c. <u>Headings</u>: The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- d. <u>Entire Agreement</u>: This Agreement sets forth all the promises, agreements, conditions and understandings among the parties hereto as to the subject matters referenced herein, and supersedes all

prior and contemporaneous agreements, understandings, inducements or conditions expressed or implied, oral or written, except as herein contained.

- e. Assignments/Binding Nature: This Agreement will be binding upon and shall inure to the benefit of the City and New England, and each party's subsidiaries, affiliates, successors and assigns. Further, the parties agree that they will not challenge the adoption of, or the validity, constitutionality, or enforceability of the provisions contained within this Agreement. New England shall have a right of assignment of rights and obligations under this Agreement, but New England agrees not to assign its rights and obligations under this Agreement unless the transferee shall execute and deliver to the City a consent to be bound by the terms and conditions of this Agreement, which consent shall be in substantially the form attached hereto as Exhibit "B".
- f. Amendments: No change in, or addition to, this Agreement shall be enforceable unless evidenced by a writing executed by the parties. Any such enforceable amendment(s) shall become effective on the date stipulated therein.
- g. Release and Waiver: Any condition to a party's obligation hereunder may be waived by that party, provided such waiver is in writing. However, the waiver by any party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision hereof. The

failure by any party to timely enforce any of the provisions of this Agreement shall not be deemed a waiver thereof.

- h. <u>Invalidity</u>: If any section, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof. In the event this Agreement is invalidated by a third party, then the parties hereto shall be returned to their respective legal positions as such existed on the date on day prior to the Effective Date of this Agreement.
- i. <u>Integrated Agreement</u>: Each party's obligations hereunder are dependent upon performance of the material obligations of the other party.
- j. Third Party Challenges: In the event that this Agreement is invalidated by a court of competent jurisdiction as a result of a challenge instituted by a third party, all the rights of obligations of the parties hereto shall terminate and be of no further force and effect, including, without limitation, any claim by New England for vested rights arising under this Agreement. Further, in the event this Agreement is terminated under this provision, the parties hereto shall then be returned to their respective legal positions as existing on the Effective Date.
- k. <u>Compromise of Disputed Claims</u>: The parties acknowledge that this Agreement is a compromise and resolution of the

disputed claims and agree that neither this Agreement, nor any action taken in furtherance of this Agreement, shall ever be treated as an admission or evidence of liability by any of them for any purpose whatsoever, nor shall it be admissible in Court.

- I. No Third Party Beneficiaries: This Agreement is intended for the sole benefit of the parties and their subsidiaries, affiliates, successors or assigns. No other person or entity shall have any right of action hereunder or be deemed to be a third party beneficiary of any provision contained herein.
- expense of its own attorneys' fees and costs in connection with the settlement of New England's Bert Harris claim, and with the negotiation and preparation of this Agreement. In the event a dispute or litigation arises in connection with this Agreement, neither party shall be entitled to the recovery of attorneys' fees or costs incurred in connection therewith, whether suit be brought or not. It is the specific intent of both the City and New England that each party to this Agreement bear its own attorneys' fees and costs. Should this Agreement become null and void under Paragraph 4, then Fla. Stat. §70.001 shall govern the award of attorneys' fees.
- n. No Precedent. This Agreement does not create a precedent obligating the City to enter any other contract as to settle any other matter, consistent with subsection I hereinabove.

in antitacoo anticacor, itto bai	mes helem have executed this Agreement
this 15th day of FEBRUARY	, 2011.
WITNESSES: Thou Stevens Printed name: Troy 12 Stevens	NEW ENGLAND PARTNERS, LLC a Florida limited liability company By: Printed name: ROBERT P. HOLD Title: MANAGING-MEMISER
Printed name: Johnifer Lind	
STATE OF FLORIDA COUNTY OF ORANGE	
OF FEBRUARY, 2011, by MANAGING-MEMBERZ OF NEW ENGLA	knowledged before me this 15th day Robert P. Holo the ND PARTNERS, LLC, a Florida limited is personally known to me or who as identification. Bourie C. Beckett Notary Public - State of Florida Print Name: Bourie A. Beckett My Commission expires: 09/21/2011
	BONNIE A BECKETT MY COMMISSION # DD 677183 EXPIRES: September 21, 2011 Bonded Thru Notary Public Underwriters

CITY OF WINTER PARK

Kenneth W. Bradley, Mayor

ATTEST:	
Cynthia Bonham City Clerk	2
Date: 2-15-11	
STATE OF FLORIDA	
COUNTY OF ORANGE	-1/
WINTER PARK, a Florida municipal c	acknowledged before me this 15th day neth W. Bradley, Mayor of the CITY OF orporation, (check one) who is personally as
known to me or \square who produced	
identification.	()
	1/ :+ N +
JUANITA GRANT	Luonila Thank
Notary Public - State of Florida	Notary Public – State of Florida Print Name: JUNNITA GRANT
My Comm. Expires Jan 15, 2013 Commission # DD 852155	My Commission expires:
Bonded Through National Notery Assn.	My Commission Capitos.

G:\Docs\City of \Winter Park\Land Development\Legal Challenge to \Land Development Code & Comp Plan\Tolling Agreements\New England Partners\Settlement Agreement 2-10-11 clean.doc

WITNESSES:

NEW ENGLAND PARTNERS, LLC, a Florida limited liability company

By:

BRYAN-HUNTER PROPERTIES, LLC, a Florida limited liability company, Managing Member

1 Hitter I Valle

Printed Name:

CATHY HAHN

By:

Paul F. Bryan, sole member and

Manager

STATE OF FLORIDA COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 2/ day of February, 2011, by Paul F. Bryan, sole member and manager of Bryan-Hunter Properties, LLC, a Florida limited liability company, Managing Member of New England Partners, LLC, a Florida limited liability, who is personally known to me.

Notary Public - State of Florida

GENEH, GODBOLD

MY COMMISSION # DD 927695

EXPIRES: November 8, 2018

Bonded Tru Nolary Public Uniterviture

Print Name:

My Commission Expires:

EXHIBIT "B" [Proposed Consent by Transferee]

AGREEMENT OF TRANSFEREE

Under this Agreement of Transferee, made this day of
("Transferee") acknowledges and agrees as follows:
1. Transferee acknowledges that
2. Transferee acknowledges that New England Partners, LLC, and the City of Winter Park have entered into an Settlement Agreement dated as of (copy attached) and recorded in O.R. Book, Page, Public Records of Orange County, Florida, which related to the settlement of a Bert Harris claim concerning the Property. Transferee acknowledges having received a copy of said Settlement Agreement and understands all of the terms, provisions, conditions, and limitations of that Settlement Agreement.
3. In consideration for receiving the benefits of the transfer of the Property and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Transferee agrees to be bound by all of the terms, provisions conditions, and limitations of that Settlement Agreement as the same may apply to the Property owned by me or in which I have an interest, including the condition that the undersigned Transferee obtain this same agreement from any subsequent transferee.
(print name)

LEGAL DESCRIPTION

New England Property:

Lot 16, Block 40, REVISED MAP OF THE TOWN OF WINTER PARK, according to the plat thereof as recorded in Plat Book "A", Pages 67 through 72, inclusive, Public Records of Orange County, Florida; together with the South half of the alley vacated by the City of Winter Park, by instrument recorded in Official Records Book 3663, Pages 2787 and 2788, abutting the North Iot line of lot 16.

Welbourne Property:

Lots 9, 10, and 11, Block 40, REVISED MAP OF THE TOWN OF WINTER PARK, according to the plat thereof as recorded in Plat Book "A", Pages 67 through 72, inclusive, Public Records of Orange County, Florida; together with the North half of the alley vacated by the City of Winter Park, by instrument recorded in Official Records Book 3663, Pages 2787 and 2788, abutting the South lot line of lots 9, 10, and 11.



BROWN, GARGANESE, WEISS & D'AGRESTA, P.A.

Attorneys at Law

111 N. Orange Ave., Suite 2000 P.O. Box 2873 Orlando, Florida 32802-2873 Phone (407) 425-9566 Fax (407) 425-9596

Usher L. Brown
Board Certified Civil Trial Lawyer

ulbrown@orlandolaw.net

December 20, 2010

Via certified mail, return receipt requested & email

Mr. Daniel B. Bellows President Sydgan Corporation P.O. Box 350 Winter Park, FL 32790-0350

511 W. New England Ave. Suite 200 Winter Park, FL 32789

Re:

Tolling Agreement

Dear Mr. Bellows:

Please be advised that at the meeting held by the Winter Park City Commission on December 13, 2010, it was determined that the termination of the March 22, 2010 Tolling Agreement was revoked and that the Tolling Agreement is reinstated for a period of six months, running from December 13, 2010. Accordingly, the March 22, 2010 Tolling Agreement is hereby extended and its term shall continue until and through June 13, 2011. This reinstatement and the term of reinstatement are subject to the parties continuing to perform in accordance with the requirements of the Tolling Agreement.

It is my understanding that you have delivered information regarding several parcels to Mr. Briggs, and Mr. Briggs has agreed to give you his response regarding those parcels before we proceed to deal with other parcels. That procedure is acceptable to us, and within the next several weeks, the attorneys in my office will work with Mr. Briggs so that he may respond to you with respect to the parcels/projects you have presented to Mr. Briggs as of the date of this letter.

Please contact me if you have any questions regarding this. Vivian Cocotas and Katie Reischmann in my office will be taking the lead in working with you and your counsel



December 20, 2010 Page 2

with respect to the issues related to the Tolling Agreement, and your potential Bert Harris claims.

Sincerely,

Usher L. Brown (Signed in absence to avoid delay)

ULB:tla

cc: Kim C. Booker, Esquire, via fax & email
G:\Docs\City of Winter Park\Land Development\Legal Challenge to Land Development Code & Comp Plan\Tolling Agreements\Vose
- Bellows\Correspondence\tr.dan bellows re reInstatement of tolling agreement.wpd

TOLLING AGREEMENT

The City of Winter Park ("City") and Scottish Primrose, LLLP; DI Partners, LLLP; HWP Partners, LLLP; PA Partners, LLLP; RWH Jr. Family Trust B; Juliette A Holler; RCJ of Winter Park No. 2, Ltd.; RCJ of Winter Park No. 3, Ltd.; Rosa LP, Ltd., LLLP; CVJCR Properties, Ltd., LLLP; Sarah B. Galloway Trust; BFC Park Avenue, LLC; BFC New England, LLC; EPIL Morse Blvd, LLC; and any other Winter Park, Florida property owner who shall retain Frank A. Hamner, P.A. or any of its members disclosed on or before May 4, 2010 for the purposes of evaluating or asserting a claim against the City under the Bert Harris Act, Sections 70.001, et seq., Florida Statutes, (hereinafter the "Act") (hereinafter collectively referred to as the "Landowners") enter into this Agreement to toll the applicable statute of limitations under the Act, and the time period of one year for presenting claims under the Act (hereinafter collectively referred to as the "Time Periods"), and agree as follows:

- Those properties listed on the attached Exhibit "A" are properties owned or under the control of the Landowners and subject to this Agreement to toll the Time Period.
- The City and the Landowner desire that for the period of this Agreement, they should be able to consider issues relating to the possibility of settling disputes without regard to the time constraints and Time Periods imposed under the Act.
- 3. The parties will work cooperatively to negotiate a settlement of any claims the Landowners may present regarding the Landowners' rights under Florida law. Notwithstanding, the parties agree there shall be no obligation to settle and the parties reserve all of their rights under law.

4. Any Landowner or the City may terminate this Agreement, at any time, based upon the party's own discretion, by delivering written notice to the other party. Notice shall be sent by certified mail, return receipt requested. The termination shall be deemed effective upon receipt of the written termination notice. All notices required by this Agreement shall be delivered as follows:

To City:

Mr. Randy Knight, City Manager City of Winter Park 401 Park Avenue South Winter Park, FL 32789

To Landowner:

1145

Frank A. Hamner c/o Frank A. Hamner, P.A. 1011 North Wymore Road Winter Park, Florida 32789 (407) 645-4549

However, neither party may terminate this Agreement for the first six (6) months from its effective date, so long as the parties engage in meaningful negotiations of claims that may be presented.

- 5. It is understood that by entering into this Agreement, no party waives any claims, rights or defenses that may have accrued up to the effective date of this Agreement.
- 6. Upon the expiration of this Agreement, the parties shall return to the status quo as of the effective date of this Agreement.

- 7. The period from and including the effective date of this Agreement through termination shall not be considered in any determination of the timeliness of the commencement of any action or proceeding relating to the Act.
- 8. Each Landowner is represented by counsel of his or its choice. None of the Landowners, or their counsel, are relying on any legal advice or factual representations made by the City or its attorney regarding the time periods within which a claim must be made under any Florida law or the Landowner's rights under any law.
 - 9. Notwithstanding the previous paragraph, the parties do agree as follows:
 - a. The City's Comprehensive Plan was adopted effective May 14,
 2009.
 - The Land Development Code was amended by the City at second reading on February 22, 2010.
 - c. The City of Winter Park intends to be equitably estopped to raise the statute of limitations as a defense so long as notice is made or claim is brought within the applicable limitations period for the Act, as it may be extended by the equitable tolling pursuant to this Agreement.
- 10. The parties rely upon the legal authority cited in favor of equitable tolling when a party agrees to toll the statute of limitations as set out and allowed by the courts in, for example, SEC v. Kelly, 663 F.Supp. 2d 276, 287, (S.D. N.Y. 2009); Hood v. Central United Life Ins., 2009 WL 3246678, 664 F.Supp. 2d 672, 676 (N.D. Miss. 2009). See also, CJS Limitation, §46, n. 9.

- 11. Nothing herein prevents a Landowner from filing a Bert Harris claim at any time in accordance with statutory requirements. Filing of an action or giving notice of a claim under Bert Harris will constitute an immediate termination of this Tolling Agreement.
- 12. This Agreement shall be construed in accordance with Florida law and the venue of any dispute arising out of this Agreement shall be in Orange County, Florida in the court of appropriate jurisdiction.
- 13. The parties agree that there is adequate consideration to support this Tolling Agreement including the mutual promises and forbearance as extended by the parties.
- 14. This Agreement shall not be offered in evidence in any action or proceeding except to prove that the statute of limitations was tolled for the period of time during which this Agreement was in effect.
- 16. The rights of this Agreement shall inure to the benefit of the parties hereto regardless of whether they choose other counsel subsequent to its Effective Date.

Signatures on following pages.

WHEREFORE, the parties are bound and do agree as shown by their signatures below.

	CITY OF WINTER PARK By: Kenneth W. Bradley Mayor Kenneth W. Bradley
Attest: Mulli Cynthia S. Bonham, City Clerk	M
	LANDOWNER: Scottish Primrose, LLLP
,	By:
	By:
	LANDOWNER: HWP Partners, LLLP
	By:
	LANDOWNER: PA Partners, LELE
	By:

LANDOWNER: RWH Jr. Family Trust B
Da la
By: Its:
LANDOWNER: Juliette A. Holler
By:
By:
LANDOWNER: RCJ of Winter Park No. 2, Ltd.
By:
By: Its:
LANDOWNER: Rosa LP, Ltd., LLLP
By:

LANDOWNER: CVJCR Properties, Ltd., LLLP

MA Te
By: Its:
LANDOWNER: Sarah B. Galloway Trust
Jet Went
By: Co-Traction Its:
LANDOWNER: BFC Park Avenue, LLC
By: W. P. Battaglia Its: President
LANDOWNER: BFC New England, LLC
By: W. P. Battaglia Its: President
LANDOWNER: EPIL Morse Blvd, LLC
By: N. P. Battaglia Its: President
Its: President

Exhibit "A"

11.50 0-1
1150 Solana Avenue
501-549 N. Virginia Avenue
310 - 326 S. Park Avenue
600 N. Knowles Avenue
348-356 S. Park Avenue
111-119 E, Lyman Avenue
540 W. Fairbanks Avenue
860 W. Fairbanks Avenue
1221 Minnesota Avenue
669 Orange Avenue
671 Holt Avenue
650 Capen Avenue
745 Holt Avenue
711 W. Fairbanks Avenue
555 S. Capen Avenue
720 Orange Avenue
745 Orange Avenue
750 Orange Avenue
761 Orange Avenue
358 N. Park Avenue
1227 N. Orlando Avenue
250 S. Park Avenue
135 E. New England Avenue
150 E. Welbourne Avenue

1150 N. Orlando Avenue	
710 W. Fairbanks Avenue	
202-206 S. Park Avenue	
330-336 S. Park Avenue	
500 S. Park Avenue	
102 N. Park Avenue	
110-112 N. Park Avenue	
127 W. Fairbanks Avenue	
967 Cherokee Avenue	
425 W. Canton Avenue	
800 W. Comstock Avenue	
809 W. Comstock Avenue	
736 W. Comstock Avenue	
906 W. Fairbanks Avenue	
643 N. Orange Avenue	
135 N. Knowles Avenue	
162 N. Knowles Avenue	
805 W. Fairbanks Avenue	
872 W. Comstock Avenue	
882 West Comstock Avenue	,
850 Via Lugano	
860 Via Lugano	
158 E. New England Avenue	3
400 W. Morse Blvd.	

REGULAR MEETING OF THE CITY COMMISSION April 9, 2012

The meeting of the Winter Park City Commission was called to order by Mayor Kenneth Bradley at 3:34 p.m. in the Winter Park Community Center, 721 West New England Avenue, Winter Park, Florida.

The invocation was provided by Fire Chief James White. A moment of silence was given in honor of the passing of Mayor Bradley's father, Commissioner Sprinkel's father and City employee Danny Byers; followed by the Pledge of Allegiance.

Members present:

Mayor Kenneth Bradley Commissioner Steven Leary Commissioner Sarah Sprinkel Commissioner Carolyn Cooper Commissioner Tom McMacken Also present:

City Manager Randy Knight City Attorney Larry Brown City Clerk Cynthia Bonham Deputy City Clerk Michelle Bernstein

Approval of the agenda

Motion made by Commissioner McMacken to approve the agenda; seconded by Commissioner Cooper and approved by acclamation with a 5-0 vote.

Mayor's Report

a. Presentation of the Winter Park Sidewalk Art Festival original art

Sarah Arnold, Winter Park Sidewalk Art Festival President presented the City with the original art work from the poster by artist Robert Beck. Mayor Bradley thanked Ms. Arnold and the Winter Park Sidewalk Art Festival board for their hard work.

b. <u>Proclamation – Winter Park Garden Clu</u>b's 90th Anniversary Day

Mayor Bradley announced that the Winter Park Garden Club will be celebrating their 90th anniversary tomorrow and thanked them for their dedication and contributions to the City.

Mayor Bradley proclaimed April 10, 2012 as Winter Park Garden Club Day in Winter Park. Sara Johns, President of the Winter Park Garden Club, was present to accept the proclamation.

c. Appointment of 'Wired for Winter Park' Task Force

Motion made by Mayor Bradley to appoint Steve Goldman, Chase Heavener, Ed Sabori and Commissioner Leary to the Wired for Winter Park Task Force; seconded by Commissioner Sprinkel and approved by acclamation with a 5-0 vote.

Mayor Bradley advised that he will appoint three additional members to this board at the next meeting.

City Manager's Report

City Manager Knight encouraged everyone to attend the first Martin Luther King Task Force community meeting tomorrow night at 6:00 p.m. at the Community Center to discuss the naming opportunities.

City Manager Knight answered questions related to the tree committee and the replanting of trees. He advised that a tree update/presentation will be given at the next meeting.

City Manager Knight addressed Commissioner Sprinkel's question regarding what the next steps would be to accomplish the strategic planning priorities. He said the Commission will have an opportunity to discuss and approve the list of priorities at the next meeting.

City Attorney's Report

Attorney Brown answered questions and provided clarification pertaining to the information he sent out last week regarding changes to work product resulting from a quasi-judicial subsidiary board.

Non-Action Item

a. Winter Park Train Station Design Development Update from ACi

This item was pulled from the agenda per staff and is rescheduled for April 23.

b. <u>Comprehensive Annual Financial Report (CAFR) for the fiscal year ended September 30, 2011</u>

Bernadette Britz-Parker, CPA of James Moore & Company, P. L. provided the CAFR from fiscal year ending September 30, 2011. Ms. Britz-Parker summarized the highlights as presented in the package and answered questions.

Motion made by Commissioner Sprinkel to accept the CAFR; seconded by Commissioner McMacken and approved by acclamation with a 5-0 vote.

c. Financial Report - February 2012

Finance Director Wes Hamil provided the February 2012 financial report and answered questions of the Commission.

Motion made by Commissioner Sprinkel to accept the Financial Report; seconded by Commissioner Leary and carried unanimously with a 5-0 vote.

Consent Agenda

- a. Approve the minutes of 3/26/12.
- b. Approve the following purchase, change order and contract:
 - 1. PR 149001 to Brown & Brown Insurance for city property insurance renewal (April 2012 2013); \$294,663.81
 - 2. Change Order COR-034 to Community Center contract (RFQ-17-2009) with Turner Construction Company and authorize the Mayor to execute the change order document; \$54,523.00
 - 3. Commercial Property Insurance Application with Brown & Brown of Florida, Inc.; and authorize the Mayor to sign the application.
- c. Enter into the grant funding agreement with the Florida Department of Environmental Protection (FDEP) for construction of: 1) Park North Subdivision West Exfiltration System; 2) Pansy Avenue Stormwater Exfiltration System; and 3) Canton Avenue Stormwater Outfall Improvements Projects. Grant agreements total: \$384,000.
- d. Approve the proposed modifications to the City of Winter Park's Rate Schedule BA-1 Billing Adjustments (fuel adjustment) **PULLED FOR DISCUSSION, SEE BELOW**
- e. Reschedule the Monday, May 28, 2012 Commission meeting to Tuesday, May 29, 2012 due to the Memorial Day holiday. **PULLED FOR DISCUSSION, SEE BELOW**

Motion made by Commissioner McMacken to approve Consent Agenda items 'a', 'b.1'-'b.3' and 'c'; seconded by Commissioner Sprinkel and carried unanimously with a 5-0 vote.

Consent Agenda Item 'd' – Approve the proposed modifications to the City of Winter Park's Rate Schedule BA-1 Billing Adjustments (fuel adjustment)

Mayor Bradley asked if this would impact our bond ratings favorably or not in terms of the City's action. City Manager Knight explained that this is a rate stabilization type of approach which would be favorable.

Motion made by Mayor Bradley to approve Consent Agenda item 'd'; seconded by Commissioner McMacken and carried unanimously with a 5-0 vote.

<u>Consent Agenda Item 'e' - Reschedule the Monday, May 28, 2012</u> <u>Commission meeting to Tuesday, May 29, 2012 due to the Memorial Day</u> holiday

Mayor Bradley suggested cancelling the Memorial Day meeting. He asked if there are any important items scheduled for that time. City Manager Knight said no.

Motion made by Mayor Bradley to go ahead and cancel the second Commission meeting in May in honor of the Memorial Day holiday; seconded by Commissioner McMacken and carried unanimously with a 5-0 vote.

Action Items Requiring Discussion

a. Appointment of Vice Mayor

Motion made by Commissioner Cooper to appoint Commissioner McMacken as Vice Mayor. Motion failed for lack of a second.

Motion made by Commissioner Sprinkel to appoint Commissioner Leary as Vice Mayor; seconded by Mayor Bradley. Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel and Cooper voted yes. Commissioner McMacken voted no. The motion carried with a 4-1 vote.

Public Comments

Joe Terranova, 700 Melrose Avenue, provided feedback regarding the CAFR report and encouraged the City to develop a comprehensive undergrounding plan for utilities.

A recess was taken from 5:14 p.m. to 5:38 p.m.

Public Hearings

a. ORDINANCE NO. 2873-12: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA RELATING TO BUILDINGS; AMENDING CHAPTER 22 TO INCORPORATE THE FLORIDA BUILDING CODE WITH CERTAIN ADMINISTRATIVE AND TECHNICAL AMENDMENTS WHICH INCLUDE A FIRE SPRINKLER REQUIREMENT AS THE WINTER PARK BUILDING CODE; DESIGNATING APPLICABLE WIND DESIGN CRITERIA; UPDATING THE PROPERTY AND BUILDING MAINTENANCE CODE WITH AMENDMENTS; REVISING CLASSES OF CERTAIN CODE ENFORCEMENT CITATIONS; AND PROVIDING AN EFFECTIVE DATE. Second Reading

Attorney Brown read the ordinance by title. Building and Code Enforcement Director George Wiggins advised that he consulted with Attorney Brown after the last Commission meeting and they have inserted a set of criteria that can be applied when extending or reinstating an expired permit to accomplish the goal of minimizing the impact of a lengthy construction project on surrounding properties. Mr. Wiggins answered questions regarding permits that are extended and the fines associated with violations to the building code and shorefront removal of lakefront vegetation.

Commissioner Cooper shared her concerns regarding the fines and was opposed with changing the class of violation for a code enforcement violation of the newly adopted Lakeshore Protection Ordinance from Class II (\$100) to Class III (\$300).

Public Works Director Troy Attaway provided background regarding the penalties for shoreline violations and answered questions.

Motion made by Commissioner Leary to adopt the ordinance; seconded by Commissioner Sprinkel.

Motion amended by Commissioner Cooper that violations of the shoreline protection provisions be categorized as a Class II violation and that construction of a seawall without a permit remain a Class III violation. Motion failed for lack of a second.

Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

b. AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, RELATING TO PAIN MANAGEMENT CLINICS AND PHARMACIES; REPEALING THE MORATORIUM ON PAIN MANAGEMENT CLINICS ADOPTED BY ORDINANCE NO. 2840-11 AS EXTENDED BY ORDINANCE NO. 2872-12; ESTABLISHING REGULATIONS OF PHARMACIES AND PAIN MANAGEMENT CLINICS; TO BE CODIFIED AS ARTICLE II, CHAPTER 54 WINTER PARK CITY CODE; CREATING REGISTRATION AND SUPPLEMENTAL MONTHLY REPORTING REQUIREMENTS FOR ALL PAIN MANAGEMENT CLINICS; CREATING SUPPLEMENTAL ZONING REGULATIONS FOR NEW PAIN AMANGEMENT CLINICS; CREATING SUPPLEMENTAL REGULATIONS FOR ALL PHARMACIES; PROVIDING THAT PHARMACIES AND PAIN MANAGEMENT CLINICS SHALL NOT CO-LOCATE; ALLOWING FOR APPLICATION FOR VARIANCE FROM THE COLOCATION BAN; CREATING A REQUIREMENT FOR ALL PHYSICIANS AND PHARMACISTS TO CHECK THE PRESCRIPTION DRUG MONITORING PROGRAM PRIOR TO PRESCRIBING OR DISPENSING DANGEROUS DRUGS; PROVIDING DEFINITIONS, TO ADD A DEFINITION FOR "PAIN MANAGEMENT CLINIC" AND TO EXCLUDE PAIN MANAGEMENT CLINIC FROM THE TERM "CLINIC"; AMENDING SECTION 58-78 PERMITTED ZONING USES, ADDING PAIN MANAGEMENT CLINIC AS A PERMITTED USE IN THE I-1 ZONING DISTRICT; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, SEVERABILITY, AND AN EFFECTIVE DATE. First Reading

Attorney Brown read the ordinance by title.

Building and Code Enforcement Director George Wiggins explained that the creation of the proposed City ordinance regulating Pain Management Clinics is not intended to interfere with legitimate medical clinics or the lawful prescription and use of controlled substances.

The new ordinance adopts the same provisions within Orange County's proposed pain management ordinance which will not go into effect until June; certain provisions that are applicable to Winter Park and our zoning code was included. Mr. Wiggins further explained details of the ordinance and answered questions.

Attorney Brown advised that the City of Winter Park will be relying upon and has incorporated the findings of the Orange County Prescription Drug Task Force that was created by Orange County.

Joseph Cocchiarella, Assistant State Attorney and member of the Task Force, provided a presentation which included prescription drug statistics, registration and operational regulations for new and existing pain management clinics, regulation of pharmacies, prescription drug monitoring program and criminal/civil action enforcement. Mr. Cocchiarella answered questions.

Motion made by Commissioner McMacken to accept the ordinance on first reading; seconded by Commissioner Sprinkel.

John Murphy, 2221 Hawick Lane, spoke in favor of the ordinance.

Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

c. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, ANNEXING APPROXIMATELY 54+- ACRES OF REAL PROPERTY REFERRED TO AS RAVAUDAGE OR HOME ACRES; GENERALLY LOCATED IN THAT POCKET OF UNINCORPORATED ORANGE COUNTY AREA BORDERED BY LEE ROAD TO THE SOUTH, ORLANDO AVENUE TO THE EAST; MONROE AVENUE TO THE NORTH AND BENNETT AVENUE TO THE WEST; PROVIDING FOR THE AMENDMENT OF THE CITY OF WINTER PARK'S CHARTER, ARTICLE I, SECTION 1.02, CORPORATE BOUNDARIES TO PROVIDE FOR THE INCORPORATION OF THE REAL PROPERTY ANNEXED HEREBY INTO THE MUNICIPAL BOUNDARIES; PROVIDING FOR THE FILING OF THE REVISED CHARTER WITH THE DEPARTMENT OF STATE; PROVIDING FOR REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. First Reading

Attorney Brown read the ordinance by title. Mayor Bradley announced that this will be treated as a simultaneous public hearing.

Planning Director Jeff Briggs noted that pursuant to Chapter 171, Florida Statutes, the City of Winter Park proposes to annex a 54+/- acre unincorporated pocket that is referred to as Ravaudage – Home Acres. Mr. Briggs explained that there are 56 properties included in the Ravaudage/Home Acres annexation area. The City of Winter Park has received voluntary annexation petitions from 33 of the individual property owners, requesting annexation into the City. Since these voluntary annexation petitions represent 56.9% of the property owners and 81.45% of the private land area involved, subsection 171.0413(6), Florida Statutes will permit the

City to annex the entire area without a vote of the electors and without the consent of the 23 properties that have not provided formally consented to this annexation. Mr. Briggs advised that the Planning Department received a letter of objection from the commercial property owners of Don Reid Ford located at 1205 North Orlando Avenue.

Mr. Briggs explained the public hearing process that was followed including notices being mailed to all property owners in the area of the pending annexation. A second hearing on the annexation ordinance for the Ravaudage/Home Acres area will not occur until a future time when a decision on the proposed CDD has been made. Mr. Briggs answered questions.

Applicant Dan Bellows, Benjamin Partners, Ltd. and Attorney Kim Booker, Booker and Associates, provided background and answered questions.

Motion made by Commissioner Leary to accept the ordinance on first reading; seconded by Commissioner Sprinkel.

Joe Terranova, 700 Melrose Avenue, spoke in favor of the project and urged the Commission to approve the request.

Colleen O'Brien, 2038 Albert Lee Parkway, spoke in opposition and shared her concerns with the increase in development and traffic congestion.

Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel, Cooper and McMacken voted yes. The motion carried unanimously with a 5-0 vote.

- Annexation Agreement for Ravaudage - Home Acres

Planning Director Jeff Briggs explained that the annexation agreement is part of the voluntary annexation for the 54 acres of Ravaudage - Home Acres as was discussed during the March 26 Commission meeting. Mr. Briggs advised that the only major change to the agreement was the removal of the provisions allowing the burning of debris. This will be handled as a separate request in the future. The agreement now contains all the exhibits including Exhibit "C" which is the PD approvals granted by Orange County. Mr. Briggs answered questions.

Commissioner Cooper shared her concerns and objected to the acceptance of the large amount of waivers from Orange County.

Motion made by Commissioner Leary to approve the annexation agreement; seconded by Commissioner Sprinkel. Upon a roll call vote, Mayor Bradley and Commissioners Leary, Sprinkel and McMacken voted yes. Commissioner Cooper voted no. The motion carried with a 4-1 vote.

City Commission Reports:

a. <u>Commissioner Leary</u>

Commissioner Leary commented about how great the new Pro-Shop looks and that the ribbon cutting event was wonderful.

b. Commissioner Sprinkel

Commissioner Sprinkel said she had a great time last Saturday at the 60th anniversary celebration concert hosted by WPRK 95.1-FM.

Commissioner Sprinkel thanked City staff for the wonderful Easter Egg event last weekend and said it was a delight to see all of the children having fun.

c. <u>Commissioner Cooper</u>

Commissioner Cooper announced the passing of Toni Koropsak, a resident who was very active in the community and the Four Seasons Condominium Association.

d. Commissioner McMacken

The meeting adjourned at 6:54 p.m.

No items.

e. Mayor Bradley

Mayor Bradley announced that board appointments will be made during the first meeting in May and any citizens interested in serving should submit their application for consideration.

Mayor Bradley commended staff for a wonderful 58th Annual Easter Egg event.

Mayor Bradley advised that City Manager Knight asked if the Commission would be interested in holding the next two Commission meetings here at the Community Center if it is available. By acclamation, the Commission agreed.

ATTEST:	Mayor Kenneth W. Bradley
City Clerk Cynthia S. Bonham	

item type	Consent Agenda	meeting date	April 23, 2012
prepared by department division	Purchasing Division	approved by	■ City Manager□ City Attorney□ N A
board approval		☐ yes ☐ no ■	N A final vote

Formal Solicitations

Services.

FOI	-ormai Solicitations				
	vendor	item background	fiscal impact	motion recommendation	
1.	BASE	RFQ-2-2012 Continuing	Continuing	Commission authorize staff	
	Consultants,	Contracts for Professional,	contract to be	to enter into negotiations	
	P.A.;	Architectural & Engineering	used on a per	with the top ranked firms,	
	Florida Bridge &	Services (Discipline: Structural	project basis with	BASE Consultants, Inc.;	
	Transportation,	Engineering)	approved budget.	Florida Bridge &	
	Inc.			Transportation, Inc.	
	This fiscal year	the City issued a Request for Qu	alifications for vario	us professional services. The	
	evaluation comi	mittee short listed a total of fou	ir (4) firms for ora	l presentations for Structural	
		post presentation ranking identifie			
		a Bridge & Transportation, Inc. U			
		tion to enter into negotiations with	n those two firms for	r continuing services contracts	
		es of Structural Engineering.			
2.	John J.	RFQ-2-2012 Continuing	Continuing	Commission authorize staff	
	Christie &	Contracts for Professional,	contract to be	to enter into negotiations	
	Associates	Architectural & Engineering	used on a per	with the top ranked firm,	
		Services (Discipline: Mechanical	project basis with	John J. Christie & Associates	
		& Electrical Engineering)	approved budget.		
		the City issued a Request for Qu			
		nittee short listed a total of three			
		ering. A post presentation ranking	-		
	Associates. Under the CCNA requirements (F.S. 287.055), staff seeks authorization to enter into				
	negotiations with this firm for a continuing services contract for the disciplines of Mechanical &				
2	Electrical Engineering.				
3.	Universal	RFQ-2-2012 Continuing	Continuing	Commission authorize staff	
	Engineering	Contracts for Professional,	contract to be	to enter into negotiations	
	Sciences	Architectural & Engineering	used on a per	with the top ranked firm,	
		Services (Discipline:	project basis with	Universal Engineering	
	Tla:- 6: 1	Environmental Services)	approved budget.	Sciences	
		the City issued a Request for Qu			
		nittee short listed a total of three			
	Services. A post presentation ranking identified the top ranked firm as Universal Engineering				
	Sciences. Unde	Sciences. Under the CCNA requirements (F.S. 287.055), staff seeks authorization to enter into			

negotiations with this firm for a continuing services contract for the disciplines of Environmental

item type	Consent Agenda	meeting date April 23, 2012
prepared by department division	Brenda Moody Parks and Recreation	approved by ☐ City Manager ☐ City Attorney ☐ N A
board approval	Parks and Recreation Board	■yes □ no □ N A 6-0 final vote

subject

Disinterment Policy

motion | recommendation

Approval of Cemetery Disinterment Policy

Background

It is necessary to have an internal policy for the disinterment or removal of a burial, from a City-owned Cemetery. This process has strict rules dictated by Florida Statutes that the City must follow. While disinterment from City Owned Cemeteries has only taken place a very few times and Florida Statutes were followed, an internal policy is needed so that staff and clients can easily communicate. There has been a recent customer inquiry about a possible disinterment and a request for a copy of city policy. Policy was written by staff based on the Florida Statutes and reviewed by city attorney.

alternatives | other considerations

none

fiscal impact

Very little fiscal impact as this is a rare occurrence; however a disinterment charge of \$1,100 would be placed upon the applicant which is equal to the interment charge.

long-term impact

none

strategic objective

n/a

Palm and Pineywood Cemeteries Disinterment Requirements March 2012



Rule 69K-6.007 of the Florida Administrative Code addresses the requirements for disinterment in subsection 3 and 4. Subsection 3 requires the presence of a licensed funeral director (FD). Subsection 4 states that the presence of a funeral director IS NOT enough, and a court order is required, UNLESS ALL of these conditions are satisfied:

- "All required permits". FD is required to show his current license in writing identify all permits he/she has (and attach and incorporate these permits to his or her written statement), and the FD must attest that these are all required permits.
- 2. Written authorization from the individual OR individuals who own the burial rights for the City cemetery space from which the remains are to be removed.
- 3. Written authorization from the person who would be legally authorized to bury the remains in the first instance. If this is the widow/widower a certified copy of an order admitting to probate a will that confers such authority and the FD must certify in writing that in his/her professional opinion the person is so authorized.

Further, a copy of all of the above documentation must be submitted in triplicate and delivered to the Assistant Director of Parks and Recreation responsible for Cemeteries. Copies will be forwarded to the City Attorney and Deputy Chief of Police for review and before approval is granted. Funeral Director must document to the City of Winter Park the location for the re-interment of the remains.

Disinterment is subject to fees according to the current city of Winter Park Fee Schedule.

Without 1-3 being satisfied, a court order is required.

The above is a draft policy and has not been codified by City Commission. Parks and Recreation Advisory Board approval granted March 28, 2012. Approval by City Attorney granted as to legality on March 18, 2012.

item type	Consent Agenda	meeting date	April 23, 2012
prepared by department division		approved by	■ City Manager□ City Attorney□ N A
board approval		☐ yes ☐ no ■	N A final vote

subject

Mid-year adjustment to budget

motion | recommendation

Approve budget adjustment

background

It appears several revenue sources will be short of the amounts projected in the FY 2012 budget. The attached budget adjustment is proposed to assist in keeping expenditures within currently projected revenues.

alternatives | other considerations

n/a

fiscal impact

Total estimated net shortfall is \$598,387.

long-term impact

Adjusting spending will keep us on track for achieving budgetary goals for FY 2012 and avoid a reduction in General Fund reserves.

strategic objective

Quality government services and financial security

Mid-Year Budget Adjustment

Description	Amount	Service Level Impact
	Projected Revenu	e Shortfalls
Electric utility taxes	(160,000)	
Water utility taxes	(45,000)	
Communications services tax	(100,000)	
FEMA reimbursement	86,613	
Half cent sales tax	(140,000)	
Revenue sharing - 8th cent fuel tax	(40,000)	
Revenue sharing - sales tax	(20,000)	
Local option gas tax	10,000	
Red light traffic cameras	(250,000)	
Fines and forfeitures	60,000	
	(598,387)	·
Draioctad cavings from vacant nocitions	Proposed Adjustme	
Projected savings from vacant positions	287,387	These savings are from specifically identified vacancies and are not expected to have a significant negative impact on
Contractual condess	200.000	service levels provided by departments.
Contractual services	200,000	This account is for the red light traffic cameras. We budgeted for all planned traffic cameras to be in place for the entire fiscal year. At this point, not all have been installed and less budget funds will be required to complete FY 2012.
Electricity for Facilities Maintenance	50,000	Mild weather and low fuel costs have combined to reduce costs below budget
Other road materials	36,000	This budget is for concrete repairs to sidewalks and curbing. After this adjustment, there will still be \$196,900 in the budget for these materials which will be sufficient to complete the year.
Election costs	25,000	Piggybacking on the presidential preference primary saved costs of a stand alone election
	598,387	

item type	Consent Agenda	meeting date April 23, 2012
prepared by department division	Wes Hamil Finance	approved by ■ City Manager □ City Attorney □ N A
board approval		☐ yes ☐ no ■ N A final vote

subject

Adjustment to solid waste collection rates for Waste Pro and the City

motion | recommendation

Approve proposed rates for Waste Pro and retail rates for the City to be effective April 1, 2012.

background

Waste Pro has requested a CPI adjustment in accordance with their contract. Waste Pro began providing solid waste collection services to the City in May 2009. Section 3 of our contract with Waste Pro provides for CPI adjustments to rates based on changes from February to February. In 2010, we asked Waste Pro to delay its CPI adjustment until October 2010 in order for rate adjustments to be on a fiscal year basis. As part of this adjustment we increased the rate to allow for Waste Pro having to wait until October for an adjustment that would have happened in May.

For October 1, 2011, we adjusted rates based on the combination of changes in CPI from February 2010 to February 2011 for non-fuel costs (assumed to be 90% of Waste Pro operating costs) and from August 2010 to August 2011 for fuel costs (assumed to be 10% of Waste Pro operating costs). A copy of this adjustment is attached. In addition, rates were adjusted for increases in landfill tipping fees in February and December 2010.

We would like to have rates be adjusted each October 1. In order for this to be fair to Waste Pro, we want to base it on CPI indexes for August. To reset the rates for October 1, 2011 we have calculated the change in CPI indexes for both fuel and non-fuel from February 2009 to August 2011 and applied this change to Waste Pro's rates at the beginning of the contract. A copy of this computation and the resulting rates for Waste Pro and the City are attached. This will provide rates the same as if they had been consistently adjusted by the change in CPI each month since the inception of the contract.

The percentage increase in rates varies depending on service. However, had the new rates been applied to the Waste Pro invoices to the City for January and February 2012, the amount of the total payment would have increased by 1.65%.

Hereafter, we propose adjusting rates each October 1 based on the change in CPI indexes from August to August. For October 1, 2012 this will be the change in CPI indexes from August 2011 to August 2012.

alternatives | other considerations

N/A

fiscal impact

We are proposing to increase the City's retail rates from the time Waste Pro began servicing the City by the same dollar amount as we are increasing Waste Pro's rates. There should be a minimal net impact to the City's finances.

long-term impact

Rates will be on track for October 1 adjustments based on recent indexes.

strategic objective

Quality government services and financial security



Phone: (407) 869-8800 Fax: (407) 869-8884

September 19, 2011

Ms. Michelle del Valle Assistant City Manager City of Winter Park 401 Park Avenue South Winter Park, Florida 32789-4386

Dear Ms. Del Valle,

As a follow-up to our previous submittal, we have included the specific calculations for the CPI and fuel increases that we recently requested. Pursuant to Section 3 (a) (b) (c) Rate and Charges, Waste Pro respectfully requests that it be granted a Consumer Price Index price adjustment to be effective October 1, 2011. CPI numbers were retrieved from the Bureau of Labor Statistics, Consumer Price Index, South Urban (Series Id: CUUR0300SA0), the calculation is as follows:

New Rate =
$$(\underline{\text{February 2011}} - \underline{\text{February 2010}}) + 1 \times \text{current rate}$$

February 2010

CPI =
$$(214.735 - 210.02) + 1 = 1.02245$$

210.02

The above calculation represents a one-year change in CPI in residential rates.

Additionally, we respectfully request a fuel adjustment pursuant to Section 3 (a) (b) (c) Rate and Charges and based upon the previous 12 month increase in fuel prices as established by the U.S. Energy Information Administration, Highway Diesel Prices, Gulf Coast Region (as obtained from their website at www.eia.gove/oog/info/wohdp)

New Fuel Component =
$$(August 2011 - August 2010 fuel prices) + 1 x current fuel component August 2010$$

Fuel Increase =
$$(3.763-2.888) + 1 = 1.303$$

2.888

The following table provides the increases in CPI, Fuel Increase, and the new rates for the residential services covered by the contract.



Phone: (407) 869-8800 Fax: (407) 869-8884

Service	Current Rate	CPI Increase	Fuel Increase	New Rate
2x1x1x with bins	\$15.85	\$0.36	\$0.49	\$16.70
2x1x1 with cart	\$18.70	\$0.42	\$0.57	\$19.69
Collection component for each additional cart	\$8.00	\$0.18	\$0.24	\$8.42
Commercial Handpick per Cart	\$27.16	\$0.61	\$0.82	\$28.59

Please consider our request and if you need any additional information, feel free to contact me.

Sincerely

Steven D. Lafferty Division Manger

Waste Proof Florida

CORRECTION TO OCTOBER 1, 2011 CPI ADJUSTMENT:

Fuel component:	
Average diesel for Gulf Coast for August 2011	3.823
Average diesel for Gulf Coast for February 2009	2.138
Increase	78.812%
Adjustment to Waste Pro Rates (assuming fuel is 10% of operational costs)	7.881%
Non-fuel component:	
August 2011 CPI	220.471
February 2009 CPI	205.343
Increase	7.367%
Adjustment to Waste Pro Rates (assuming non-fuel is 90% of operational costs)	6.630%
Total CPI increase	14.512%
Total Cri IIIClease	14.512%

Waste Pro Rates

Rates that should have been in place **Beginning Contract** October 1, Dollar Increase at Current Percentage Rates 14.512% 2011 Rates Increase Increase Residential 2x1x1 with recycling bins 14.80 2.15 16.95 16.69 0.26 1.54% 2.80% Residential 2x1x1 with recycling cart 22.55 3.27 25.82 25.12 0.70 Residential Curbside service with additional recycling cart 17.05 2.47 19.52 19.13 0.39 2.06% Residential Multi-family residential curbside service 14.80 2.15 16.95 16.69 0.26 1.54% Residential Each cart above two one time maintenance fee 65.00 9.43 74.43 70.65 3.78 5.35% Residential **Bulk Per Item** 25.00 3.63 28.63 Residential Bulk up to 2 yards 67.16 9.75 76.91 27.99 32.05 Residential Bulk each additional yard 4.06 10.00 per yard Residential Bulk Yard Waste over 3 yards 1.45 1.45 Commercial Cart service (per cart) 25.76 3.74 29.50 28.60 0.90 3.14% Commercial Minimum service charge 25.76 3.74 29.50 28.60 0.90 3.14% Commercial Front Load Loose per yard 5.95 0.86 6.83 Commercial Front Load 15.84 2.30 Compacted per yard 18.14 Commercial Front Load Extra pick up per yard 14.88 2.16 17.04 Commercial Front Load Extra pick up per yard compacted 39.60 5.75 45.35 Commercial Front Load Lease fee for compactor 265.00 38.46 303.46 Commercial Front Load Wheels 35.00 5.08 40.08 **Commercial Front Load** Locks 25.00 3.63 28.63 Roll-Off (C&D) Pull Charge 20 yards 300.00 43.53 343.53 Roll-Off (C&D) Pull Charge 30 yards 350.00 400.79 50.79 400.00 Roll-Off (C&D) Pull Charge 40 yards 58.05 458.05 Roll-Off (Class 1 & 3) Pull Charge 200.00 Plus disposal 29.02 29.02 Roll-Off Lease Fee (Open Top) 15 yards 80.00 91.61 11.61 Roll-Off Lease Fee (Open Top) 20 yards 80.00 11.61 91.61 Roll-Off Lease Fee (Open Top) 80.00 91.61 30 yards 11.61 Roll-Off Lease Fee (Open Top) 40 yards 80.00 11.61 91.61 Receiver 30 yards 175.00 25.40 200.40 200.40 Receiver Box Lease Fee 40 yards 175.00 25.40 Compactor Lease Fee 15 yards 450.00 65.30 515.30 Compactor Lease Fee 20 yards 450.00 65.30 515.30 450.00 65.30 515.30 Compactor Lease Fee 30 yards Compactor Lease Fee 515.30 40 yards 450.00 65.30

80.00

11.61

91.61

Deliver Charge

Open Tops & Compactors

City Retail Rates

_	Beginning Contract Rates	Increase at 14.512%	Rates that Should have been in place October 1, 2011	Current Rates	Dollar Increase	Percentage Increase
Commercial curbside service Residential service with an	26.50	3.74	30.24	29.24	1.00	3.41%
additional recycling cart	2.25	0.33	2.58	3.31	(0.73)	-22.16%
Residential curbside service Multi-family residential curbside	15.55	2.15	17.70	17.47	0.23	1.30%
service	15.55	2.15	17.70	17.47	0.23	1.30%
Additional cart maintenance fee						
for each garbage cart above two	65.00	9.43	74.43	67.09	7.34	10.94%
Residential bulk pickup (up to two cubic yards) Each additional cubic yard above	67.16	9.75	76.91	69.32	7.59	10.94%
two	27.99	4.06	32.05	28.89	3.16	10.94%
Bulk yard waste in excess of three						

1.45

11.45

10.32

1.13

10.96%

10.00

yards (each additional yard)

ORDINANCE NO. 2768-09

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA GRANTING A RESIDENTIAL, COMMERCIAL AND CONSTRUCTION SOLID WASTE COLLECTION FRANCHISE TO WASTE PRO OF FLORIDA, INC.; PROVIDING TERMS, CONDITIONS AND OTHER PROVISIONS; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Winter Park, Florida (the "city") has previously granted a franchise for the collection of solid waste materials from residential and commercial establishments within the city, the term of which franchise expired April 30, 2009; and

WHEREAS, the city, pursuant to the authority granted by Article VIII, Section 2, Florida Constitution (1968, as amended), Section 166.021, Florida Statutes, Section 180.14, Florida Statutes, and Chapter 403, Part IV, Florida Statutes, may grant to private companies or corporations the privilege or franchise for the collection and disposal of garbage and other solid waste, for such term of years and upon such conditions and limitations as may be deemed expedient and for the best interest of the City; and

WHEREAS, Section 2.11 (b) (4) of the Charter of the city authorizes the granting, renewing or extending of a franchise; and

WHEREAS, the city has requested proposals for solid waste collection within the city,

WHEREAS, after due and proper review, evaluation, and consideration of the proposals submitted, the city finds that it is expedient and in the best interest of the city to award a franchise to Waste Pro of Florida, Inc. a Florida corporation, for the collection and disposal of bulk trash, refuse, vegetative waste, recyclable materials, white goods, and construction and demolition debris from residents, businesses, and other entities within the municipal boundaries of the City of Winter Park;

NOW, THEREFORE, be it enacted by the people of the City of Winter Park as follows:

SOLID WASTE COLLECTION FRANCHISE

Section 1. Grant of franchise.

That there is hereby granted to Waste Pro of Florida, Inc. (herein called the "Franchisee"), its successors and assigns, the exclusive right, privilege or franchise to collect garbage, refuse, trash and other solid waste materials from residential and commercial establishments within the City of Winter Park, Orange County, Florida.

Section 2. Exclusive right.

So long as franchisee shall perform the services set forth herein, no other private refuse collector shall be permitted by the city to provide residential and commercial solid waste collection services within the city, except upon the prior written consent of the franchisee.

Section 3. Contract.

The franchise shall be carried out in accordance with the contract attached to this ordinance.

Section 4. Illegal provisions.

If any provision of the franchise shall be declared illegal, void, or unenforceable, the other provisions shall not be affected but shall remain in full force and effect:

Section 5. Repeal.

All ordinances or portions thereof in conflict herewith are hereby repealed.

Section 6. Effective date.

This ordinance shall take effect immediately upon its final passage and adoption. The franchise herein created shall become effective as to the franchisee named herein on the date when the franchisee accepts the same in writing, which date shall not be more than thirty (30) days after the date of final passage and adoption.

Adopted at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida on the <u>27th</u> day of April, 2009.

Kenneth W. Bradley, Mayor

ATTEST:

Cynthia S. Bonham, City Clerk

SOLID WASTE AGREEMENT

THIS AGREEMENT made and entered into this 1st day of May, 2009, by and between the CITY OF WINTER PARK, FLORIDA, a Florida Municipal Corporation, located at 401 Park Avenue South, Winter Park, Florida 32789 (hereinafter "City") and WASTE PRO OF FLORIDA, INC., a Florida Corporation, located at 2101 West SR 434, Suite 301, Longwood, Florida 32779 (hereinafter "Contractor").

WITNESSETH:

WHEREAS, there is an immediate and continuing need for the collection and disposal of bulk trash, refuse, vegetative waste, recyclable materials, white goods, and construction and demolition debris from residents, businesses, and other entities within the municipal boundaries of the City of Winter Park; and

WHEREAS, Contractor has the necessary equipment, personnel, and experience to properly perform the collection and disposal services described herein; and

WHEREAS, it appears to be in the best interests of the public health, safety, and welfare of the citizens of the City of Winter Park and its resident businesses and entities to award a franchise to Contractor to provide for the collection and disposal of bulk trash, refuse, vegetative waste, and recyclable materials upon the terms and conditions more particularly described herein.

NOW THEREFORE, in consideration of the mutual covenants, agreements, and consideration contained herein, the City and Contractor agree as hereinafter set forth:

TECHNICAL SPECIFICATIONS

SECTION 1. DEFINITIONS

1. Definitions.

The following words and phrases contained in this Agreement shall have the meaning set forth in this section unless the context clearly indicates otherwise:

Authorized Representative: Person authorized to represent the City as designated by the City Manager.

Bags: Biodegradable or plastic sacks designed for solid waste with sufficient wall strength to maintain physical integrity when lifted from the tip, securely tied at the top for collection, with a capacity not to exceed thirty-two (32) gallons and a loaded weight not to exceed fifty (50) pounds.

Bidder: Any firm, corporation, organization, agency, or joint venture submitting a bid for the work proposed or its duly authorized representative.

Bin: Typical 18 gallon open top durable plastic container for residential recycling. Bins are uniform in color and fixed with a logo approved by the City Of Winter Park.

Bulk Waste: Any tangible item such as furniture, white goods, carpet, grills, lawn equipment, furnaces, bicycles, excluding motor vehicles (with exception of used tires), or similar property not having a useful purpose to the owner or abandoned by the owner and not included within the definitions of garbage, yard waste, or rubbish. A customer at a residential unit in the Contractor's service area shall generate residential bulk waste from time to time or during moving in or out of unit. Carpet shall be no greater than 6' X 10', rolled and weigh less than 50 pounds.

Cart: Shall mean a plastic sixty-four (64) or ninety (96) gallon toter cart with wheels dumped mechanically by a collection vehicle and able to be serviced by Contractor.

City: The City of Winter Park under the direct supervision of the City Manager.

City Commission: The elected governing body of the City of Winter Park, Florida

City Code or Code: Shall mean the Code of Ordinances of the City of Winter Park, Florida.

City's Project Manager: The Project Manager has responsibility for the day-to-day administration of the resulting contract for the City and shall be the Water & Wastewater Utility Director or his/her designee.

Collection and Disposal Service: Shall mean the process whereby refuse, bulk trash, vegetative waste, or recyclable material is collected and transported for disposal by Contractor under this Agreement to a designated facility or some other approved disposal facility.

Collection and Disposal Equipment: Shall mean any vehicle and equipment that are used by Contractor to perform the collection and disposal service required by this Agreement including, but not limited to, all vehicles, mechanical containers, mechanical carts, and all other equipment.

Collection Vehicle: Shall mean any vehicle that is used by Contractor to perform the collection and disposal service required by this Agreement.

Collection Regulations: Shall mean any local, state, and federal laws and administrative rules that regulate any and all aspects of collection and disposal services, as may be in existence during the term of this Agreement.

Commercial Service: Collection and disposal service provided to business establishments, churches, schools, office buildings, restaurants and other commercial establishments.

Commercial Trash: Any and all accumulation of paper, rags, excelsior or other packing materials, furniture, appliances, wood, paper or cardboard boxes or containers, sweepings, and any other similar accumulation not included under the definition of garbage, generated by the operation of stores, offices, restaurants, and other commercial establishments. Commercial trash shall not include special waste.

Complaint: Shall mean verbal or written indication from a customer or the Authorized Representative of a problem with any aspect of the collection and disposal services provided by Contractor pursuant to this Agreement, whether or not the problem results in a service call by Contractor.

Container: Shall mean and include plastic or metal containers 2 cubic yards and greater dumped mechanically by a collection vehicle and able to be serviced by Contractor including, but not limited to, dumpsters, front load and compaction type containers. However, Mechanical container does not include mechanical carts.

Construction and Demolition Debris: Discarded materials generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, or asphalt material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, including such debris from construction of structures at a site remote from the construction or demolition site. The term includes rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project; clean cardboard, paper, plastic, wood, and metal scraps from a construction project; and de minimis amounts of other nonhazardous wastes that are generated at construction or demolition projects, provided such amounts are consistent with best management practices of the construction and

demolition industries. Mixing of construction and demolition debris with other types of solid waste will cause it to be classified as other than construction and demolition debris.

Contract or Agreement: The Franchise Agreement executed by the City and the Contractor for the performance of the work. The Franchise Agreement shall be substantially in the form provided in these Specifications.

Contractor or Vendor: The person, firm, corporation, organization, agency or joint venture with whom the City has executed a Franchise Agreement for performance of the Work or supply of equipment or materials or his duly authorized representative. The Contractor or Vendor is also the Franchisee under the Franchise Agreement.

Contractor's Project Manager: The Project Manager has responsibility for the day to day administration of the resulting contract for the Contractor and shall be designated prior to execution of the contract.

Contractor's Route Supervisor: The route supervisor or designee has responsibility for the day-to-day operations resulting from contract for the Contractor who shall be available during rendering of all city services and who is authorized to take corrective or remedial actions to ensure high quality and timely service. Contractor shall provide mobile phone/radio to City Project Manager to ensure direct communication while performing services.

CPI: Shall mean the Consumer Price Index (1982-84=100) for the U.S. City average Southern Region - all items - all urban customers - published by the United States Department of Labor, Department of Labor Statistics.

Customer: Shall mean City and any person, establishment or entity that receives, is required to receive, or requests collection and disposal services within the service area.

Curbside: The area within eight (8) feet of the maintained road right of way, whether the road is publicly or privately maintained. Curbside shall include any area up to ten (10) feet of a maintained road right of way if such road is undergoing construction or adjacent unimproved property. "Curbside pickup" or service "at the curb" shall mean that area at a residence provided such area is reasonably accessible to the Contractor. "Side yard" service shall be given to disabled person(s) households, if requested, at no additional cost. Side yard service shall include collection of household waste and recyclables. Yard waste shall be placed at curbside for collection. Disabled households shall be defined as a household occupied by a single individual that is disabled or a household occupied by two individuals in whom both persons are disabled.

Disposal or Recycling Facility: A facility permitted or approved by the Florida Department of Environmental Protection to receive, process, transfer, landfill and/or otherwise dispose of solid waste, yard trash or recycle materials.

Disposal Costs: Shall mean the "tipping fees" or landfill costs charged to the Contractor by others for the disposal of waste collected by the Contractor in performing collection and disposal services provided hereunder.

Dispute: Shall mean a disagreement between Contractor and City concerning a question of fact, interpretation of this Agreement, Contractor's compliance and performance with the terms and conditions of this Agreement, and Contractor's level of service provided while performing collection and disposal services.

Franchise. There is hereby granted to Contractor an exclusive right, privilege or franchise to collect and transport for disposal solid waste, recycling, and construction and demolition debris within the service area, during the term of this Agreement and subject to the limitations and conditions as set forth in this Agreement. All rights granted to Contractor hereunder shall be subject to the continuing right of the City to regulate the City's rights-of-way and to protect the public health, safety, and welfare as shall, at the sole discretion of the City, be in the public's interest. The grant of this franchise shall not affect the City's right to provide collection and disposal services not expressly and unambiguously provided hereunder to Contractor on an exclusive basis or during an emergency. Nothing under this Agreement shall be construed as providing any franchise for collection and disposal services not expressly provided for hereunder.

Garbage: Shall mean all putrescible waste which generally includes, but is not limited to, kitchen and table food waste, animal, vegetative, food or any organic waste that is attendant with or results from the storage, preparation, cooking or handling of food materials whether attributed to residential or commercial activities. Garbage shall not include special waste.

Hazardous Waste: Solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. (Regulated by the Florida Department of Environmental Protection (FDEP) pursuant to Chapter 62-730, Florida Administrative Code.)

Household Furniture: All movable compactable articles or apparatus such as chairs, tables, sofas, mattresses, etc., for equipping a house.

Household Waste: Any solid waste, including garbage, and trash derived from households, including single and multiple residences, crew quarters, picnic grounds, and day-use recreation areas.

Industrial Solid Wastes: Solid waste generated by manufacturing or food processes that are not a hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products, or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; non-ferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Landfill: A solid waste disposal facility, approved by FDEP, which is an area of land or an excavation where wastes are or have been placed for disposal, for which a permit, other than a general permit, is required by Florida Statutes Section 403.707. This term shall not include: (a) A land spreading site; (b) A surface impoundment; (c) An injection well defined under and subject to the provisions of Chapter 62-28, F.A.C.

Litter: Contractor shall not be responsible for scattered solid waste which can be categorized as litter unless the same has been caused by Contractor's acts or omissions, in which case, all such scattered solid waste shall be picked up immediately by Contractor. Contractor shall maintain sufficient equipment/tools on each collection vehicle (i.e.: pitch fork, broom, shovel) to pick up such scattered solid waste.

Materials Recovery: Any process by which one or more of the various components in solid waste is separated and concentrated for reuse.

Material Recovery Facility (MRF): A FDEP approved solid waste management facility that provides for the extraction from solid waste of recyclable materials.

Multiple Dwelling Units: Any building containing four (4) or more permanent living units, not including motels and hotels.

Owner or City: The City of Winter Park or an authorized representative.

Recyclable Materials: Shall mean newspapers (including inserts), magazines, mixed office paper, aluminum cans, steel cans, tin cans, plastic containers (coded 1, 2 or 3), cereal/snack boxes without wax paper lining, junk mail, amber, clear and green glass bottles and jars, and other solid waste materials added upon written Agreement between the City and the Contractor, when such materials have been either diverted from the remaining solid waste stream or removed prior to their entry into the remaining solid waste stream. Recyclable materials shall not include containers that previously held toxic material, cardboard boxes that have not been flattened and stacked under the recycle bin, and plastic grocery bags.

Recycling: Shall mean any process by which recyclable materials are collected, separated, and processed for purposes of extracting or reusing the raw materials contained in the recyclable materials.

Recycling Container: shall mean sixty four (64) or ninety six (96) gallon recycling bins for residential, commercial and multiple dwelling unit customers, or other types of recycling bins approved by the Authorized Representative, to store recyclable materials for collection and disposal service.

Rolloff Container: Shall mean a dumpster which is used for the collection and disposal of construction and demolition debris or solid waste. The rolloff container may be of the open or enclosed variety and is typically hoisted onto a specifically equipped truck for transporting the construction and demolition debris or solid waste to a designated facility.

Residential: Shall mean single family detached homes, duplexes and multifamily dwelling units and mobile home parks with curbside individual service.

Residential Service: Shall mean collection and disposal services provided to persons occupying residential dwelling units who are not receiving commercial service under this Agreement.

Service Area: Shall mean the area within the municipal boundaries of the City of Winter Park, Florida, as may be modified from time to time pursuant to Chapter 171, Florida Statutes.

Sludge: Shall mean the accumulated solids, mixed liquids, residues, and precipitates generated from wastewater treatment, water supply treatment, air pollution control facilities, septic tanks, grease

Solid Waste Disposal Facility: Any solid waste management facility which is the final resting place for solid waste, including landfills and incineration facilities that produce ash from the process of incinerating municipal solid waste.

Special Waste: Solid wastes that can require special handling and management, including, but not limited to, commercial white goods, waste tires, used oil, lead acid batteries, construction and demolition debris, ash residue, yard trash and biological wastes.

Transfer Station: A site the primary purpose of which is to store or hold solid waste for transport to a processing or disposal facility. It does not include green boxes, compactor units, permanent dumpsters, and other containers from which such wastes are transported to a landfill or other solid waste management facility.

Waste Tire: A tire that has been removed from a motor vehicle and has not been retreaded or re-grooved. Waste tire includes used tires and processed tires.

White Goods: Inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances.

Yard Trash or Yard Waste: Vegetative matter resulting from lawn maintenance, including accumulation of lawn, grass, shrubbery cuttings or clippings and dry leaf raking, small tree branches (which shall not exceed four (4) feet in length and fifty (50) pounds),

palm fronds (whole), bushes or shrubs, green leaf cuttings, fruits, or other matter usually created in the care of lawns and yards.

2. Scope of Work.

It is the intent of this franchise to provide for the exclusive collection and disposal service of solid waste, recycling and construction and demolition debris within the service area, with the exception of the exclusions specifically set forth in this Agreement. The Contractor shall comply with all federal, state, and local requirements, with special attention to City of Winter Park Ordinances and acquire and maintain all required permits and licenses Contractor shall perform the collection and disposal service under the following terms and conditions, all of which shall be a material part of this Agreement:

- a. General Requirements: Contractor shall fully comply with the following:
 - i. Laws and Regulations. Contractor shall be familiar and comply with all collection regulations and shall be solely responsible for determining, absorbing, and adjusting to the financial and practical impact such regulations have on its operation, subject to Contractor's ability to petition the City Commission for a rate adjustment pursuant to paragraph 5.6 of this Agreement.
 - ii. Labor, Insurance, Equipment, etc. Contractor shall provide, at its sole cost and expense, all labor, insurance, supervision, machinery, equipment, plant and office buildings, trucks, and other tools, equipment, and accessories necessary to perform the collection and disposal services in accordance with the level of service required by this Agreement.
 - iii. Protection of Public/Private Property and Utilities. Contractor shall conduct his work in such a manner as to avoid damage to private or public property and shall repair or pay for any damage caused by its negligent operations, except reasonable wear and tear to roadways. Contractor shall have knowledge of all existing utilities and it shall operate with due care in the vicinity of such utilities and shall repair or have repaired, at no additional cost to the customer or utility owner, any breakage or damage caused by its negligent operations.
 - iv. Spillage. Contractor shall not cause any spillage of solid waste to occur upon private or public property or the rights-of-way wherein the collection and disposal service occurs. Collection and disposal service shall be performed by Contractor to avoid leaking, spilling, and blowing of solid waste. In the event of any spillage caused by Contractor, Contractor shall immediately clean up all spillage at its expense. In order to be the first responder to spillage incidents, Contractor shall maintain a certified spill cleanup kit, acceptable to the City, on each and every vehicle servicing the City including the vehicles used by supervisors. Such kit shall include at a minimum a pitch fork, broom, absorbent pads, and shovel to pick up and contain spillage. In addition, Contractor shall immediately clean up all

- fluid spillage from collection equipment to the maximum extent feasible and promptly notify the Authorized Representative of all such fluid spillage.
- v. Holidays. Unless otherwise directed by the Authorized Representative in writing, Contractor shall provide collection and disposal service on holidays observed by the City, except Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas, and New Years Day. Residential recycling accounts will be serviced on New Years Day. Any disposal and collection service that would have been regularly provided shall be provided the next regularly scheduled pick-up day after the holiday.
- vi. Contractor's Office. Contractor shall provide, at its sole cost and expense, a suitable office located within reasonable proximity to the service area. Within said office, Contractor shall maintain, during Contractor's normal working hours, a staff and a local telephone number where complaints and requests for collection and disposal service shall be received, recorded in a log, and handled during Contractor's normal working hours. The office shall also provide for a means to promptly handle emergency complaints and requests for service.
- vii. Litter and Dangerous Animals. Contractor shall not be responsible for scattered solid waste which can be categorized as litter unless the same has been caused by Contractor's acts or omissions, in which case, all such scattered solid waste shall be picked up immediately by Contractor. Contractor shall maintain sufficient equipment on each collection vehicle (e.g. pitch fork, broom, shovel) to pick up such scattered solid waste. Contractor shall not be required to expose themselves to the danger of being bitten by vicious dogs and animals, roaming at large, in order to accomplish collection and disposal services. However, in the event Contractor is unable to provide collection and disposal services to a customer under such conditions, Contractor shall immediately notify the customer, in writing, of such conditions and its inability to provide such collection and disposal services.
- viii. Hours and Days. Except for unusual circumstances approved by the Authorized Representative in writing or as otherwise provided elsewhere in this Agreement, Contractor shall not perform collection and disposal services prior to 7:00 A.M. or after 7:00 P.M., E.S.T., Monday through Friday. No collection and disposal services shall normally occur on holidays or on Saturdays and Sundays unless is authorized in writing by the Authorized Representative.
- ix. Tagging Solid Waste Improperly Containerized. In the event solid waste is not containerized, bundled, or piled pursuant to this Agreement or Contractor does not perform collection and disposal services regarding such solid waste, Contractor shall tag the container, bundle, or pile or subject property with a written notice containing a brief explanation why the container, bundle, or pile was not collected. The Contractor shall

- immediately record all contract issues in the approved web-based tracking system
- x Customer Report; City Billing Database. Contractor and City agree that the monthly customer report required to be maintained and filed by Contractor is vital to keeping an accurate account of all customers receiving collection and disposal services under this Agreement and for ensuring accurate billing of customers by City To this end, Contractor and City agree that each party must diligently maintain an accurate, up-to-date list of customers and the collection and disposal services received by those customers The Contractor shall promptly notify the City of any new and existing Customers requesting collection and disposal services and any current Customers terminating such services
- x1 Handling of Freon White Goods/Solid Waste. Contractor shall be responsible for properly disposing of all white goods and solid waste in accordance with law
- Bin & Cart Purchase. All bins and carts utilized in this contract shall be sold to City for the lump sum total of one Dollar (\$1 00) at end of the contract. If the contract should be terminated before the 7 year initial agreement the City would pay a prorated value for all bins and carts.
- Recycling Service. The proposer shall partner with the City to educate the community on current recycling practices. This may include providing information for the City's website, including mailers in the utility bill, attending special events or educational opportunities at the local schools
- b Residential Service. Contractor shall provide residential collection and disposal service to residential customers as follows
 - Frequency of Collection. Contractor shall provide collection and disposal services for household trash and garbage at least two (2) times per week, with collections at least three (3) days apart, and for bulk trash, vegetative waste, and recyclable materials not less than once per week. All collection route cycles shall be subject to the prior written approval of the Authorized Representative Special pick-ups, including pick-ups of white goods, shall be provided on an "as needed basis" and shall be allowed on any day, except Saturdays and Sundays
 - Point of Collection. Collection of household trash, garbage, bulk trash, vegetative waste, and recyclable materials shall be within eight (8) feet of curbside. In the event an appropriate location cannot be agreed upon by the customer and Contractor, the Authorized Representative shall designate the location. The Contractor and Authorized Representative shall mutually agree upon point of collection locations for non-conforming service areas. For customers that are need of special assistance (e.g., certified by a doctor as disabled and are unable to place household trash, garbage, or recyclable.

materials at the curb), the Authorized Representative, at his discretion, shall establish, and notify the Contractor of, special handling instructions for the benefit of the customer Such special handling instructions may include collection from the customer's garage door or some other location acceptable to the customer and will be performed at no additional fee

ni Containers and Preparation.

- 1 Household Trash and Garbage. Contractor shall be required to provide collection and disposal services for all household trash and garbage generated from residential customers which has been properly prepared and stored in a refuse container or mechanical cart Contractor shall supply each residential account up to two (2) 64 or 96 gallon carts (or a combination of the two) for garbage collection Additional carts can be ordered and a monthly charged assessed as outlined in the Fee Schedule
- 2 Recyclable Materials. Contractor shall be required to provide collection and disposal services for all recyclable materials generated from residential customers that have been properly prepared and stored in a recycling container. A list of the materials that shall be recycled is listed in Exhibit III. This list may change from time to time based on local facilities abilities to accept said materials.
- Wegetative Waste. Vegetative Waste at the curb shall be collected weekly. The occupant shall place loose yard trash such as leaves, pruning and grass garbage can or bag for collection, transport and disposal in the same manner as garbage. Non-containerized yard waste shall be collected providing that it is tied, stacked and bundled, does not exceed (4) feet in length (except palm fronds) or four (4) inches in radius nor be greater than fifty (50) pounds in weight for any piece or segment of such materials. Palm fronds stacked at curb shall be collected up whole. All piles in excess of three (3) cubic yards shall be assessed as outlined in the Fee Schedule.
- Bulk Trash and White Goods and Household Furniture. Bulk items such as appliances, furniture, etc shall be collected free of charge twice per year as agreed upon by the City and the Contractor, during the months of May and November Customers wishing to order a bulk pickup outside of the two free each year would be required to pay a special pickup fee in accordance with the adopted fee schedule. The Contractor shall be responsible for coordination of the collection. On a monthly basis, the Contractor shall provide the City with a list of items collected via special pick-up and the address from which they were collected for billing purposes.
- c Commercial Service. Contractor shall provide commercial collection and disposal service to commercial customers as follows

- Frequency of Collection. Contractor shall provide collection and disposal services for commercial trash and garbage at least one (1) time per week for customers that generate dry waste, at least two (2) times per week for customers that generate putrescible waste (e.g. restaurants), and more frequently as mutually agreed to by Contractor and the commercial customer and/or required by the City Recyclable materials (if recyclable material service is requested by customer) shall be picked up not less than once per week or more frequently as required by the City Special pick-ups, including pick-ups of white goods, shall be provided on an "as needed basis" and shall be allowed on any day, except Sundays
- Point of Collection. Collection of commercial trash, garbage, vegetative waste, and recyclable material shall be at a location mutually agreed upon by the customer and Contractor, and approved by the Authorized Representative If mutual agreement cannot be reached between customer and Contractor, the Authorized Representative shall designate the location. However, in the event the location was approved as part of a City or County site plan or development review process, the location shall be as shown on the final approved site or development plan. To the maximum extent feasible, the designated location shall be located in a place that provides for safe, convenient, and expedient access by Contractor.

111. Containers and Preparation.

- 1 Commercial Trash and Garbage. Contractor shall be required to provide collection and disposal services for all commercial trash and garbage generated by commercial customers which has been properly prepared and stored in a refuse container, mechanical cart, mechanical container, rolloff container, or compactor under the following conditions
 - a Customers shall be permitted to use carts provided the amount of commercial trash and garbage per collection can be stored in a maximum of two (2) carts, otherwise, customers shall be required to use one or more of the following mechanical containers, compactor service, or rolloff containers. Should it be determined by the cities representative that the property is not suitable for mechanical containers, compactor service, or rolloff containers then the customer will be allowed to use additional carts.
 - b Contractor shall be required to provide an adequate number of mechanical containers, mechanical carts, compactors, or rolloff containers to customers Mechanical containers, mechanical carts, and rolloff containers shall be provided at Contractor's sole expense and shall remain the property of Contractor, unless the mechanical container,

mechanical carts, or rolloff container is owned by the customer

- 2 Container Cleaning. The Containers shall be cleaned regularly, but no less than quarterly The City's Utility Director or his/her designee shall have the authority to request a specific container be cleaned at any time. The City shall be provided with a cleaning schedule.
- 3 **Container Maintenance.** The container shall be well maintained and painted at least annually, but more often if required to maintain a fair appearance. The City's Utility Director or his/her designee shall have the authority to request a specific container be painted. Annually a schedule of containers painted shall be provided to the City.
- Advertising. No advertising shall be posted on the containers. The containers, upon approval of the Utility Director or his/her designee may contain the Contractor's name and customer service information such as a phone number or email address only
- 5 Compactor Maintenance Compactors shall be deodorized with each collection and cleaned thoroughly (by steaming) no less than once per quarter A schedule of the maintenance shall be provided to the City, and additional cleanings may be required as needed at the discretion of the Utility Director or his designee
- Recyclable Materials. Contractor may provide collection and disposal services for recyclable materials generated from commercial customers who specifically request such service or as required by City If requested, recyclable materials shall be properly prepared and stored in a recycling container A list of the materials that shall be recycled is listed in Exhibit III This list may change from time to time based on local facilities abilities to accept said materials
- d. **Multiple Dwelling Units.** Contractor shall provide collection and disposal service to multiple dwelling unit customers as follows
 - Frequency of Collection. Contractor shall provide collection and disposal services for household trash and garbage at least two (2) times per week, with collections at least three (3) days apart, and for bulk trash and recyclable materials not less than once per week. All collection route cycles shall be subject to the prior written approval of the Authorized Representative Pickups, including pick-ups of white goods, shall be provided on an "as needed basis" and allowed on any day, except Saturdays and Sundays
 - Point of Collection. Collection of household trash, garbage, bulk trash, vegetative waste, and recyclable materials shall be at a location mutually

agreed upon by the customer and Contractor, and approved by the Authorized Representative If mutual agreement cannot be reached between customer and Contractor, the Authorized Representative shall designate the location However, in the event the location was approved as part of a City or County site plan or development review process, the location shall be as shown on the final approved site or development plan. To the maximum extent feasible, the designated location shall be located in a place that provides for safe, convenient, and expedient access by Contractor.

111 Containers and Preparation.

- 1 Household Trash and Garbage. Contractor shall be required to provide collection and disposal services for all household trash and garbage generated by multiple dwelling units which has been prepared and stored in a refuse container, mechanical carts, mechanical container, or compactor under the following conditions
 - a The multiple dwelling unit customer shall be permitted to use individual refuse containers or mechanical carts for each dwelling unit only upon City approval, otherwise, customers shall be required to use mechanical containers or compactor service
 - b Contractor shall be required to provide an adequate number of mechanical containers or compactors to customers who request or exceed the maximum number of refuse containers or mechanical carts Mechanical containers and mechanical carts (if authorized by the City) shall be provided at Contractor's sole expense and shall remain the property of Contractor, unless the mechanical container is owned by the customer Compactors shall be provided as mutually agreed to by Contractor and customer
- Recyclable Materials. Contractor shall be required to provide collection and disposal services for all recyclable materials generated from multiple dwelling unit customers who have been properly prepared and stored in a recycling container. A list of the materials that shall be recycled is listed in Exhibit III. This list may change from time to time based on local facilities abilities to accept said materials.
- Vegetative Waste. Vegetative Waste service at the curb shall be collected weekly. The occupant shall place loose yard trash such as leaves, pruning and grass garbage can or bag for collection, transport and disposal in the same manner as garbage. Non-containerized yard waste shall be collected providing that it is tied, stacked and bundled, does not exceed (4) feet in length (except palm fronds) or four (4) inches in radius nor be greater than fifty (50) pounds in weight for any piece or segment of such materials. Palm fronds stacked at curb shall be collected up whole. All

piles in excess of three (3) cubic yards shall be assessed as outlined in the Fee Schedule

- Bulk Waste Collection, White Goods and Household Furniture. Bulk items such as appliances, furniture, etc (not hazardous waste) shall be collected free of charge twice per year as agreed upon by the City and the Contractor, most likely the months of May and November Customers wishing to order a bulk pickup outside of the two free each year would be required to pay a special pick-up fee in accordance with the adopted fee schedule. The contractor shall be responsible for coordination of the collection. On a monthly basis, the contractor shall provide the City with a list of items collected via special pick-up and the address from which they were collected for billing purposes.
- e City Controlled Property. As requested by the Authorized Representative, Contractor shall be required to provide collection and disposal services for all refuse, bulk trash, white goods, and recyclable materials generated by City at properties owned, leased, or otherwise controlled by City In addition, Contractor shall provide such collection and disposal services for any and all City sponsored special events as agreed to by City and Contractor, and for all City public receptacles located along or in public rights-of-way, sidewalks, and public recreational facilities. A list of current facilities is specified in Exhibit I which is incorporated herein. The intent of this Agreement is for the Contractor to provide all waste and resource, recovery needs of the City without cost to the City facilities and City sponsored events. The exception is for disposal fees associated with removal of construction debris generated by City Utility or Public Works crews.
 - Representative in writing, Contractor shall provide collection and disposal services for refuse at least two (2) times per week, with collections at least three (3) days apart, and for bulk trash, vegetative waste, and recyclable materials not less than once per week All collection route cycles shall be subject to the prior written approval of the Authorized Representative Special pick-ups, including pick-ups of white goods, shall be provided on an "as needed basis" and shall be allowed on any day, except Saturdays and Sundays
 - 11. **Point of Collection.** Collection of refuse, bulk trash, vegetative waste, and recyclable materials shall be at locations designated by the Authorized Representative, with consideration given for the safe, convenient, and expedient access by Contractor

111 Containers and Preparation.

1 **Refuse.** Contractor shall be required to provide collection and disposal services for refuse generated by City which has been properly prepared and stored in a refuse container, mechanical cart,

- or mechanical container as determined by the Authorized Representative Contractor shall be required to provide all mechanical containers and mechanical carts at Contractor's expense
- 2 Recyclable Materials. Contractor shall be required to provide collection and disposal services for all recyclable materials generated by City which have been properly prepared and stored in a recycling container or other container mutually agreed to by the Authorized Representative and Contractor A list of the materials that shall be recycled is listed in Exhibit III This list may change from time to time based on local facilities abilities to accept said materials
- 1. Bulk Trash and White Goods. Contractor shall be required to provide collection and disposal services for all bulk trash and white goods generated by City regardless of whether they are containerized
- f Biohazardous, Biological, Hazardous, Sludge, and Special Waste. Contractor shall not be responsible for collection and disposal services for biohazardous waste, biological waste, hazardous waste, sludge, and special waste under this Agreement
- g Construction and Demolition Debris Service. Contractor shall provide collection and disposal service of construction and demolition debris to residential, multiple dwelling unit, contractors and commercial customers as follows
 - Exclusive Right. Contractor shall provide and have the exclusive right to provide collection and disposal services for construction and demolition debris utilizing rolloff containers, as that term is defined in this Agreement, or other appropriate containers
 - 1 **Exclusion.** Contractors hauling their own waste as described in the City Code are excluded from this provision
 - Frequency of Collection. Contractor shall provide collection and disposal services for construction and demolition debris utilizing rolloff containers or other appropriate containers to customers that specifically request such service or as required by City Said collection and disposal services shall be provided as frequently as mutually agreed to by Contractor and the customer or as required by the Authorized Representative or City Code to protect the public health, safety, and welfare.
 - Point of Collection. Collection of construction and demolition debris shall be at a location mutually agreed upon by the customer and Contractor, provided, collection shall be located within the boundary of the property served, unless otherwise approved by the Authorized Representative

- or more rolloff containers or other appropriate containers of a size and number mutually agreed to by Contractor and customer
- h Code Enforcement. Upon request of the Authorized Representative, Contractor shall assist the City in its code enforcement efforts by providing collection and disposal service of solid waste and construction and demolition debris located on real property in violation of the City Code at no cost to the City, not to exceed ten (10) twenty (20) yard rolloff containers per year
- Tire Collection. Contractor shall provide weekly tire collection and disposal services to residential customers at no additional charge, provided no more than four (4) tires per household per year
- handling and management of solid waste not covered under the general pick-ups required by this Agreement, including special pickups for items such as asbestos, waste tires (which exceed the number allowed in this agreement), used oils, lead free batteries, construction and demolition debris, ash residue, and biological waste All such requests shall be billed directly to the customer For purposes of this paragraph, the term "special pickup" shall mean excessive waste debris residue generated by contractors, waste requiring special equipment to dispose of:
- k **Reporting.** The Contractor shall submit a monthly report to the City which includes tonnage of solid waste, recycling and yard waste
- l City Cleanliness Contractor shall collect adopt-a-road litter bags within 48 hours of notification from city right of ways
- m **Dead Animals** Contractor shall collect dead animals from city right of ways with 24 hour notice
- n **Community Clean-ups.** Contractor shall provide roll-offs for up to four (4) community cleanup events per year
- o City Events. Contractor shall provide recycling, garbage carts and roll-off containers for up to six (6) City sponsored events per year identified in EXHIBIT I

3 Rates and Charges; Compensation to Contractor; Franchise Fee Billing.

a Rates; Compensation to Contractor. For collection and disposal services provided under this Agreement, Contractor agrees that the rates shall be as set forth in the attached rate sheet Exhibit IV

b Consumer Price Index (CPI) Adjustment. The rates in paragraph 3(a) shall remain unchanged during the term of this Agreement unless the Contractor requests in writing an annual CPI adjustment or petitions the City for a rate adjustment in accordance with this agreement. If a CPI rate adjustment is requested, the Contractor shall receive said adjustment to fees which are billed directly by the contractor and fees, billed by the city, paid to the contractor based on the following mathematical formula

"CPI1" The published CPI for the month of February of the preceding year

"CPI2" The published CPI for the month of February for the year in which the rate is being adjusted

If CPI1 and CP12 are not expressed in relation to the same base period or if a material change is made in the method of establishing CPI, the City and the Contractor shall make an appropriate statistical adjustment or conversion. If the CPI is discontinued, the City and the Contractor shall mutually select another index published by the United States Government or by a reputable publisher of financial and economic indices.

- Fuel Adjustment Costs Based upon the fact that the cost of diesel fuel is not adequately accounted for in the CPI in section 5.2, the Contractor may request fuel increases based on the previous 12 month service average increase CPI rate for fuel component. The calculation will be made in the same manner as the CPI in section 3(b)
- d Billing Customers by City Customer billing shall be established and enforced by City Code The City shall provide the customer billing for all collection and disposal services provided by Contractor under this Agreement, unless otherwise specifically stated herein City shall perform said billing by means and at times deemed appropriate by City Contractor shall fully cooperate with City in customer billing
- e Billing and Payment Procedure. Unless otherwise provided by the Authorized Representative, customer billing and payment to Contractor shall be in accordance with the following procedure
 - The City shall provide all Customer billing for residential and commercial cart collection and disposal services provided under this Agreement by adding a line item on the City's monthly utility bill Contractor shall, however, provide Customer billing for commercial dumpster service
 - On a monthly basis, the City shall provide to the Contractor an updated assessment roll or customer list setting forth the total number of, and

address of each, residential collection units to be served under this Agreement. In addition, the City shall provide Contractor with monthly notification of new residential certificates of occupancy issued in the preceding month and City will pay Contractor for the new residences the next full month following notification.

- Contractor shall be paid by the City based on the number of residential collection units on the customer list Payment shall be made by the City no later than the 15th day of each month for collection and disposal services provided by Contractor during the preceding month
- Should the City or Contractor discover that the City is erroneously paying for collection and disposal services to a non-existent residential collection unit, or alternatively, Contractor is providing such services to residential collection unit not listed on the most recent assessment roll or customer list, the discovering party shall immediately notify the other party. Upon verification by the other party that the omission is correct, the City's next payment to the Contractor shall be accordingly increased for each non-listed unit or decreased for each non-existent unit
- Commercial Billing. Contractor shall direct bill all commercial customers. The Contractor shall provide the City with a monthly report regarding the collection and disposal services provided to such customers. The report shall be in a form acceptable to the City and shall be delivered no later than the 15th day of each month for the preceding month's services. The report shall include at a minimum the customer address, the collection and disposal services provided, and the amount billed to the customer for said services.
- g. Franchise Fee. At the City Commission's sole and absolute discretion, the City reserves the unconditional right to charge Contractor, a Franchise Fee equal to an amount permitted by law to be established by the City. The Franchise Fee shall not be construed as a tax, but shall be considered a payment to the City in exchange for the rights and privileges granted by this Franchise. The Franchise Fee shall be passed along to the customer and remitted by Contractor to the City according to the formula provided in Exhibit V. At the effective date of this Agreement, Contractor acknowledges and agrees to pay a Franchise Fee related to all collection and disposal services directly billed by Contractor under this Agreement including, but not limited to, commercial and construction and demolition debris services
- h- Contractor's Petition for a Rate Adjustment. The Contractor will receive a CPI and fuel rate adjustment per section 3b and 3c annually upon requesting it in writing so long as the contractor has no incurred any administrative charges based on performance measurement as described in section 7b and Exhibit II of this contract. If administrative charges have been incurred, the city Commission as the discretion to require corrective measures prior to authorization of a CPI increase, and any such increase shall not become effective until authorization. The contractor must request the increase no later than ninety (90) days prior to the anniversary date of this Agreement, beginning in 2010.

- Landfill Tipping Fees. Contractor shall be responsible for paying all landfill tipping charges for services provided under this agreement. Should landfill fees increase at a rate greater than the CPI as identified in section 3b, the Contractor would have the ability to petition the City for a rate adjustment which would be effective the same date as the rate change.
- Unusual Costs. The Contractor may petition the City to adjust the rates in herein based upon unusual and unanticipated increases in the cost of doing business, including but not limited to a change in any collection regulation. Any such request shall be supported by full documentation establishing the increase in operating costs and the reasons therefore. The City shall be entitled to audit the Contractor's financial and operational records directly related to the Contractor's request in order to verify the increase in costs and the reasons therefore. This may be approved or denied at the sole discretion of the City Commission.
- k Taxes The Contractor shall pay all Federal, State and local taxes and fees including, but not limited to, sales tax, social security, workers' compensation, unemployment insurance and other required taxes and fees which may be chargeable against labor, material, equipment, real estate and any other item necessary to and in the performance of this Contract

4 Schedules and Routes.

Contractor shall provide written notice to the City of its collection and disposal routes and schedules. The City reserves the unconditional right to deny Contractor's vehicles access to any street, alley, bridge, beach, or public way within the service area while performing collection and disposal services under this Agreement, where the City determines that it is in the best interests of the public health, safety, and welfare to do so because of the conditions of the streets, alleys, bridges, beaches, or public ways. However, Contractor shall not interrupt the regular schedule and level of service because of such closures of less than eight (8) hours in duration. The City shall notify Contractor of any such closures of longer duration, and arrangements shall be made in a manner acceptable to Contractor and the Authorized Representative for the collection and disposal services interrupted by the closure. Any and all route and schedule changes must receive prior approval by the Authorized Representative.

a Storm, Natural or Man Made Disaster In the case of a severe weather or disaster event, the City may grant the Contractor reasonable variance from the regular schedules and routes. As soon as practicable after such severe weather or disaster event, the Contractor shall advise the City of the estimated time required before regular schedules and routes can be resumed. The City shall inform all customers. In case of a severe weather or disaster event where it is necessary for the Contractor and the City to obtain additional equipment and to hire extra crews to clean the City of debris and solid waste resulting from the severe weather event, the Contractor shall work with the City in all possible ways for the efficient and rapid cleanup of the City. The Contractor will be compensated by the City for additional personnel, overtime and costs of rental equipment, provided the Contractor has first secured written authorization and approval from the City Manager for the rates and total costs

5 Collection Equipment and Vehicles.

Contractor shall provide collection equipment or the collection and disposal services under the following conditions

- Type, Condition and Amount. Contractor shall have on hand, at all times under this Agreement, collection equipment that is in good working order and sanitary condition that will permit Contractor to perform the collection and disposal services in a sufficient and efficient manner so that the schedules and routes can be maintained Collection equipment shall be obtained from a nationally known and recognized manufacturer of collection equipment. Collection vehicles shall be of the enclosed packer type or other type vehicle which meets industry standards and is approved by the Authorized Representative All collection vehicles shall be equipped with communication devices which allow for proper communication with Contractor's dispatcher and the City and such devices shall be maintained in good operating order. The Contractor shall maintain a central dispatch during all residential service hours to provide information to units in the field and to dispatch units to provide service or the correction of problems The Contractor shall also have a route supervisor on duty to remediate any residential issues in a timely manner The Contractor shall ensure that all vehicles are washed on the outside and painted or repainted as often as necessary to keep them in a neat, clean and sanitary condition Contractor vehicles will prominently display name and telephone number on each vehicle and the City of Winter Park approved logo displayed on each side of the vehicle at contractor's expense No other advertising will be without express written consent of the Utility Director or his/her designee
- b **Overloading.** Collection vehicles shall not be overloaded by Contractor so as to cause litter or spillage, however, if litter or spillage occurs because of overloading it shall be picked up immediately
- Back-up Equipment. Contractor shall maintain sufficient back-up collection and disposal equipment to temporarily replace collection and disposal equipment that is in a state of disrepair or is inoperable at any time during Contractor's performance of the collection and disposal services pursuant to this Agreement. The back-up collection and disposal equipment shall be put into service within a reasonable time and without interruption of collection and disposal services. Such back-up collection and disposal equipment shall correspond in size and capacity to the collection and disposal equipment ordinarily used by Contractor in performance of the collection and disposal services under this Agreement.
- d **Traffic.** Contractor's vehicles shall not interfere unduly with vehicular or pedestrian traffic and shall not be left parked on the street unattended, except as made essential by loading operations
- e City Right To Inspect. The City, at its discretion, shall have the right to inspect all collection and disposal equipment used by the Contractor within the

service area at any time Should the City deem that any collection and disposal equipment fails to meet minimum standards, the City shall have the right to prohibit such equipment from being utilized within the service area until such time that the equipment is repaired to meet such standards or replaced

6 Contractor's Personnel.

Contractor shall fully comply with the following terms and conditions regarding Contractor's personnel

- a Contractor's Representative. Contractor shall appoint a representative to administer and manage this Agreement on Contractor's behalf
- b Personnel. Contractor shall provide a sufficient number of permanent and qualified full-time employees to provide all of the collection and disposal services within the service area. All such employees shall be lawfully permitted to work in the State of Florida and the United States. Temporary employees and labor shall be prohibited unless authorized by the Authorized Representative to handle emergency situations.
- Conduct of Personnel. Contractor shall require and ensure that its personnel shall serve all customers in a courteous, helpful, and impartial manner Contractor's personnel shall perform collection and disposal services while using existing sidewalks and driveways when on private and public property Contractor personnel shall observe all no trespassing signs and shall not cross between neighboring properties unless the customer, or customer's in the case of neighboring properties, has expressly given said personnel permission Contractor's personnel shall perform all collection and disposal services with due care and shall always take reasonable precautions and steps to avoid damaging all real and personal property including, but not limited to, refuse containers, recycling containers, carts, racks, trees, shrubs, flowers, and similar property Contractor shall be fully liable for all such damage caused by Contractor's negligence and Contractor shall promptly provide sufficient and appropriate compensation to customer's for such damage After emptying containers, employees shall return them to the same location from which they were taken, and anything spilled shall be picked up immediately by such employee
- d Uniform Regulations. Contractor agrees that the identification of Contractor's personnel while performing the collection and disposal services is important to the customer's health, safety, and welfare Consequently, Contractor's personnel performing collection and disposal services shall wear a uniform or shirt bearing the Contractor's name and an approved safety vest Lettering stitched on or identifying patches permanently attached to the uniform or shirt shall be acceptable
- e. Labor and Employment Laws. The Contractor shall comply with all applicable
 State and Federal laws relating to wages, hours and all other applicable laws relating
 to the employment or protection of employees, now or hereafter in effect. The
 Contractor is required and hereby agrees by acceptance of this Contract to pay all

employees not less than the Federal minimum wage and to abide by other requirements as established by the Fair Labor Standards Act, as amended from time to time

- f Informing Personnel of Responsibilities. Contractor shall take whatever steps it deems necessary to fully inform its personnel about the terms and conditions and personal responsibilities provided under this Agreement City shall not be responsible for informing Contractor's personnel of said terms, conditions, and responsibilities Contractor shall also provide operating and safety training manuals to all its personnel
- g **Driver's License.** All Contractor's personnel that drive a collection vehicle while performing collection and disposal services shall at all times have and carry a valid Florida commercial driver's license, for the type of vehicle being driven
- h **Drug Free Workplace.** Contractor shall maintain a drug free workplace policy If requested by City, Contractor shall provide a document certifying to the City it is a drug free workplace
- Criminal History. No person convicted of a crime(s) and/or repeated non-criminal violations of traffic laws which demonstrate a propensity to unfaithfully fulfill the duties of employment such as, but not limited to, larcenous activity, aggravated battery or other violence, those relating to the operation of motor vehicles, and any crime for which civil rights have been removed within two (2) years of the date of service to the City shall be employed by the Contractor
- J. Character of Workers and Equipment. The direction and supervision of solid waste collection, transportation, and disposal shall be by competent, qualified, sober personnel, and the Contractor shall devote sufficient personnel, time and attention to the direction of operations to assure performance satisfactory to the City All Subcontractors, Superintendents, Foremen and Workers employed by the Contractor shall be careful and competent. Any employee of the Contractor who acts in an improper fashion, or is incompetent or negligent or is disorderly, dishonest, intoxicated, blasphemous, obscene or grossly discourteous shall be removed from service to the City upon receipt by the Contractor of a written request from the City Manager that such action be taken.

7 Level of Service; Customer Complaints

a Handling Complaints The Contractor shall perform a service of high quality and keep the number of legitimate complaints to a minimum. In order that the City may be informed of the quality of service, the Contractor shall furnish at a minimum one (1) employee with a telephone and arrange the handling of complaints in substantially the following manner. All complaints, whether received in person, by mail, e-mail or telephone, shall be recorded. Complaints received before 12.00 noon each day shall be serviced before 5.00 p.m. that day Complaints received after 12.00 noon shall be serviced before 12.00 noon the

following calendar day Each complaint shall be considered legitimate if not remedied within the parameters above

- **Performance Measurement** It is the intent of the City to ensure that the Contractor provides a quality level of Solid Waste Collection, Transportation, and Disposal Services All complaints received by the City and reported to the Contractor shall be resolved as noted However, in the event that circumstances make it impossible to resolve a particular complaint within the time periods set forth, Contractor shall notify the Authorized Representative as to the reason the complaint can not be resolved within said time periods and when the complaint will be fully resolved Upon request by the Contractor, the City may grant, at its sole discretion, a written extension of time to resolve the complaint if Contractor's reasons for the delay are reasonable, legitimate, and not a habitual excuse for failing to resolve the complaint Contractor shall be required to promptly notify the customer as to when the complaint will be resolved In the event the violation has not been corrected with the specified time limits, administrative charges shall be assessed as identified in Exhibit II not as a penalty or as a liquidated damage, but to represent an administrative charge to the City for the staff time and effort necessitated by the complaint The City may assess and invoice for payment of administrative charges pursuant to the above schedule on a monthly basis during the term of this Contract and will deduct such administrative charges from the payment of the residential collection services for the corresponding month in which the charge was imposed. Contractor shall be required to place repeated complaints on a monitored stop list for 90 day at the City's request Units with monitored stops shall have all services or non-services recorded at time of service in web-base or Contractor shall be assessed administrative charges and remediate within 12 hours
- office Hours Contractor shall operate a manned customer service center which shall be open during all hours of residential collection. No mechanical/electronic substitution shall be permitted nor shall the use of an answering service be permitted in place of Contractor personnel during times of residential service routes.

d Performance Bond

Guarantee of Performance The Contractor shall deposit with the City a performance bond from an acceptable surety licensed by the State of Florida, securing the City in an amount of not less than twenty-five percent (25%) of the amount of the basic residential customer rate per year multiplied by the total number of residential customers to be serviced, which surety shall be as a guarantee to the City of faithful performance of the contract for the first year of operation. The amount of the performance bond shall be adjusted in accordance with this provision annually on October 1st of each year.

8 Transfer of Ownership or Control

The Contractor may not assign this franchise, nor any part of it, without consent of the City Commission. Upon approval of any transfer of this Franchise by the City Commission, the Contractor or the transferee/assignee shall pay the City a transfer fee of Twenty-Five Thousand Dollars (\$25,000 00) for the first transfer and One Hundred Thousand Dollars (\$100,000 00) for each subsequent transfer as a condition precedent to the effective date of any such transfer

9 Effect of Circumstances Beyond Control of Franchisee ("Force Majeure").

Contractor shall not be declared at fault or be subject to any sanction under any provision of this Agreement in any case, in which performance of any such provision is prevented for reasons beyond the Contractor's control. For the purposes of this Agreement, causes or events beyond the Contractor's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, terrorism, riots or civil disturbances, sabotage, restraints imposed by order of a governmental agency or court. A fault shall not be deemed to be beyond the Contractor's control if committed by a corporation or other business entity in which the Contractor holds a controlling interest whether held directly or indirectly, when such fault is due to Contractor's financial inability to perform or comply, economic hardship, or misfeasance, malfeasance or nonfeasance by any of the Contractor's directors, officers, employees or contractors or agents. Failure of collection and disposal equipment and strikes or work stoppages held by Contractor's employees shall not be considered acts beyond Contractor's control.

10 Effect of Pending Litigation.

Pending litigation or any appeal to any regulatory body or court having jurisdiction over the Contractor shall not excuse the Contractor from the performance of its obligations under this Agreement, unless specifically provided for by court order or by the regulatory body having jurisdiction over such matters. Failure of the Contractor to perform such obligations because of pending litigation or petition may result in forfeiture or revocation pursuant to the provisions of this section.

11 Regulatory Authority.

a **Authority.** The City reserves the right to exercise the maximum authority, as may at any time be lawfully permissible, to regulate the collection and disposal services and any other solid waste services, the Franchise granted hereunder, and the Contractor Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the City, the City may without the approval of the Contractor engage in any such additional regulation as may then be permissible, whether or not contemplated by this Agreement or the City Code, including without limitation, regulation regarding franchise fees, taxes, programming, rates charged to customers, consumer protection, or any other similar

- or dissimilar matter. The City agrees to meet and confer with the Contractor prior to enacting new regulatory ordinances.
- b **Right of Inspection.** The City shall have the right to inspect in a timely manner and in the accompaniment of a representative of the Contractor all collection and disposal services performed subject to the provisions of this Agreement and equipment used by Contractor, and to make such tests as it shall find necessary to ensure compliance with the terms of this Agreement, the City Code and any other applicable provisions of local, state or federal law
- c City Regulation. To the extent that federal or state law or regulation may now, or as the same may hereafter be amended by legislation, administrative regulation or decision, or judicial determination, authorize the City to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Contractor, the City shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City. The City shall provide advance notification to the Contractor of its intention to exercise any such regulation and written notification when such ordinance is adopted. However, failure to so provide advance notification to the Contractor or written notification when such ordinance is adopted shall not be a basis upon which to declare this Agreement in breach or to invalidate the ordinance.
- d City Health and Sanitation Regulations. Without any limitation on the authority granted City above, City reserves the unconditional right to adopt by ordinance additional health and sanitation regulations which shall apply to the collection and disposal of solid waste, biohazardous waste, biological waste, construction and demolition debris, hazardous waste, sludge, special waste and all other kinds of waste. To the extent determined at the sole discretion of the City's City Commission, these regulations shall be codified in the City Code. Contractor shall fully comply with these regulations to the extent applicable to the collection and disposal services provided under this Agreement and said regulations shall be deemed to be fully incorporated herein by this reference. In the event any provision of this Agreement is in conflict with any provision of the additional City health and sanitation regulations, the provision contained in the regulations shall prevail

12 Liability and Insurance.

The Contractor shall not commence work under this Contract until it has obtained all insurance as specified under the City of Winter Park Insurance Requirements included in the bid documents and such insurance coverage required by the City. The Contractor shall not allow any subcontractor to commence work on subcontracts until after they have been approved by the City and similar insurance of the subcontractor has been obtained and approved by the City

a **Certificate of Insurance.** Prior to the effective date of this Agreement and thereafter continuously throughout the duration of the Agreement and any extensions or renewals thereof, Contractor shall furnish to the City, certificates of insurance and

endorsements, in a form approved by the City, for all types of insurance required under this section. Failure to furnish said certificates of insurance and endorsements in a timely manner shall constitute material breach of this Agreement. At the City's request, Contractor shall furnish certificates of insurance and endorsements which are in effect from time to time.

- b **No Liability Limit.** Neither the provisions of this Section or any damages recovered by the City hereunder, shall be construed to limit the liability of Contractor for damages under this Agreement
- c **Endorsement.** All insurance policies maintained pursuant to this Agreement shall contain an endorsement in substantially the following form
 - It is hereby understood and agreed that this insurance policy may not be modified or canceled by the insurance company nor the intention not to renew be stated by the insurance company until thirty (30) Days after receipt by the City of Winter Park City Manager by certified mail, of a written notice of such intention to cancel or not to renew
- d **State Institution.** All insurance policies provided pursuant to this Agreement shall be written by companies authorized by the Florida Insurance Commissioner to do business in the State of Florida as an insurance company. The insurance company shall have a Best Insurance rating of A or better, unless otherwise approved by the Authorized Representative
- e **Named Insured.** The City shall be an additional named insured for all insurance policies written pursuant to this Agreement, as the City's interests may appear from time to time
- Changes in Policy Limits. To offset the effects of inflation and to reflect changing liability limits, all of the coverage, limits, and amounts of the insurance provided for herein are subject to reasonable increases at the end of every two (2) year period of this Agreement, applicable to the next two (2) year period or termination date of this Agreement (whichever occurs first), at the City's discretion, but not to exceed the coverage, limits, and amounts of insurance the City requires of other contractors transacting business with the City
- g Commercial General Liability Insurance. Contractor shall maintain throughout the term of this Agreement, general liability insurance insuring Contractor in the minimum of
 - 1 \$5,000,000 for property damage single limit, and
 - 11 \$5,000,000 single limit liability for personal bodily injury or death to any one person

- h **Automobile Liability Insurance.** Contractor shall maintain throughout the term of the Agreement, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of
 - \$5,000,000 single limit liability for bodily injury and consequent death per occurrence, and
 - \$5,000,000 for property damage per occurrence
- Worker's Compensation. Contractor shall maintain throughout the term of the Agreement, worker's compensation at least to the minimum amount of the statutory limit for worker's compensation, as amended from time to time

13. Public Convenience, Safety, and Indemnity

The Contractor shall at all times observe City ordinances controlling or limiting those engaged in the Work as presently or in the future enacted The Contractor and its surety hereby expressly bind themselves to indemnify, save the City harmless and defend the City from all suits or actions of every name and description brought against said City for or on account of any injuries or damages received or sustained by any party or parties from the acts, omissions or negligence of said Contractor, or his servants or agents, including, but not limited to, subcontractors, in doing the work herein contracted for, by, or in consequence of any negligence in guarding against same, or in any improper materials or equipment used in its performance, or by or on account of any act or omission of the said Contractor, or on account of any claims or amounts recovered for infringement of patent, trademark or copyright, or from any claims or amount arising or recovered under the Workers' Compensation laws The Contractor hereby covenants not to sue the City relative to such matters and recognizes that the City has not waived sovereign immunity or its protections under State law including, but not limited to, the provisions of Section 768 28, Florida Statutes The City agrees to be responsible for the City's own negligent acts and omissions, but does not waive sovereign immunity or any other defenses available to the City

14 Interference with Persons, Public and Private Property, and Utilities.

Contractor's collection equipment and personnel used in performing the collection and disposal services hereunder shall

- a Not endanger or interfere with the health, safety or lives of persons,
- b Not interfere with any improvements which the City, county, state, and federal government may deem proper to make,
- c Not interfere with the free and proper use of Public Rights-of-Way, alleys, bridges, easements or other public property, except to the minimum extent possible during actual collection and disposal services being provided hereunder,

- d Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual collection and disposal services being provided hereunder, and
- e Not obstruct, hinder or interfere with any gas, electric, water, wastewater, reclaimed water, stormwater drainage, telephone, or other utility facilities located within the service area

15 Books and Records Available to City.

Contractor shall maintain books, records, documents, time and costs accounts and other evidence directly related to its performance of services under this Agreement. The City, or any of its duly authorized representatives, shall have access within twenty-four (24) hours notice to such books, records, documents, and other evidence for inspection, audit and copying. Copying of the Contractor's books, records, documents, time records and cost accounts and other evidence shall be at the Contractor's expense. The City may perform, or cause to have performed, an audit of the records of Contractor before or after payments to support payments. This audit shall be performed at a time mutually agreeable to Contractor and the City subsequent to the close of a Contract year. In the event of any audit or inspection conducted reveals any overpayment by the City under the terms of the Agreement, the Contractor shall refund such overpayment to the City within thirty (30) days of notice by the City of the request for the refund. The Contractor agrees to fully comply with all State laws relating to public records to include, but not be limited to, Chapter 119, Florida Statutes, and Article I, Section 24 of the Constitution of the State of Florida.

16 Preferential or Discriminatory Practices Prohibited.

All collection and disposal services rendered and all rules and regulations adopted by Contractor shall have general application to all persons and shall not subject any person to prejudice or disadvantage on account of race, gender, religion, origin, or ethnicity Contractor shall not deny service to any group of potential customers within the City because of the income of the customers within the service area Contractor shall not charge customers different rates for service for the same class or type of service. However, this paragraph is not intended to restrict Contractor from offering reasonable discounts to senior citizens or other economically disadvantaged groups in accordance with any local, state, or federal law.

17. Miscellaneous Provisions.

a. Independent Contractor. Contractor is an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, a joint venture relationship, a partnership relationship, or to allow the City to exercise control or direction over the manner or method by which Contractor performs the collection and disposal services which are the subject matter of this Agreement Contractor understands and agrees that (i) the City will not withhold on behalf of Contractor pursuant to this Agreement any sums for payment of income tax, unemployment insurance, social security or any other

withholding, (ii) all such payments, withholdings and taxes are the sole responsibility of Contractor, and (111) Contractor will indemnify and hold the City, its City Commission members, attorneys, employees, officers, and/or agents harmless from and against any and all loss or liability arising with respect to such payments, withholdings, or taxes, including, but not limited to reasonable attorneys' fees through any and all administrative, pre-trial, trial, post trial judgment, and appellate proceedings The parties hereto agree that both Contractor and the City shall have the right to participate in any discussion or negotiation with the Internal Revenue Service concerning Contractor's independent contractor status regardless of with whom or by whom such discussions or negotiations are initiated. In the event that any applicable government agency determines that Contractor is an employee of the City and the City is required to pay any additional amount to any governmental authority based upon Contractor being reclassified an employee of the City, Contractor hereby covenants and agrees to reimburse immediately the City for any such amount paid to any such governmental authority and the costs and expenses associated with defending the City, including, but not limited to reasonable attorneys' fees In the event that Contractor is reclassified as an employee and becomes eligible for a refund of any taxes paid to any governmental agency, including but not limited to, a claim for refund of self-employment taxes, then Contractor hereby covenants and agrees to pursue any such refund and assign to the City the proceeds from any such refund

- b **No Joint Venture.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other
- c Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, and supersede all prior oral negotiations and written agreements between the parties. This Agreement may be amended, supplemented, modified, or changed only by a written instrument agreeing to said amendment, supplementation, modification, or change in the terms hereof by the parties.
- d Notices. Any notice, request, instruction, or other document to be given as part of this Contract shall be in writing and shall be deemed served when either delivered in person to the following designated agents or received by registered or certified United States mail, return receipt requested, postage prepaid, or received by facsimile, addressed as follows

TO THE CITY

City Manager & Water and Waste Water Director City of Winter Park 401 Park Ave South Winter Park, FL 32708 Ph (407) 327-5957

TO THE CONTRACTOR

Waste Pro of Florida, Inc Attn Tim Dolan 2101 West SR 434, Suite 301 Longwood, Florida 32791 Ph 407-774-0800

Either party may change the aforementioned designated agents at any time by providing written notice of such change to the other party

- e Captions. Captions to sections through this Agreement are solely to facilitate the reading and reference to the sections and provisions of the Agreement Such captions shall not affect the meaning or interpretation of the Agreement
- Severability. If any section, subsection, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision. Such holding shall not affect the validity of the remaining portions of this Agreement, unless the City determines that the portions remaining (without the severed portions) have an adverse effect on the best interests of City, then City shall have the right to terminate this Agreement without penalty
- g City's Rights of Intervention. Contractor agrees not to oppose intervention by the City in any suit or proceeding to which Contractor is a party, concerning or involving this Agreement and the City's rights under this Agreement
- h Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be considered an original agreement, but such counterparts shall together constitute but one and the same instrument
- Waiver. Failure of the City to insist upon performance within any time period or upon a proper level of service shall not act as a waiver of the City's right to later claim a failure to perform on the part of Contractor
- Jurisdiction; Venue. This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of Florida Venue for any state action or litigation shall be Orange County, Florida Venue for any federal action or litigation shall be Orlando, Florida

18 Effective Date, Term, and Required Performance.

a **Effective Date.** The effective date of this Agreement shall be May 1, 2009. Any prior contract between the parties, and all addendums thereto, is hereby superseded and of no further force and effect, provided, however, any monies still

owed by the Contractor to the City under the prior contract shall be duly and fully paid and Contractor shall be paid the last month's billing under the prior contract for only the last month's collection and disposal services performed by Contractor

- b Term. The initial term of this Agreement shall be for Seven (7) years and shall commence on May 1, 2009 and terminate on April 30, 2016. The term of this Agreement will be automatically renewed for successive three (3) years terms at the end of any term unless City or Contractor provides one hundred eighty (180) days notice prior to the end of a term of its unwillingness to renew the agreement No cause is necessary for notice of unwillingness to renew.
- c Breach of Contract by Contractor It shall be the right of the City Manager and any official of the City which he may designate to observe closely the solid waste collection, transportation, and disposal operations and if, in the opinion of the City Manager, there has been a breach of contract, the City Manager shall notify the Contractor, in writing, specifying the manner in which there has been a breach of contract. If, within a period of seven (7) days, the Contractor has not eliminated the condition considered to be a breach of contract, the City Manager shall so notify the City Commission and a hearing date shall be set within fifteen (15) days of such notice

At that time, the City Commission shall hear the Contractor, and the City representatives and shall make a determination as to whether or not there has been a breach of contract, and shall direct what further action shall be taken by the City, as hereinafter provided Any lesser remedial action than cancellation shall not waive the City's right to further remedial action The Water and Waste Water Director or his/her designee may assess liquidated damages of \$1,000 per day of breach not as a penalty, but as a good faith effort to ascertain and provide for damages that are unable for precise determination under the context of this agreement for failure to perform under this Contract Such assessments may be appealed to the City Commission within seven (7) days of being assessed for nonperformance Decisions of the City Commission shall be final In the event of a default described herein, the Contractor shall be liable to City for all damages including, but not limited to, reasonable attorneys fees and Court costs Repeated failure to perform as required by this Contract or repetitive defaults of similar nature shall be grounds for the City to terminate this Contract The City may, notwithstanding any other provisions of this Agreement, elect to proceed with any legal remedy available to it under the provisions of applicable law in the event of a breach of contract, without limitation of the foregoing, City reserves the right to terminate this Agreement at any time if Contractor defaults in its performance of any of the terms and conditions of this Agreement.

d Right to Require Performance The failure of the City at any time to require performance by the Contractor of any provisions hereof shall in no way affect the right of the City thereafter to enforce same Nor shall waiver by the City of any breach of provisions hereof taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself

19 Disruption in Collection and Disposal Services.

In the event a disruption (e g strike, labor stoppage, collection equipment in disrepair) causes Contractor to fall one week or more behind in its collection schedule, City may, at its option, cause the collection and disposal services to be performed by any means available to City Such means may include, but not be limited to, City taking over and operating the collection equipment used in the performance of this Agreement until such time Contractor can perform the collection and disposal services and City contracting with a third party to perform the collection and disposal services. Any cost incurred by City in exercising this option shall be charged against Contractor and the performance bond or alternative letter of credit furnished by Contractor under this Agreement. The foregoing option shall only be exercised by a majority vote of the City's City Commission after the City Commission has declared that the disruption has caused an emergency to arise within the service area that adversely affects the public health, safety, and welfare

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this AGREEMENT in duplicate each of which shall be deemed an original on the first date as written

City of Winter Park, Florida	Waste Pro of Florida, Inc
Signature Jandy Bling	Contractor ()
Name Randy B Knight Title—City-Manager	Name FRANKS. JELINEK Title Olisin Mange
Artest Michelly Cong	Attest Welle Oll Selle Name Wichell Oll Alle

Exhibit I City Facilities and Service Schedule

The list of services outlined in this exhibit will be provided to the City free of charge. This list will be updated as permanent facilities are added to the City facilities. Temporary construction projects are not included in this list.

Facility

Park Avenue Street Containers

32 street cans with liners, serviced 7 times per week, 5 00AM Weekdays/6 00AM Weekends

New England/Hannibal Square Street Containers

15 street cans

Orange Avenue Street Containers – N/A

Existing and Proposed Bus Shelter Containers

20 containers, 55 gallon bags, serviced twice weekly or as needed

WP Golf Course - Maintenance Area - N/A

WP Golf Couse – Clubhouse

8 Ottos

Azalea Lane Recreation Center

6 Ottos

Fleet Peoples Park (Dog Park)

25 Ottos, (1) 6 yd FEL, serviced once weekly

Central Public Works Compound (Multiple Buildings)

 $15(\pm/-)$ Ottos

- (1) 20 yd for tires, serviced as needed
- (4) 30 yd roll-offs, serviced twice per month
- (1) 30 yd roll-off for PVC, serviced once per month
- (1) 4 yd FEL serviced once per week

Cady Way Community Pool

(2) 4 yd FEL serviced once weekly

Cady Way Tennis Court

5 Ottos

Showalter Field

50 Ottos, (1) 4 yd FEL serviced twice weekly, (1) 4 yd FEL serviced once weekly

343 W Canton Avenue Fire Station #61

9 Ottos, 4 recycle bins

Lakemont Firé Station #62

2 Ottos, 2 recycle bins

Howell Branch Fire Station #64

1 Otto

City Hall/Public Works Building

(2) 4-yd FEL serviced once weekly

Welcome Center/Chamber of Commerce

(1)

4 yd FED

Police Department Gun Range/Temple Trail Complex

4 Ottos

(1) 3 yd FEL, serviced weekly

Mead gardens Complex

30 Ottos

(1) 4 yd FEL, serviced once weekly

Harper Avenue Shuffle Board Complex – N/A

Public Safety Complex /911 Communications Bldg

10 Ottos

(1) 4 yd FED, serviced daily

WP Library

(1) 4 yd FEL, serviced once weekly

. Central Park

40 Ottos

Farmers Market

20 Ottos – Not all 20 in service all of the time However, Farmers Market is serviced twice per week regardless

Rachel D Murrah Civic Center

(1) 2 yd FEL, serviced three times per week

Community Center

15 Ottos:

(1) 6 yd FEL, serviced twice weekly

Palm & Piney Woods Cemeteries

Palm - (1) 30 yd roll-off, serviced as needed

Pineywood – (1) 6 yd FEL, serviced once weekly

Dinky Dock Park - N/A

Phelps Park – N/A

Lake Island Community Playground/Sports Fields

55 Ottos – Not all 55 in service all of the time However, Lake Island Community Playground/Sports Field is serviced twice per week regardless

Kraft Gardens Park

12 Ottos

Winter Park Estates Wastewater Treatment Facility

2 Front load with wheels, serviced twice per week

Swoope Water Treatment Plant – N/A

Magnolia Water Treatment Plant – N/A

Aloma Water Treatment Plant – N/A

Wymore Water Storage facility – N/A

WP Sponsored SPECIAL EVENTS (Shall include recycling containers per event organizer)

Taste of Winter Park
July 4th Celebration
Arbor Day
Special Event Boxes
Winter Park Sidewalk Art Festival
Autum Art Festival
Run for The Trees

Please note

- 1) The City reserves the right to amend this list as new facilities are added or to modify the service provided to existing facilities
- 2) All street containers, regardless if they are identified above, are the responsibility of the contractor to empty and service with liners as needed ...

EXHIBIT II SCHEDULE OF ADMINISTRATIVE CHARGES

The following administrative charges will be assessed to the Contractor for all legitimate complaints beginning 08/01/2009 and continuing through the end of the contract

A Collection Misses

- Failure or neglect to collect properly prepared solid waste, program recyclables, or yard trash from any curb or City facility or deliver, maintain or replace a bin or cart at those times provided by the resulting contract. Service issues shall be resolved with within twenty-four (24) hours of the day of notification. Each failure shall result in the imposition of a \$50 fine. Each additional twenty-four (24) hours of failure to collect after previous notification shall result in the imposition of a \$150 charge.
- If the same premises are missed a second time within ninety (90) days of the first incidence, it shall result in the imposition of a \$100 00 charge Each additional twenty-four (24) hours of failure to collect after previous notification shall result in the imposition of a \$250 charge
- If the same premises are missed a third time within ninety (90) days of first incidence, it shall result in the imposition of a \$250.00 charge. Each additional twenty-four (24) hours of failure to collect after previous notification shall result in the imposition of a \$500 charge. Referenced premises shall be placed on a ninety (90) days supervised monitor list and any collection miss shall result in the imposition of a \$1000 charge, per incident.
- B Spillage and litter Failure to complete residential pickup or clean up spilled material from loading and/or transporting shall result in a \$25 per incident, per location charge
- Failure to replace any container damage or repair property damage caused by the Franchisee or their personnel within five 5) business days of notification shall result in a \$25 per incident charge Each additional twenty-four (24) hour period without replacement shall result in the imposition of a \$50.00 charge
- D Failing to maintain properly licensed vehicle operators shall result in a \$100 per incident, per day charge
- E Failure to maintain office hours as required by this ITB and the resulting contract shall result in a \$250 per incident, per day charge
- Failure to maintain a call-in center or complaint database during service routes shall result in a \$100 per incident, per day charge
- Failure of personnel to treat customer(s) or their property in a professional manner shall result in a \$15 per incident charge Failure to follow designated disposal and recycling facility rules and policies may result in personnel being banned for up to three (3) working days at the facility director's discretion

- H Failure to maintain equipment in a clean, safe and sanitary manner shall result in a \$15 charge per infraction
- I Chronic equipment problems Failure or neglect to correct chronic equipment problems (chronic shall mean three instances of the same or similar problem with equipment/trucks within a twelve month period) shall result in the imposition of a \$250 charge for each occurrence after the second
- Failure to maintain and/or submit to the City all documents and reports required under the provisions of this ITB and resulting contract shall result in the imposition of a \$25 per incident, per day charge
 - K Failure to paint, repaint or display the Franchisee's name and phone number on collection vehicles shall result in the imposition of \$25 charge per incident, per day
 - Earlure to comply with the hours of operation, route supervision or provide 24-hour emergency response contact and telephone number response, as required by this ITB shall result in the imposition of a \$100 per incident charge
 - M Failure to deliver, maintain or replace bins or carts or throwing of containers or recycling bins shall result in the imposition of a \$25 per incident, per location charge
 - N Blocking driveways with containers or recycling bins shall result in the imposition of a \$25 per incident, per location charge
 - O Chronic nuisance complaint problems referenced in items J & K Failure or neglect to correct chronic nuisance problems (chronic shall mean three (3) or more similar legitimate complaints within a twelve (12) month period) shall result in the imposition of a \$250 charge for each occurrence after the second
 - P Route Completion Failure or neglect to complete each route (including missing whole streets) on the regular scheduled collection day within twenty-four (24) hours of the day of notification shall result in the imposition of a \$500 per route, per day charge for each instance
 - Q Changing routes without proper notification, of this ITB shall result in the imposition of a \$10,000 per route charge
 - R Mixing Materials Intentionally mixing yard trash, recyclables or solid waste during collection shall result in the imposition of a \$250 charge for each instance
 - S Mixing Recyclables Mixing recyclable dual sort items during collection or tipping at the designated RMPF shall result in the imposition of a \$150 charge for each occurrence
 - W Failure to collect dead animals, Adopt-a-road litter bags, event bins, carts or roll-offs from right of ways within twenty-four (24) hours of notification shall result in the imposition of a \$25 charge For each additional twenty-four (24) period, a \$100 charge shall be assessed for each occurrence
- X Failure to provide promotional, educational materials and/or advertisements shall result in the imposition of a \$1,000 charge per event

EXHIBIT III MINIMUM ACCEPTABLE SINGLE STREAM RECYCLING MATERIALS

Steel and Tin Cans Includes steel and tin cans and empty aerosol cans

Aluminum Includes aluminum beverage containers, aluminum foil and aluminum pie plates

Glass Clear (flint), brown (amber) and green, blue food and beverage jars and bottles Paper labels, rings and lids on glass containers are acceptable

PET Plastic Bottles (SPI code No 1) PET containers, such as beverage bottles, dishwashing soap bottles, shampoo bottles and similar items

HDPE Plastic Bottles (SPI code No 2) Blow molded, closed mouth natural and colored HDPE containers generally consisting of plastic milk jugs, water bottles, detergent bottles and similar items. Paper labels are acceptable. Rinsed containers that may have held toxic or contaminated materials are acceptable.

Preparation Residents shall be asked to rinse the items and remove organics, other contents, labels, lids and plastic caps, but there is no requirement for these to be removed from Recyclable Containers Inclusion of organics, caps, lid, labels and other contents shall not be reason for rejection

Recyclable Paper consists of the following materials,

ONP All loose or paper bagged newsprint is acceptable and includes all paper that is distributed with or as part of general circulation newspapers

OCC All loose old corrugated containers that are flattened and either cut down or folded to size, no more than 4' X 4' flattened and 2' X 2' square Staples and tape do not have to be removed

Brown Paper Bags All loose or bagged Kraft paper sacks used to hold newspaper

Telephone Books Old telephone directories

Magazines Old magazines including catalogs and similar printed material with glossy pages

Paperboard Cereal boxes (without plastic liner), drink boxes, snack boxes, etc Wax-coated paperboard is acceptable

Mixed Residential Paper Mixed paper, including shredded paper, may include all of the following junk mail, high-grade paper, whit and colored ledger, copier paper, office paper, laser printer paper, computer paper including continuous-formed perforated white bond or green bar paper, book paper, cotton fiber content paper, duplicator paper, form bond, manifold business forms, mimeo paper, note pad paper, loose leaf fillers, stationery, writing paper, paper envelopes including envelopes with plastic windows, carbonless (NCR) paper, tabulating cards, facsimile paper, and manila folders

 Items NOT Accepted for Single Stream Recycling Plastic bags Plastic tubs Garbage

Exhibit IV Rate Sheet

Residential 2x1x1 with recycling cart 17 15	Residential	2x1x1 with recycling bins	\$14 80
Residential Each cart above two one time maintenance fee 65 00 Residential Each cart above two monthly collection fee 7 75 Residential Bulk* Per item 25 00 Residential Bulk* up to 2 yards 67 16 Residential Bulk* each additional yard 27 95 Residential Bulk Yard Waste (over 3 yards) 10 00 per yard 25 76 Commercial Cart service (per cart) 25 76 Commercial Loose per yard 5 96 Front Load Compacted per yard 15 84 Front Load Compacted per yard 14 86 Front Load Extra pick up per yard compacted 39 60 Commercial Front Load Extra pick up per yard compacted 39 60 Commercial Front Load Extra pick up per yard compacted 35 00 Commercial Front Load Locks 25 00 Commercial Front Load Locks 25 00 Roll-Off (C&D) Pull Charge – 20 yards 300 00 (C&B) Pull Charge – 30 yards 400 00 (C&B)			17 15
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Residential Each cart above two monthly collection fee	Residential	Each cart above two one time	65.00
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Extra pick up per yard		Compacted per yard	15 84
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1	Lease Fee	·	• • •
(Open top)	4	,	
	Roll-Off	40 yards	80 00
	Lease Fee		
(Open top)	ì	t .	
	Receiver	30 yards	175 00

Box Lease Fee		
Receiver	40 yards	175 00
Box Lease	ı	
Fee		
Compactor	15 yards	450 00
Lease Fees		
Compactor	20 yards	450 00
Lease Fees		
Compactor	30 yards	450 00
Lease Fees		
Compactor	40 yards	450 00
Lease Fees		
Delivery	Open tops & Compactors	80 00
Charge		

^{*}Requires photo of waste and approval from the City

Exhibit V Franchise Fee Calculation (Sample Worksheet)

City of Winter Park Franchise Fees APRIL-JUNE 2008

	44),46	C'Rolloff		 Commerciál 🖫 🏌
Total Revenue minus adjustments for	\$	198 411 44	Total Revenue	\$ 435,796 32
monthly svc charges		\$32,782 68	/5 41 avg yds per p/u	80,553 85
			*\$1 02 (city fee surcharge/yd)	\$ 82,164 93
Total *15% Franchise Fee	\$ \$	165,628 76 24,844 31	Total	\$ 82,164 93
		•	Total Revenue	\$ 435,796 32
Total Rolloff Franchise Fee	\$	24,844 31	Minus total of city fee for yardage	\$ 82,164 93
	<u> </u>		Total	\$ 353,631 39
			Total	\$ 353,631 39
			*15% Franchise Fee	\$ 53,044 71
			15% Franchise Fee portion - from above	\$ 53 044 71
			City surcharge fee portion - from above	\$ 82,164 93
			Total Commercial Franchise Fee	\$ 135,209 63
Total Franchise Fee Due C	ıty o	f Winter Park		\$ 160,053 95

item type	Action Item Requiring Discussion	meeting date	April 23, 2012
prepared by department division	City Management	approved by	■ City Manager□ City Attorney□ N A
board approval		yes 🗌 no 🔲	N A final vote

subject

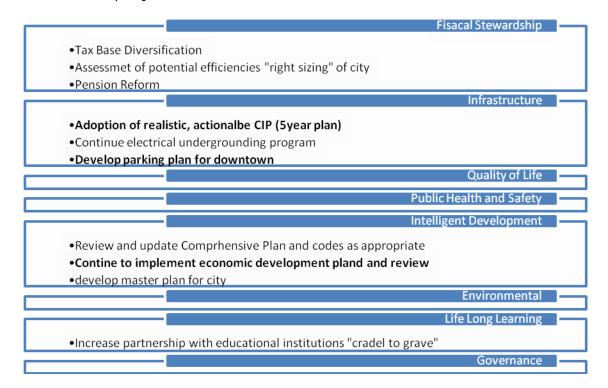
Strategic Objectives

motion | recommendation

Approve strategic objectives as discussed at the April 4, 2012 strategic planning session.

background

On April 4, 2012 the City Commission and Department Heads participated in a strategic planning session facilitated Marilyn Crotty, UCF Institute of Government. The Commission settled on 8 strategic issues and then discussed many strategic objectives. Through a multi voting process, the Commission agreed to 10 key strategic objectives (ideas earning 3 or 4 vote each). The strategic issues and key objectives are listed below.



A full list of items discussed is attached. The objectives that did not make the "key strategic objectives" list will still be considered and worked on as time permits in the overall work plan, but will not receive the same level of priority.

Once the above strategic objective priorities are confirmed by the Commission staff will develop a work plan for each. Staff will also develop a scorecard reporting model that will be used to track progress on the items.

alternatives | other considerations

The Commission may choose to modify the key objectives.

fiscal impact

Key strategic objectives identified in the process that require an associated budget will be funded through saving in the FY 12 budget or will be programmed as part of the FY 13 budget process.

long-term impact

n/a

strategic objective

n/a



Strategic Planning Session ♦ Wednesday, April 4, 2012 ♦ Winter Park Community Center

Tier One Objectives (4 dots)

- Adoption of a realistic, actionable CIP (5 year plan)
- Develop parking plan for downtown
- Continue to implement economic development plan

Tier Two Objectives (3 dots)

- Tax base diversification
- Assessment of potential efficiencies "right sizing" of city
- Pension reform
- Continue electric undergrounding program
- Review and update Comprehensive Plan and codes as appropriate
- Develop master plan for the city
- Increase partnership with educational institutions "cradle to grave"

Strategic Issues	Objectives
1. Fiscal Stewardship	Move to 30% reserves (1 dot)
Right sizing	Tax base diversification (3 dots)
 Departments 	Maintain/improve bond rating (2 dots)
o Staff	Continue sustainability of enterprise funds (2 dots)
o Fleet	Review provision & level of service – fees charged (1 dot)
 Annexation 	 Assessment of potential efficiencies "right sizing" of city (3 dots)
	Explore becoming debt-free city (2 dots)
	Pension reform (3 dots)
2. Infrastructure	Adoption of a realistic, actionable CIP (5 year plan) (4 dots)
 Undergrounding electric 	Continue electric undergrounding program (3 dots)
 Utilities – water & sewer 	Provide for a sustainable water/wastewater system

 Transportation 	Develop policy on jurisdictional control of state roads
 Sidewalks, parking, state roads 	Develop parking plan for downtown (4 dots)
 Technology 	Update master plan for parks & recreation
 City recreational facilities/parks 	Acquisition of additional open space (1 dot)
3. Quality of life	Use existing data to measure quality of life & develop performance indicators (who uses our
 Families, people (sociability) 	services)
 Preservation of heritage 	Conduct citizen survey by professionals (1 dot)
 Cultural organizations 	Maximize arts and culture in the city (1 dot)
 Not-for-profits 	Continue and expand family events (2 dots)
 Recreation/special events 	Increase community wide utilization of WP Community Center (1 dot)
 Multi-generational 	Preserve historic neighborhoods and properties (1 dot)
4. Public health and safety	Maintain low rate of traffic, pedestrian & bike, accidents/crime and high survivability rate
 Public health 	(1 dot)
• Police	Improve citizen perception of safety (1 dot)
• Fire	Continue partnership with WP Health Foundation and Healthy Winter Park (1 dot)
	Support police and fire accreditation process
5. Intelligent development	Review and update Comprehensive Plan and codes as appropriate (3 dots)
• Infill	Promote, protect and extend WP brand
 Quality development 	Continue quality and compatibility of development (1 dot)
Complete city	Use innovative processes to review commercial corridors (2 dots)
Economic development	Continue to implement economic development plan and review (4 dots)
 Mix residential/commercial 	Explore becoming a "sustainable" city (2 dots)
Brand management	 Evaluate cost and benefits to get to "platinum level" certification
	Develop master plan for the city (3 dots)
	Become a visually distinctive city (digital signage, etc.) (2 dots)
6. Environmental	Maintain and increase water quality in lakes in addition to clarity (1 dot)
 Open space 	Maintain tree canopy (2 dots)
 Conservation 	Participate in regional air quality initiatives (1 dot)
• Trees	Reduce number of septic tanks in city (2 dots)
• Lakes	Protect existing conservation areas (1 dot)
7. Lifelong learning	 Increase partnership with educational institutions "cradle to grave" (3 dots)
	 Reach out to key educational partners for their input
	Continue to offer educational programs in partnership with community organizations (2 dots)
	Coordinate Neighborhood Council & Neighborhood Watch programs to educate residents (1 dot)

	Continue citizen police academies (1 dot)
	Reinstitute a youth advisory board
8. Governance	Continue 2-way communication with cities using a variety of methodologies
Citizen participation	Seek and maintain state and national accreditations as appropriate (1 dot)
	Review and evaluate advisory boards (2 dots)
	Continue and increase intergovernmental organizations and meetings
	Ratify and publish performance key indicators (2 dots)
	Examine process and financial support of community organizations
	Maintain positive intergovernmental relations – legislative, DC (1 dot)

item type	Action Item Requiring Discussion	meeting date	April 23, 2012
prepared by department division	Don Marcotte, Asst. Director Public Works Department	approved by	■ City Manager□ City Attorney□ N A
board approval		☐ yes ☐ no ■	N A final vote

subject

Amtrak Station Preliminary Plans.

motion | recommendation

Motion to approve the preliminary plans for the Amtrak Station and direct Associated Consulting International (ACi) to continue with the plans development.

background

Amtrak Station

April 30, 2009 – City received notice of the \$950,000 FTA earmark for the "Amtrak Station Construction and Improvements, Winter Park"

November 23, 2009 – City Commission passed a Resolution authorizing the filing of applications with FTA for the funding.

March 8, 2010 – City Commission procured architectural services from Helman Hurley Charvat Peacock (HHCP) for the preparation of preliminary architectural drawings to aid in the future request for proposal (RFP) process to select a design/build team for the Amtrak Station project.

June 13, 2011 – City Commission passed a Resolution to execute a Joint Participation Agreement (JPA) with the FDOT for the Amtrak Station project.

July 26, 2011 - Executed the JPA.

February 27, 2012 - City Commission selected ACi to develop the plans for Amtrak Station.

RFQ for Continued Architectural Services

October 17, 2011 – RFQ for Continuing Contracts for Professional, Architectural and Engineering Services was issued.

January 11, 2012 – Following presentation of four top ranked firms the Selection Committee agreed to contract with Associated Consulting International (ACi) and Helman Hurley Charvat Peacock (HHCP) for continued architectural services.

February 13, 2012 – City Commission approved the continued architectural services contracts for ACi and HHCP.

Other Related Actions - Commuter Rail

August 11, 2008 – City Commission accepted the three voluntary architects (Drew Krecicki, Steve Feller and Jack Rogers) to develop the conceptual designs for the Commuter Rail canopies design to provide the FDOT with direction for design.

September 8, 2008 – City Commission approved the recommended style for the Commuter Rail canopy and structure design as advocated by the architects (Craftsman Style) to provide the FDOT with direction for design.

alternatives | other considerations

N/A

fiscal impact

The cost of the plans development service is part of the \$1,187,500 budget for the Amtrak Station project.

strategic objective

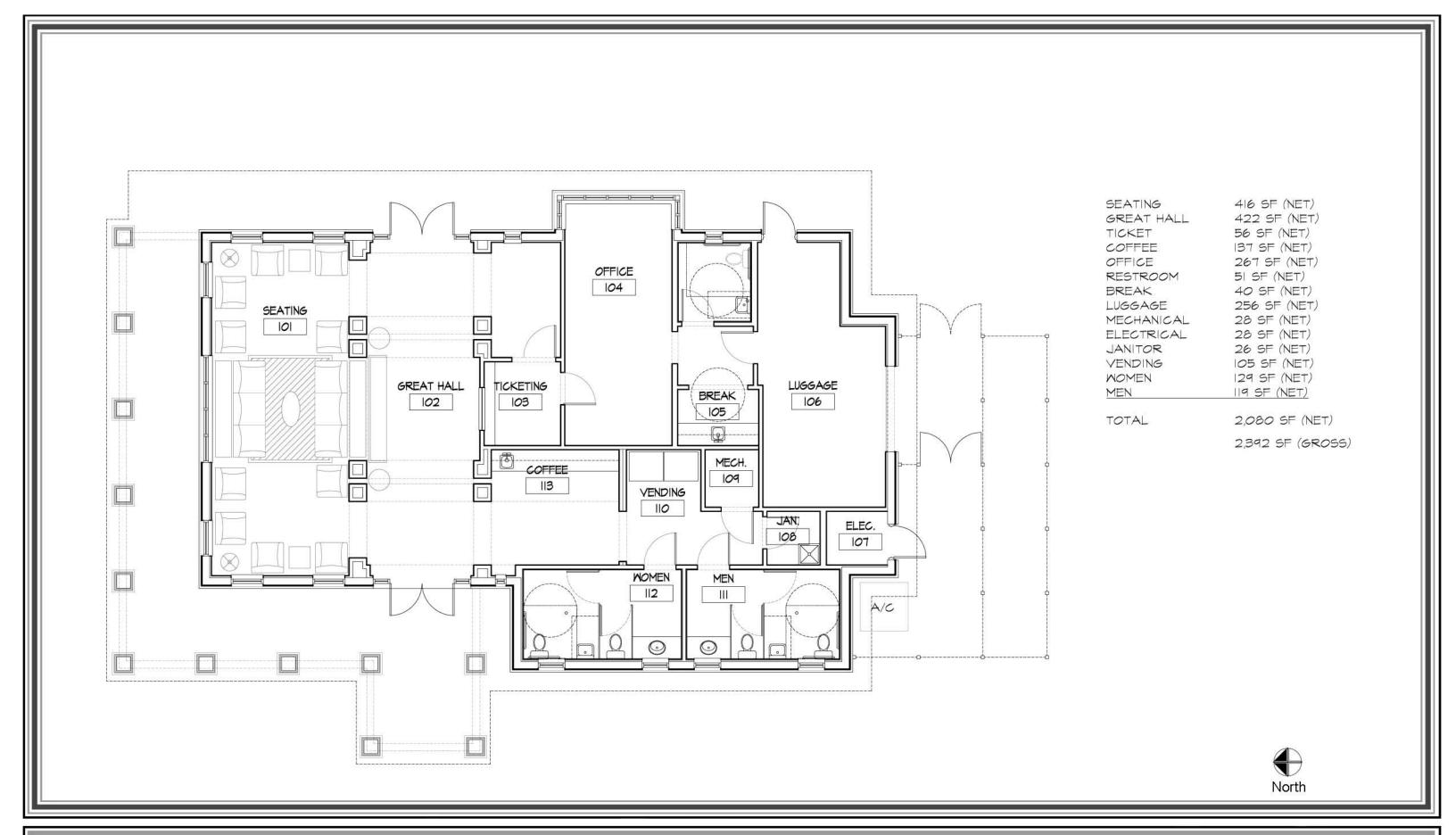
Provide quality facilities and infrastructure.

























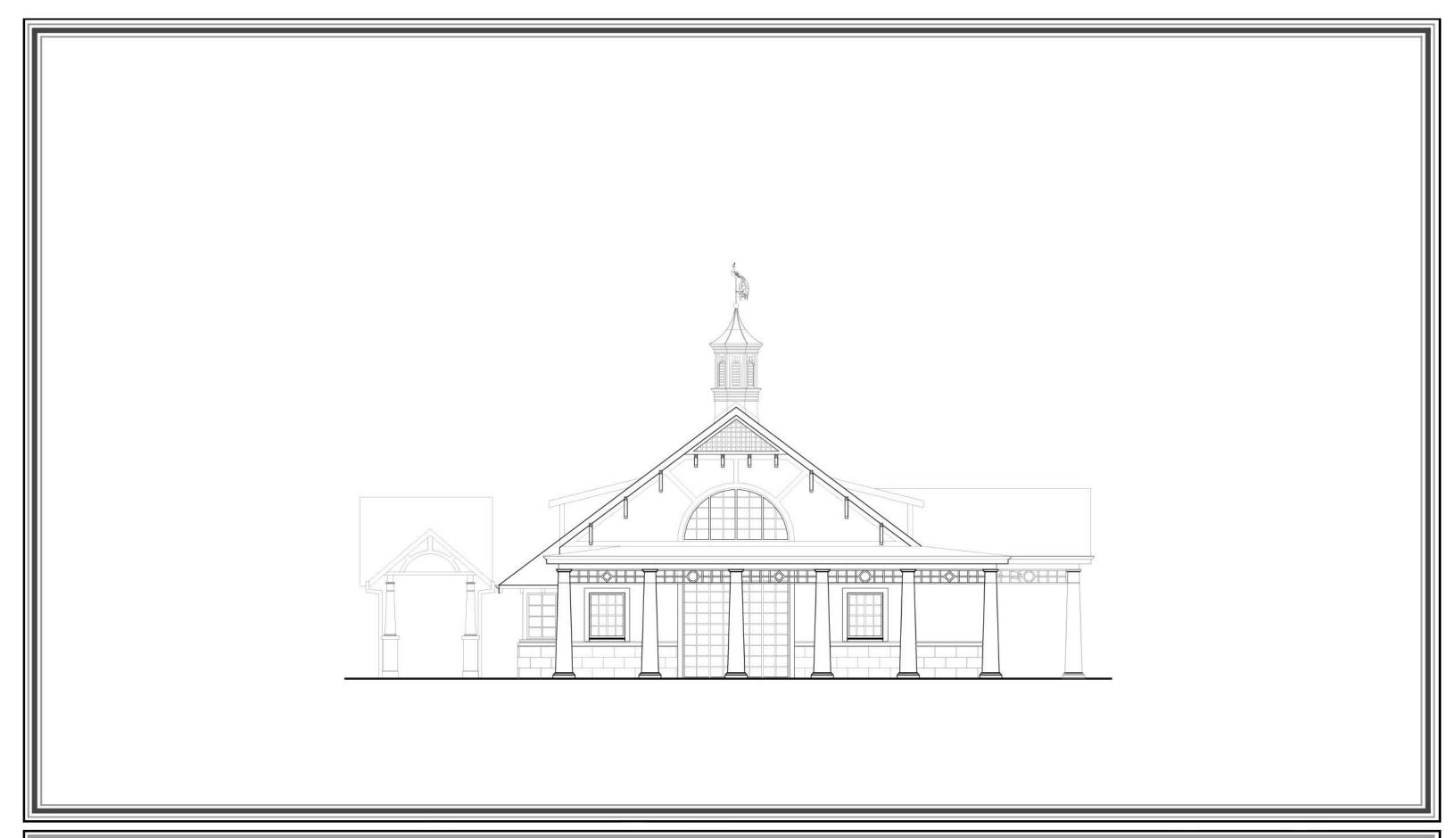
























FTA Earmark

April 30, 2009 – City received notice of the \$950,000 FTA earmark for the "Amtrak Station Construction and Improvements, Winter Park".

FEDERAL TRANSIT ADMINISTRATION

TABLE 10A

FY 2009 Section 5309 Bus and Bus Facility Allocations

State	Earmark ID	Project No.	Project	Allocation
CA	E2009-BUSP-176	459	Transbay Terminal Califrain Downtown Extension Project	4,725,000
A	E2009-BUSP-177		Transit Station Expansion Project (Metrolink Parking Lot), Riallo	285,000
A	E2009-BUSP-178		Tri-Delta Transit Park and Ride Lots, Eastern Contra Costa County	641,250
A	E2009-BUSP-179		Union City Intermodal Phase II - Commuter Rail Connection, Union City, Alameda County	475,000
A	E2009-BUSP-180	35	Union City, CA Inter-modal Station, Phase 1; Medify BART station	959,310
A	E2009-BUSP-181	195	Woodland Hills, CA Los Angeles Pierce College Bus Rapid Transit Station Extension	225,720
Á	E2009-BUSP-182	83	Woodland, CA Yolobus operations, maintenance, administration facility expansion and improvements to increase bus service with alternative fuel buses	451,440
0	E2009-BUSP-183	449	City of Aspen, CO Bus and Bus Facilities	158,004
0	E2009-BUSP-184	448	City of Duyango, CO Bus and Bus Facilities	56,430
0	E2009-BUSP-185	509	Colorado Association of Transit Agencies/Colorado Transit Coalition-Colorado Statewida Buses and Bus Facilities	7,130,000
0	E2009-BUSP-186		Colorado Transit Coalition Statewide Bus and Bus Facilities	237,500
)	E2009-BUSP-187	518	Denver Regional Transit District-Bus Maintenance Facility	823,000
)	E2009-BUSP-188	520	Denver Regional Transit District-Denver Union Station Multimodal Renovations	549,000
Ś	E2009-BUSP-189	521	Denver Regional Transit District-US 36 Corridor BRT	1.919,000
)	E2009-BUSP-190	167	Denver, CO Denver Union Statlon Inter-modal Center	1,241,460
)	E2009-BUSP-191	435	Denver, Golorado-Regional Transportation District Bus Replacement	451.440
)	E2009-BUSP-192	441	Grand Valley Transit, CO Bus and Bus Facilities	112,860
)	E2009-BUSP-193	188	Mountain Express, Crested Butte, CO Bus and Bus Facilities	112,860
)	E2009-BUSP-194	444	Pueblo Transit, CO Bus and Bus Facilities	56,430
)	E2009-BUSP-195	445	Roaring Fork Transit Authority, CO Bus and Bue Facilities	169,290
5	E2009-BUSP-196	446	Steamboat Springs, CO Bus and Bus Facilities	169,290
)	E2009-BUSP-197	450	Town of Snowmass Village, CO Bus and Bus Facilities	67,710
	E2009-BUSP-198	447	Town of Telluride, CO Bus and Bus Facilities	72,923
)		447	Bridgeport Intermodal Transportation Center	2,850,000
r	E2009-BUSP-199	44	Bridgeport, Connecticut-Greater Bridgeport Transit Authority Bus Facility	112.866
	E2009-BUSP-200		Bridgeport, CT Facility Expansion/Improvement	750,000
	E2009-BUSP-201	476	Buses and bus related facilities throughout the State of Connecticul	1,354,320
	E2009-BUSP-202	90	Downtown Middletown, CT, Transportation Infrastructure Improvement Project	2,850,00
	E2009-BUSP-203	523	Enfield, Connecticut-Intermodal station	677,16
ſ	E2009-BUSP-204	218	Hartlerd, CT Buses and bus-related facilities	902,88
	E2009-BUSP-205	394	Middletown, CT Construct Intermodal center	338,58
Г	E2009-BUSP-206	267	New Haven, CT Bus Maintenance Facility	2,850.00
r	E2009-BUSP-207	589	New London, Connecticul-Intermodal Transportation Center and Streetscapes	112.86
r	E2009-BUSP-208	269	Norwalk, Connecticut-Pulse Point Joint Development inter-modal facility	112,86
ſ	E2009-BUSP-209	369 131	Stonington and Myslic, Connecticut-Intermodal Center parking facility and Streetscape	550,75
Γ	E2009-BUSP-210			451,44
r	E2009-BUSP-211	32	Torrington, CT Construct bus-related facility (Northwestern Connecticul Central Transit District)	1,715,47
Ę.	E2009-BUSP-212	270	Vernon, Connecticut-Intermodal Center, Parking and Streetscapes	3,400,00
f	E2009-BUSP-213	657	Waterbury, CT Bus Maintenance Facility	475,00
0	E2009-BUSP-214		Union Station intermodal Transportation Center, Washington	475,00
=	E2009-BUSP-215		Automotive-Based Fuel Cell Hybrid Bus Program	112,86
E,	E2009-BUSP-216	169	Delaware-University of Delaware Fuel Cell Bus Deployment	950,00
	E2009-BUSP-217		Amtrak Station Construction and Improvements, Winter Park	712,50
	E2009-BUSP-218		Bay County Transit Facility Upgrade	549,00
	E2009-BUSP-219	470	Bay County, FL - Transit Facility	451,44
	E2009-BUSP-220	297	Broward County, FL - Purchase Buses and construct bus facilities	
	E2009-BUSP-221	69	Broward County, FL Buses & Bus Facilities	1,467,18 549,00
	E2009-BUSP-222	479	Broward County-Bus and Bus Facilities	112.86
	E2009-BUSP-223	117	Broward, FL Purchase new articulated buses and bus stop improvements on State Road 7. (SR 7) between Golden Glades Interchange and Glades Road	475,00
	E2009-BUSP-224		Bus Facility, North Bay Village	475,00
	E2009-BUSP-225		Bus Replacement for LeeTran Transit System, Lee County	475,00
	E2009-BUSP-226		Central Avenue BRT Corridor Station Development and Enhancements	810,00
	E2009-BUSP-227	453	Central Florida Commuter Ball Intermodal Facilities	1,372.00
	E2009-BUSP-228	488	Central Florida Regional Transportation Authority-LYNX Bus Fleet Expansion Program	274.00
_	E2009-BUSP-229	498	City of Gainesville Regional Transit System-Facility Expansion	274.00
	E2009-BUSP-230	508	Collier County Transit-Transit Facility	
	E2009-BUSP-231		Construction of Bus Stations in Altamonte, Lake Mary, Longwood, and Sanford	1,425,0
	E2009-BUSP-232		Construction of Transit Facilities and Bus Replacement, St. Johns County Council	1,472,5
Ĺ	E2009-BUSP-233		Design, Acquisition of ROW, and Construction of the Regional Intermodal Terminal Center, Jacksonville	475,0
L	E2009-BUSP-234	23	Design, engineering, right-of-way acquisition and construction intermodal transportation & parking facility, City of Winter Park	112,80
FL	E2009-BUSP-235	439	Dosign, engineering, right-of-way acquisition, and construction Central Florida Commuter Rail intermodal facilities	1,128,6 475,0
			Doral Transit Circulator Program, City of Doral	

Resolution No. 2038-09

November 23, 2009 – City Commission passed a Resolution authorizing the filing of applications with FTA for the funding.

RESOLUTION NO. 2038-09

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE FILING OF APPLICATIONS WITH FEDERAL TRANSIT ADMINISTRATION, AN ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FOR FEDERAL TRANSPORTATION ASSISTANCE **AUTHORIZED BY 49 U.S.C. CHAPTER 53, TITLE 23, UNITED STATES CODE** AND OTHER FEDERAL STATUTES ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION.

WHEREAS, the Federal Transportation Administrator has been delegated authority to award Federal financial assistance for a transportation project;

WHEREAS, the grant or cooperative agreement for Federal Financial assistance will impose certain obligations upon the Applicant, and may request the Applicant to provide the local share of the project cost;

WHEREAS, the Applicant has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Winter Park, Florida: 1) The City Manager or his/her designee is authorized to execute and file application for Federal assistance on behalf of the City of Winter Park, Florida, with the Federal transit Administration for Federal Assistance authorized by 49 U.S.C. Chapter 53, Title 23, United States Code, or other Federal statutes authorizing a project administered by the Federal Transit Administration.

- The City Manager or his/her designee is authorized to execute and file with its application the annual certification and assurances and other document the Federal Transportation Administration requires before awarding a Federal assistance grant or cooperative agreement.
- 3) The City Manager or his/her designee is authorized to execute grant and cooperative agreements with the Federal Transit Administration on behalf of the City of Winter Park, Florida,

ADOPTED at a regular meeting of the City Commission of the City of Winter Park held in City Hall, Winter Park on this 23rd day of November, 2009.

Kenneth W. Bradley, Mavor

ATTEST: The undersigned duly qualified City Clerk, acting on behalf of the City of Winter Park, Florida, certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Winter Park City Commission held on November 23, 2009.

Cynthia S. Bonham, City Clerk Date <u>//・ス3・0</u>9

11-23-09 M, NUTES

Public Hearings:

a) RESOLUTION NO. 2038-09: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE FILING OF APPLICATIONS WITH THE FEDERAL TRANSIT ADMINISTRATION, AN OPERATING ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FOR FEDERAL TRANSPORTATION ASSISTANCE AUTHORIZED BY 49 U.S.C. CHAPTER 53, TITLE 23, UNITED STATES CODE AND OTHER FEDERAL STATUTES ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION.

Attorney Brown read the resolution by title. City Manager Knight explained that this is the \$950,000 for the Amtrak Station; not commuter rail. Discussion ensued regarding the Federal funds that have been earmarked for Winter Park, the process the FTA says the City has to go through to make application for those funds, where the money has been placed and how this money is applicable to remodeling the station. City Manager Knight stated that they are working with FTA to obtain information regarding the rules and what the money can be used for; i.e., new building or remodeling, etc. He explained that this will come back to the Commission for approval before applying for the funds.

Commissioner Dillaha disagreed with not having all the details ahead of time before moving forward. City Manager Knight explained this is the next step in the process so the rest of the answers can be forthcoming. Commissioner Dillaha addressed unclear language in the agreement that Attorney Brown clarified. He explained that this is only asking permission to file for the grant and that the detailed grant application will come to the Commission for approval. Commissioner Dillaha elaborated on her research and what she believed the funds can be used for and cannot be used to rebuild the Amtrak station. She stated she is not comfortable with this at this time and will not support the resolution. No public comments were made.

Motion made by Commissioner Anderson to adopt the resolution; seconded by Commissioner Diebel. Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Bridges and Diebel voted yes. Commissioner Dillaha voted no. The motion carried with a 4-1 vote.

Preliminary Architectural Services

March 8, 2010 – City Commission procured architectural services from Helman Hurley Charvat Peacock (HHCP) for the preparation of preliminary architectural drawings to aid in the future request for proposal (RFP) process to select a design/build team for the Amtrak Station project.

3-8-10 MINUTES

Action Items Requiring Discussion:

a. Amtrak Station building renovation

Assistant Public Works Director Don Marcotte presented the FTA schedule and the RFP process schedule. He stated that Helman Hurley Charvat Peacock (HHCP) is the best fit for the architectural services since they have been previously contracted with FDOT and has been working in concert with three local Winter Park architects to complete 100% of the design with an architectural style that best fits downtown Winter Park. He stated he is seeking approval this evening for the preliminary architecture done with HHCP. He stated he hopes the construction of the building coincides with the construction of commuter rail and they are anticipating construction beginning in March 2011. Mr. Marcotte answered questions.

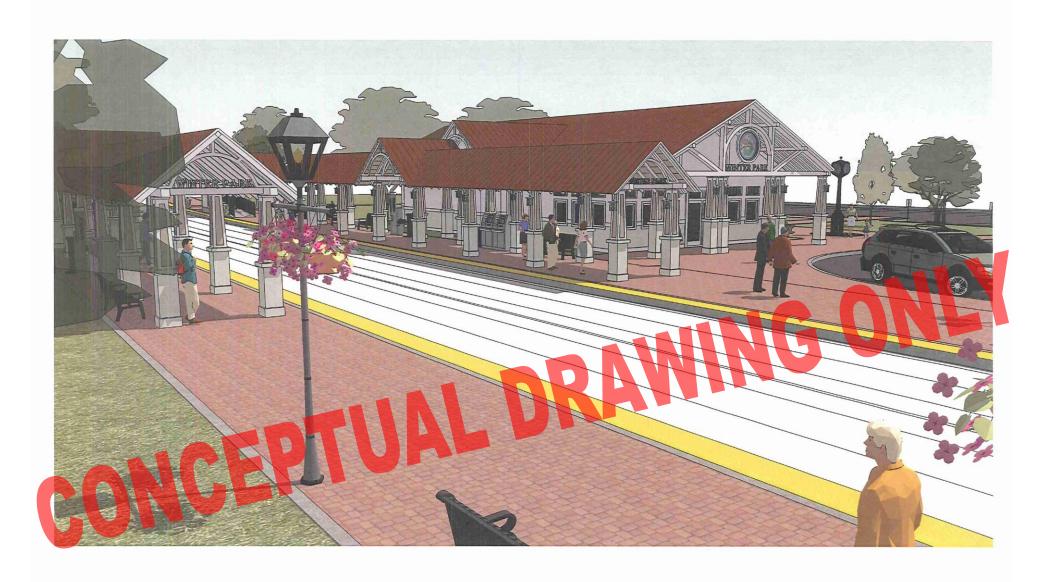
Motion made by Mayor Bradley to procure architectural services from Helman Hurley Charvat Peacock (HHCP) for the preparation of preliminary architectural drawings to aid in the future request for proposal (RFP) process to select a design/build team for the project. The motion was seconded by Commissioner Diebel.

Commissioner Dillaha asked if we need the drawings to make application for the funds. Mr. Marcotte explained they are meeting with the FTA this month to discuss those details and what goes in with the application. Mayor Bradley stated that both Congressman Mica and Congresswoman Brown have stated the funding is there. Commissioner Dillaha stated she wants to make sure the money is there for Winter Park and asked about the timing of the funding versus the submittal of the designs. Mr. Marcotte stated until they meet with them they do not yet know what they will need for the application but believed they would want preliminary conceptual drawings. City Manager Knight stated they have been assured the money is there and available to us and that we want to do the design so we are ready for the RFP process.

Commissioner Dillaha asked if they should wait until the meeting with the FTA next week to better understand the requirements and vote on this on the March 22 agenda. Mayor Bradley stated this process has to be done and did not agree with delaying the beginning of the design. Commissioner Diebel agreed. City Manager Knight stated he does not want to be behind on the commuter rail project but that waiting two weeks should not impact the process. Commissioner Bridges questioned the funding and the sources of the money for the project. Mr. Marcotte stated the match for commuter rail is no longer necessary and that the Federal Government and the State are paying the entire \$3 million so the City no longer has to worry.

Upon questioning by Commissioner Bridges, Mr. Marcotte further explained the budget for this project. Commissioner Anderson asked where the \$25,000 for this request is coming from. It was clarified it will come from previously allocated CRA funds. Commissioner Anderson did not see the need to delay this request two weeks. Commissioner Diebel agreed and stated that this also takes care of the capital request for the restrooms in Central Park. No public comments were made.

Upon a roll call vote, Mayor Bradley and Commissioners Anderson, Dillaha, Diebel and Bridges voted yes. The motion carried unanimously with a 5-0 vote.









Resolution No. 2085-11

June 13, 2011 – City Commission passed a Resolution to execute a Joint Participation Agreement (JPA) with the FDOT for the Amtrak Station project.

RESOLUTION NO. 2085-11

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, TO EXECUTE A PUBLIC TRANSPORTATION JOINT PARTICIPATION AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE WINTER PARK TRAIN STATION/AMTRAK STATION RECONSTRUCTION PROJECT.

WHEREAS, the State of Florida Department of Transportation and the City of Winter Park, Florida, desire to facilitate reconstruction of the existing Winter Park Train Station located at 150 West Morse Boulevard, Florida, and

WHEREAS, the State of Florida Department of Transportation has requested the City of Winter Park, Florida, to execute and deliver to the State of Florida Department of Transportation the Joint Participation Agreement, Financial Project Number 426791-1-94-01 for the aforementioned project,

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Winter Park, Florida that Randy Knight, City Manager, is hereby authorized to make, execute, and deliver to the State of Florida Department of Transportation the Joint Participation Agreement for the aforementioned project.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park held in City Hall, Winter Park on this 13th day of June, 2011.

Lat Dorlan

Kenneth W. Bradley, Mayor

ATTEST:

Cynthia S. Bonham, City Clerk

6-13-11 MINUTES

d. <u>RESOLUTION NO. 2085-11</u>: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, TO EXECUTE A PUBLIC TRANSPORTATION JOINT PARTICIPATION AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE WINTER PARK TRAIN STATION/AMTRAK STATION RECONSTRUCTION PROJECT

Attorney Reischmann read the resolution by title. Commissioner Cooper spoke about the start date of September 2011 and the completion date of December 2011 of the grant award process and executive grant agreement completion. She addressed the previous discussion that there are minor differences between the commuter rail configuration of the platform and the Amtrak and since the schedule contemplates the beginning of September and we are supposed to get a decision on commuter rail from Governor Scott in July, she questioned the need for approval of this now. She stated that she preferred to wait to sign the resolution until the end of July when the decision is made by the Governor relative to whether we are configuring an Amtrak or a commuter rail station.

City Manager Knight reminded everyone that this is entirely separate from whether or not there is a commuter rail station. He stated we still want to obtain this grant to rebuild the Amtrak building. He stated we do not have to pay the grant back if commuter rail goes away. Assistant Public Works Director Don Marcotte addressed the importance to move forward with the grant process to obtain the \$950,000 and stressed that this is a separate issue apart from commuter rail. He stated all they are asking for at this time is approval of the JPA which starts the process to obtain the \$950,000.

Commissioner Cooper asked what the difference is now in the platform and the design between commuter rail and Amtrak. Mr. Marcotte stated they are raising it to a certain level to accommodate wheelchairs and that is the only change they need to make. He stated it has been confirmed more than once that this money can be used for the Amtrak station if SunRail does not happen.

Commissioner Cooper spoke about the sentence in the JPA: "This Amtrak Station Construction project calls for the reconstruction of the existing train station building, at its same current location, for the same current use, with no alterations to the existing railroad tracks." She asked if they are discussing moving it. Mr. Marcotte responded that we are going through some iterations with the architects in a more logical configuration which would keep Amtrak in operation and build a new station adjacent to it shifted to the south. He stated that will be brought back to the Commission. There was discussion regarding the ordinance in place that structures will not be built in Central Park and whether or not moving the station 100' feet constitutes a violation of the ordinance.

City Manager Knight stated he believed the citizens will prefer what they are proposing and that the design of the station will be coming back for their approval. Mr. Marcotte reminded the Commission that the Commission has already approved the architectural style of the canopies that the building will match which has not changed from what was approved. Mayor Bradley reminded everyone that the design of the building will come back to the Commission for approval and at that time the citizens can voice their concerns if they have any. Commissioner Cooper commented that there was a lot of discussion and public presentation regarding the canopies and the design of the station. She stated if they have moved away from that, she wanted to know for sure and asked for copies of the current status of the design of the commuter rail station. Mayor Bradley clarified they are discussing the Amtrak station; not the commuter rail station.

Motion made by Commissioner Sprinkel to adopt the resolution (approve the Joint Participation Agreement); seconded by Commissioner Leary.

Mr. Marcotte at this time stated that the plans that Commissioner Cooper is referring have been on the website for 2 or 3 years and is the same plan. Mayor Bradley clarified that they have not yet been approved by the Commission.

Joe Terranova, 700 Melrose Avenue, addressed following this project and that it needs to be approved.

Commissioner Cooper reiterated her need to obtain a good understanding of what would be the impact to getting this done if we did not submit this document until end of July and why it is imperative that this be done before hearing from the Governor regarding commuter rail. Mr. Marcotte stated it needs to be executed by September in order to use the funding by 2013 and if that slips he did not know that they would be in line for that funding. Commissioner Leary asked Commissioner Cooper what her hesitancy is on this. She responded that it is a design issue and what they are putting out there and if it is an Amtrak station or an Amtrak/SunRail station. Mayor Bradley again clarified the resolution states it is an Amtrak station.

Commissioner Sprinkel responded this is not about the design but is about the agreement and that they need to approve the agreement so they can move forward with obtaining the funding as the design will come back to them for approval at a later time. Commissioner Cooper also commented that if you review the letter from Congressman Mica this money for the Amtrak station is also on the same letter and that is her concern that there is no issue with us having to pay money back to the Federal Government. Commissioner Leary stated staff has said there is no issue with that. Commissioner Cooper stated there isn't but we would know for sure in July and that is the difference. Mayor Bradley stated he believed Congressman Mica's word is pretty solid on this.

Upon a roll call vote, Mayor Bradley and Commissioners Leary and Sprinkel voted yes. Commissioner Cooper voted no. The motion carried with a 3-1 vote. Commissioner McMacken was absent.

<u>JPA</u>

July 26, 2011 – Executed the JPA.

The JPA includes the project budget and the project schedule.



RICK SCOTT GOVERNOR

133 S. Semoran Blvd. Orlando, FL 32807

ANANTH PRASAD, P.E. SECRETARY

August 5, 2011

Mr. Don Marcotte, PE Assistant Public Works Director City of Winter Park 401 Park Avenue South Winter Park, FL 32789

Subject: Joint Participation Agreement

FM NUMBER 426791-1-94-01 CONTRACT NUMBER AQD32

ORANGE COUNTY

Dear Mr. Marcotte:

Enclosed for your information and use is a fully executed Joint Participation Agreement, dated July 26, 2011.

If you have any questions, please call the Diane Poitras or me.

Sincerely,

Karen Adamson

Supervisor Transit and Intermodal Programs

- Paren adamson

District Five

KA/dp

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PUBLIC TRANSPORTATION JOINT PARTICIPATION AGREEMENT

725-030-06 PUBLIC TRANSPORTATION 06/11 Page 1 of 14

Financial Project No(s).: (item-segment-phase-sequence)	Fund: 010	FLAIR 088809
426791-1-94-01	Function: 683	Object Code: 790072
A	Federal No.: n/a	Org. Code: 55052000531
Contract No.: 42032	DUNS No.: 80-939-7102	Vendor No.: F596000456002
CFDA Number: 20.500	CSFA Number:	n/a
THIS AGREEMENT, made and e		July , 2011.
by and between the STATE OF FLORID	DA DEPARTMENT OF TRANSPORTA	TION, an agency of the State of Florida,
hereinafter referred to as the Departmen		
401 Park Avenue South, Winter Park, FL	. 32789	
hereinafter referred to as Agency. The I	Department and Agency agree that all	terms of this Agreement will be completed
on or before December 30, 2013		ire unless a time extension is provided
in accordance with Section 18.00.		and a fine extension is provided
	WITNESSETH:	
WHEREAS, the Agency has the authority and the Department has been granted the implementation of an integrated and 341.053	e authority to function adequately in al	indertake the project hereinafter described, I areas of appropriate jurisdiction including authorized under
Florida Statutes, to enter into this Agreen	nent.	,
NOW, THEREFORE, in consideration of as follows:	the mutual covenants, promises and re	epresentations herein, the parties agree

1.00 Purpose of Agreement: The purpose of this Agreement is

to provide pass thru FTA funding for the Amtrak Station Construction and Improvements in Winter Park, FL provided from FY 2009 Section 5309 Bus and Bus Facility Earmark E2009-BUSP-217. Funds will be used for the development of railway station design, architectural plan development, engineering development, and building reconstruction of the Winter Park Train Station located at 150 West Morse Boulevard, Winter Park, FL. Additional details provided in Attachment One.

and as further described in Exhibit(s) A, B, C, D attached hereto and by this reference made a part hereof, hereinafter referred to as the project, and to provide Departmental financial assistance to the Agency and state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

2.00 Accomplishment of the Project

- 2.10 General Requirements: The Agency shall commence, and complete the project as described in Exhibit "A" attached hereto and by this reference made a part hereof this Agreement, with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws.
- 2.20 Pursuant to Federal, State, and Local Law: In the event that any election, referendum, approval, permit, notice, or other proceeding or authorization is requisite under applicable law to enable the Agency to enter into this Agreement or to undertake the project hereunder, or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.
- 2.30 Funds of the Agency: The Agency shall initiate and prosecute to completion all proceedings necessary including federal aid requirements to enable the Agency to provide the necessary funds for completion of the project.
- **2.40 Submission of Proceedings, Contracts and Other Documents:** The Agency shall submit to the Department such data, reports, records, contracts and other documents relating to the project as the Department may require as listed in Exhibit "C" attached hereto and by this reference made a part hereof.
- 3.00 Project Cost: The total estimated cost of the project is \$\frac{1,187,500}{\text{.}}\$. This amount is based upon the estimate summarized in Exhibit "B" attached hereto and by this reference made a part hereof this Agreement. The Agency agrees to bear all expenses in excess of the total estimated cost of the project and any deficits involved.
- 4.00 Department Participation: The Department agrees to maximum participation, including contingencies, in the project in the amount of \$\\ 950,000\\ \text{percentage(s)}\) of total cost shown in Exhibit "B", whichever is less.
- 4.10 Project Cost Eligibility: Project costs eligible for State participation will be allowed only from the effective date of this agreement. It is understood that State participation in eligible project costs is subject to:
 - (a) Legislative approval of the Department's appropriation request in the adopted work program year that the project is scheduled to be committed;
 - (b) Availability of funds as stated in Section 17.00 of this Agreement;
 - (c) Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement;
 - (d) Department approval of the project scope and budget (Exhibits A & B) at the time appropriation authority becomes available.

6.00 Project Budget and Payment Provisions:

- **6.10 The Project Budget:** A project budget shall be prepared by the Agency and approved by the Department. The Agency shall maintain said budget, carry out the project and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved budget for the project. No budget increase or decrease shall be effective unless it complies with fund participation requirements established in Section 4.00 of this Agreement and is approved by the Department Comptroller.
- **6.20 Payment Provisions:** Unless otherwise allowed under Section 4.20, payment will begin in the year the project or project phase is scheduled in the work program as of the date of the agreement. Payment will be made for actual costs incurred as of the date the invoice is submitted with the final payment due upon receipt of a final invoice.

7.00 Accounting Records:

- 7.10 Establishment and Maintenance of Accounting Records: The Agency shall establish for the project, in conformity with requirements established by Department's program guidelines/procedures and "Principles for State and Local Governments", separate accounts to be maintained within its existing accounting system or establish independent accounts. Such accounts are referred to herein collectively as the "project account". Documentation of the project account shall be made available to the Department upon request any time during the period of the Agreement and for three years after final payment is made.
- 7.20 Funds Received Or Made Available for The Project: The Agency shall appropriately record in the project account, and deposit in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, all payments received by it from the Department pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the project, which Department payments and other funds are herein collectively referred to as "project funds". The Agency shall require depositories of project funds to secure continuously and fully all project funds in excess of the amounts insured under federal plans, or under State plans which have been approved for the deposit of project funds by the Department, by the deposit or setting aside of collateral of the types and in the manner as prescribed by State Law for the security of public funds, or as approved by the Department.
- **7.30 Costs Incurred for the Project:** The Agency shall charge to the project account all eligible costs of the project. Costs in excess of the latest approved budget or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.
- 7.40 Documentation of Project Costs: All costs charged to the project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.
- 7.50 Checks, Orders, and Vouchers: Any check or order drawn by the Agency with respect to any item which is or will be chargeable against the project account will be drawn only in accordance with a properly signed voucher then on file in the office of the Agency stating in proper detail the purpose for which such check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate and apart from all other such documents.
- 7.60 Audit Reports: In addition to the requirements below, the Agency agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department, including but not limited to site visits and limited scope audits. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the State Comptroller or Auditor General. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of three years from the date the audit report is issued, and shall allow the Department access to such records and working papers upon request. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any state agency inspector general, the Auditor General, or any other state official.

The Agency shall comply with all audit and audit reporting requirements as specified in Exhibit "D" attached hereto and by this reference made a part hereof this Agreement.

7.61 Monitoring: In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, Florida Statutes, (see "Audits" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, and/or other procedures. The Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Agency is appropriate, the Agency agrees to comply with any additional instructions provided by the Department staff to the Agency regarding such audit. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by FDOT's Office of Inspector General (OIG) and Florida's Chief Financial Officer (CFO) or Auditor General.

7.62 Audits:

Part I Federally Funded: If the Agency is a state, local government, or non-profit organizations as defined in OMB Circular A-133 and a recipient of federal funds, the following annual audit criteria will apply:

- 1. In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. Exhibit "D" to this agreement indicates Federal resources awarded through the Department by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.
- 2. In connection with the audit requirements addressed in Part I, Paragraph 1., the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133.
- 3. If the recipient expends less than the amount in Part I, Paragraph 1., an audit conducted in accordance with the provisions of OMB Circular A-133, is not required. If the recipient elects to conduct such an audit, the cost of the audit must be paid from resources obtained from other than Federal entities.
- 4. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.
- Part II State Funded: If the Agency is a nonstate entity as defined by Section 215.97(2)(m), Florida Statutes, and a recipient of state funds, the following annual audit criteria will apply:
- 1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500, 000 in any fiscal year, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services and the CFO; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit "D" to this agreement indicates state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
- 2. In connection with the audit requirements addressed in Part II, Paragraph 1., the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapter 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
- 3. If the recipient expends less than the amount in Part II, Paragraph 1., such audit is not required. If the recipient elects to conduct such an audit, the cost of the audit must be paid from the recipient's resources obtained from nonstate entities.
- 4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

Part III Other Audit Requirements

- 1. The Agency shall follow-up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.
- 2. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the Department, the Department Comptroller, and the Auditor General. This section does not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

Part IV Report Submission

- Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by Section 7.62 Part I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, by or on behalf of the recipient directly to each of the following:
 - A. The Department at each of the following addresses:

Florida Department of Transportation Attention: Dianne Peek 719 South Woodland Blvd. Deland, FL 32720

B. The number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, submitted to the following address:

Federal Audit Clearinghouse Bureau of the Census 1201 East 10th Street Jeffersonville, IN 47132

- C Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133.
- 2. In the event that a copy of the reporting package for an audit required by Section 7.62 Part I of this Agreement and conducted in accordance with OMB Circular A-133 is not required to be submitted to the Department for reasons pursuant to section .320 (e)(2), OMB Circular A-133, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to each of the following:

Florida Department of Transportation Attention: Dianne Peek 719 South Woodland Blvd. Deland, FL 32720

In addition, pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, and any management letters issued by the auditor, to the Department at each of the following addresses:

Florida Department of Transportation Attention: Dianne Peek 719 South Woodland Blvd. Deland, FL 32720

- Copies of financial reporting packages required by Section 7.62 Part II of this Agreement shall be submitted by or on behalf of the recipient directly to each of the following:
 - A. The Department at each of the following addresses:

Florida Department of Transportation Attention: Dianne Peek 719 South Woodland Blvd. Deland, FL 32720

B. The Auditor General's Office at the following address:

Auditor General's Office Room 401, Pepper Building 111 West Madison Street Tallahassee, Florida 32399-1450

- 4. Copies of reports or the management letter required by Section 7.62 Part III of this Agreement shall be submitted by or on behalf of the recipient directly to:
 - A. The Department at each of the following addresses:

Florida Department of Transportation Attention: Dianne Peek 719 South Woodland Blvd. Deland, FL 32720

- 5. Any reports, management letter, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, Section 215.97, Florida Statutes, and Chapter 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- 6. Recipients, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Agency in correspondence accompanying the reporting package.

7.63 Record Retention: The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least five years from the date the audit report is issued, and shall allow the Department, or its designee, the CFO or Auditor General access to such records upon request. The Agency shall ensure that the independent audit working papers are made available to the Department, or its designee, the CFO, or Auditor General upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the Department. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Participant's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.

7.64 Other Requirements: If an audit discloses any significant audit findings related to any award, including material noncompliance with individual project compliance requirements or reportable conditions in internal controls of the Agency, the Agency shall submit as part of the audit package to the Department a plan for corrective action to eliminate such audit findings or a statement describing the reasons that corrective action is not necessary. The Agency shall take timely and appropriate corrective action to any audit findings, recommendations, and corrective action plans.

7.65 Insurance: Execution of this Joint Participation Agreement constitutes a certification that the Agency has and will maintain the ability to repair or replace any project equipment or facilities in the event of loss or damage due to any accident or casualty for the useful life of such equipment or facilities. In the event of the loss of such equipment or facilities, the Agency shall either replace the equipment or facilities or reimburse the Department to the extent of its interest in the lost equipment or facility. In the event this Agreement is for purchase of land or for the construction of infrastructure such as airport runways the Department may waive or modify this section.

8.00 Requisitions and Payments:

- 8.10 Action by the Agency: In order to obtain any Department funds, the Agency shall file with the Department of Transportation, District Five Public Transportation Office 133 S. Semoran Blvd., Orlando, FL , FL, its requisition on a form or forms prescribed by the Department, and any other data pertaining to the project account (as defined in Paragraph 7.10 hereof) to justify and support the payment requisitions.
- **8.11** Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- **8.12** Invoices for any travel expenses shall be submitted in accordance with Chapter 112.061, F.S. The Department may establish rates lower than the maximum provided in Chapter 112.061, F.S.
 - 8.13 For real property acquired, submit;
 - (a) the date the Agency acquired the real property,
 - (b) a statement by the Agency certifying that the Agency has acquired said real property, and actual consideration paid for real property.
 - (c) a statement by the Agency certifying that the appraisal and acquisition of the real property together with any attendant relocation of occupants was accomplished in compliance with all federal laws, rules and procedures required by any federal oversight agency and with all state laws, rules and procedures that may apply to the Agency acquiring the real property.
- **8.20 The Department's Obligations:** Subject to other provisions hereof, the Department will honor such requisitions in amounts and at times deemed by the Department to be proper to ensure the carrying out of the project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment on the project if:
- **8.21 Misrepresentation:** The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;
- **8.22 Litigation:** There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the project, the Agreement, or payments to the project;
- **8.23 Approval by Department:** The Agency shall have taken any action pertaining to the project which, under this agreement, requires the approval of the Department or has made related expenditures or incurred related obligations without having been advised by the Department that same are approved;
- **8.24 Conflict of Interests:** There has been any violation of the conflict of interest provisions contained herein; or
- **8.25 Default:** The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.
- **8.26 Federal Participation (If Applicable):** Any federal agency providing federal financial assistance to the project suspends or terminates federal financial assistance to the project. In the event of suspension or termination of federal financial assistance, the Agency will reimburse the Department for all disallowed costs, including any and all federal financial assistance as detailed in Exhibit "B."

- 8.30 Disallowed Costs: In determining the amount of the payment, prior to receipt of annual notification of funds availability, the Department will exclude all projects costs incurred by the Agency prior to the effective date of this Agreement, costs which are not provided for in the latest approved budget for the project, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department and costs invoiced prior to receipt of annual notification of fund availability.
- **8.40 Payment Offset:** If, after project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this agreement, the Department may offset such amount from payments due for work or services done under any public transportation joint participation agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting amounts shall not be considered a breach of contract by the Department.

9.00 Termination or Suspension of Project:

- 9.10 Termination or Suspension Generally: If the Agency abandons or, before completion, finally discontinues the project; or if, by reason of any of the events or conditions set forth in Sections 8.21 to 8.26 inclusive, or for any other reason, the commencement, prosecution, or timely completion of the project by the Agency is rendered improbable, infeasible, impossible, or illegal, the Department will, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate any or all of its obligations under this Agreement.
- 9.11 Action Subsequent to Notice of Termination or Suspension. Upon receipt of any final termination or suspension notice under this paragraph, the Agency shall proceed promptly to carry out the actions required therein which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the financing is to be computed; (2) furnish a statement of the project activities and contracts, and other undertakings the cost of which are otherwise includable as project costs; and (3) remit to the Department such portion of the financing and any advance payment previously received as is determined by the Department to be due under the provisions of the Agreement. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and budget as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Agency to furnish the schedule, plan, and budget within a reasonable time. The approval of a remittance by the Agency or the closing out of federal financial participation in the project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.
- 9.12 The Department reserves the right to unilaterally cancel this Agreement for refusal by the contractor or Agency to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S. and made or received in conjunction with this Agreement.
- 10.00 Remission of Project Account Upon Completion of Project: Upon completion of the project, and after payment, provision for payment, or reimbursement of all project costs payable from the project account is made, the Agency shall remit to the Department its share of any unexpended balance in the project account.
- 11.00 Audit and Inspection: The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives to inspect all work, materials, payrolls, records; and to audit the books, records and accounts pertaining to the financing and development of the project.

12.00 Contracts of the Agency:

12.10 Third Party Agreements: Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department joint participation funds, including consultant, construction or purchase of commodities contracts or amendments thereto, with any third party with respect to the project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department as provided in Section 8.23. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same.

12.20 Compliance with Consultants' Competitive Negotiation Act: It is understood and agreed by the parties hereto that participation by the Department in a project with an Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency complying in full with provisions of Chapter 287, F.S., Consultants' Competitive Negotiation Act. At the discretion of the Department, the Agency will involve the Department in the Consultant Selection Process for all contracts. In all cases, the Agency's Attorney shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

12.30 Disadvantaged Business Enterprise (DBE) Policy

12.31 DBE Policy: The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26, as amended, have the maximum opportunity to participate in the performance of contracts and this Agreement. In this regard, all recipients, and contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that the Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Grantees, recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department assisted contracts.

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)

12.40 The Agency agrees to report any reasonable cause notice of noncompliance based on 49 CFR Part 26 filed under this section to the Department within 30 days of receipt by the Agency.

13.00 Restrictions, Prohibitions, Controls, and Labor Provisions:

- 13.10 Equal Employment Opportunity: In connection with the carrying out of any project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin. The Agency will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Agency shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the project, except contracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.
- 13.20 Title VI Civil Rights Act of 1964: Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et. seq.), the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto.
- 13.30 Title VIII Civil Rights Act of 1968: Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by Title VIII of the Civil Rights Act of 1968, 42 USC 3601,et seq., which among other things, prohibits discrimination in housing on the basis of race, color, national origin, creed, sex, and age.

- 13.40 Americans with Disabilities Act of 1990 (ADA): Execution of this Joint Participation Agreement constitutes a certification that the Agency will comply with all the requirements imposed by the ADA (42 U.S.C. 12102, et. seq.), the regulations of the federal government issued thereunder, and the assurance by the Agency pursuant thereto.
- 13.50 Prohibited Interests: The Agency shall not enter into a contract or arrangement in connection with the project or any property included or planned to be included in the project, with any officer, director or employee of the Agency, or any business entity of which the officer, director or employee or the officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's, director's or employee's spouse or child, or any combination of them, has a material interest.

"Material Interest" means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity.

The Agency shall not enter into any contract or arrangement in connection with the project or any property included or planned to be included in the project, with any person or entity who was represented before the Agency by any person who at any time during the immediately preceding two years was an officer, director or employee of the Agency.

The provisions of this subsection shall not be applicable to any agreement between the Agency and its fiscal depositories, any agreement for utility services the rates for which are fixed or controlled by the government, or any agreement between the Agency and an agency of state government.

13.60 Interest of Members of, or Delegates to, Congress: No member or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

14.00 Miscellaneous Provisions:

- 14.10 Environmental Pollution: Execution of this Joint Participation Agreement constitutes a certification by the Agency that the project will be carried out in conformance with all applicable environmental regulations including the securing of any applicable permits. The Agency will be solely responsible for any liability in the event of non-compliance with applicable environmental regulations, including the securing of any applicable permits, and will reimburse the Department for any loss incurred in connection therewith.
- 14.20 Department Not Obligated to Third Parties: The Department shall not be obligated or liable hereunder to any party other than the Agency.
- 14.30 When Rights and Remedies Not Waived: In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist, on the part of the Agency, and the making of such payment by the Department while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- 14.40 How Agreement Is Affected by Provisions Being Held Invalid: If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.
- **14.50 Bonus or Commission:** By execution of the Agreement the Agency represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- 14.60 State or Territorial Law: Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable State law: Provided, that if any of the provisions of the Agreement violate any applicable State law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the project.

- 14.70 Use and Maintenance of Project Facilities and Equipment: The Agency agrees that the project facilities and equipment will be used by the Agency to provide or support public transportation for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles and approved by the Department. The Agency further agrees to maintain the project facilities and equipment in good working order for the useful life of said facilities or equipment.
- 14.71 Property Records: The Agency agrees to maintain property records, conduct physical inventories and develop control systems as required by 49 CFR Part 18, when applicable.
- 14.80 Disposal of Project Facilities or Equipment: If the Agency disposes of any project facility or equipment during its useful life for any purpose except its replacement with like facility or equipment for public transportation use, the Agency will comply with the terms of 49 CFR Part 18 relating to property management standards. The Agency agrees to remit to the Department a proportional amount of the proceeds from the disposal of the facility or equipment. Said proportional amount shall be determined on the basis of the ratio of the Department financing of the facility or equipment as provided in this Agreement.
- 14.90 Contractual Indemnity: To the extent provided by law, the Agency shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Agency, its agents, or employees, during the performance of the Agreement, except that neither the Agency, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by the Agency in the performance of services required under this Agreement, the Department will immediately forward the claim to the Agency. The Agency and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the Agency in the defense of the claim or to require that the Agency defend the Department in such claim as described in this section. The Department's failure to promptly notify the Agency of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Agency. The Department and the Agency will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial.

- 15.00 Plans and Specifications: In the event that this Agreement involves the purchasing of capital equipment or the constructing and equipping of facilities, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the project and comments or recommendations concerning any remainder of the project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval with said remainder of the project. Failure to obtain this written approval shall be sufficient cause for nonpayment by the Department as provided in 8.23.
- 16.00 Project Completion, Agency Certification: The Agency will certify in writing on or attached to the final invoice, that the project was completed in accordance with applicable plans and specifications, is in place on the Agency facility, that adequate title is in the Agency and that the project is accepted by the Agency as suitable for the intended purpose.

17.00 Appropriation of Funds:

17.10 The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

17.20 Multi-Year Commitment: In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Chapter 339.135(6)(a), F.S., are hereby incorporated: "(a) The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of 25,000 dollars and which have a term for a period of more than 1 year."

18.00 Expiration of Agreement: The Agency agrees to complete the project on or before

December 30, 2013

If the Agency does not complete the project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the District Director of Transportation Development

Expiration of this Agreement will be considered termination of the project and the procedure established in Section 9.00 of this Agreement shall be initiated.

- 18.10 Final Invoice: The Agency must submit the final invoice on this project to the Department within 120 days after the expiration of this Agreement.
- 19.00 Agreement Format: All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- 20.00 Execution of Agreement: This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

21.00 Restrictions on Lobbying:

21.10 Federal: The Agency agrees that no federal appropriated funds have been paid or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federal appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Joint Participation Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

21.20 State: No funds received pursuant to this contract may be expended for lobbying the Legislature or a state agency.

22.00 Vendors Rights: Vendors (in this document identified as Agency) providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services unless the bid specifications, purchase order or contract specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

If a payment is not available within 40 days after receipt of the invoice and receipt, inspection and approval of goods and services, a separate interest penalty in accordance with Section 215.422(3)(b), F.S. will be due and payable, in addition to the invoice amount to the Agency. The interest penalty provision applies after a 35 day time period to health care providers, as defined by rule. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices which have to be returned to an Agency because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from the Department. The Vendor Ombudsman may be contacted at (850) 413-5516.

23.00 Public Entity Crime: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017, F.S. for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

24.00 Discrimination: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

25.00 E-Verify: The Agency shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of;

- all persons employed by the Agency during the term of the Contract to perform employment duties within Florida; and
- 2. all persons, including subcontractors, assigned by the Agency to perform work pursuant to the contract with the Department.

725-030-06
PUBLIC TRANSPORTATION
02/11
Page 14 of 14

Financial Project No(s). 426791-1-94-01

Contract No. AD32

	Agreement Date 7-26-2011
IN WITNESS WHEREOF, the parties hereto have caused thes	e presents be executed, the day and year first above writter
AGENCY	FDOT
City of Winter Park AGENCY NAME SIGNATORY (PRINTED OR TYPED) SIGNATURE C. G. Manage	See attached Encumbrance Form for date of Funding Approval by Comptroller LEGAL REVIEW DEPARTMENT ON TRANSPORTATION DEPARTMENT OF TRANSPORTATION District Director of Transportation Development TITLE

EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

This exhibit forms an integral part of that certain Joint Participation Agreement between the State of Florida Department of Transportation and the <u>City of Winter Park</u>, 401 Park Avenue South, Winter Park, FL 32789 dated 1-24-2011

PROJECT LOCATION:

City of Winter Park 401 Park Avenue South Winter Park, FL 32789

Mr. Don Marcotte, PE Assistant Public Works Director (407) 599-3424

PROJECT DESCRIPTION:

Amtrak Station Construction and Improvements in Winter Park, FL with funding provided from Federal Transit Administration FY 2009 Section 5309 Bus and Bus Facility Earmark E2009-BUSP-217. Funds will be used for the development of railway station design, architectural plan development, engineering development, and building reconstruction of the Winter Park Train Station located at 150 West Morse Boulevard, Winter Park, FL. Further detailed in Attachment One.

SPECIAL CONSIDERATIONS BY AGENCY:

The audit report(s) required in paragraph 7.60 of the Agreement shall include a schedule of project assistance that will reflect the Department's contract number, Financial Management Number and the Federal Identification number, where applicable, and the amount of state funding action (receipt and disbursement of funds) and any federal or local funding action and the funding action from any other source with respect to the project.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

N/A

EXHIBIT "B" PROJECT BUDGET

PROJECT COST:				
Architectural & Engineering for				
Construction Plan Development			\$	110,000.00
Project Administration			\$	80,000.00
Construction Management			\$	50,000.00
Construction			\$	947,500.00
TOTAL PROJECT COST		<u>nterio</u>	\$	1,187,500.00
PARTICIPATION:				
Maximum Federal Participation				
FTA, FAA	(%)	or	\$	
Agency Participation			*	
In-Kind	(%)		\$	
Cash	(20%)		\$	237,500.00
Other	(%)		\$	
Maximum Department Participation,				
Primary				
(DS)(DDR)(DIM)(PORT)	(%)	or	\$	
Federal Reimbursable (DU)(FRA)([)FTA)(80%)	or	\$	950,000.00
Local Reimbursable (DL)	(%)	or	\$	230,000.00
	(/0)	O1	Ψ	
TOTAL PROJECT COST			© 1	,187,500.00

EXHIBIT "C" (GENERAL)

referenced by the above Financial Project Number.

This Agreement is in conformance with Chapter 341.053, Florida Statutes.

The CITY shall comply with applicable Federal laws and regulations, including but not limited to, Federal Transit Administration (FTA) laws at 49 USC Chapter 53, FTA regulations and other Federal laws and regulations that contain requirements applicable to FTA recipients and the FTA assisted procurements. These laws and regulations include, but are not limited to:

- a. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18 ("Common Grant Rules").
- b. FTA Certifications and Assurances for Federal FY 2011, found http://fta.dot.gov/documents/2011-Cert-Appendix.A.pdf
- c. FTA Circular 4220.1(f) and as revised from time to time.
- d. FTA Circular 5010.1D, and as revised from time to time.
- e. FTA Circular 9300.1B, and as revised from time to time.
- f. State and Local laws and ordinances, to the extent that said laws and ordinances are not inconsistent with Federal laws and regulations.
- g. The CITY must maintain control over the real property and the facility constructed thereon to ensure that is it used in transit service. All uses must be compatible with the approved purposes of the project and must not interfere with intended public transportation uses of project assets. Additionally, the CITY must keep the facilities and the property in good operating order. An effective maintenance plan shall be established and adhered to by CITY. Said plan shall include the goals and objectives of the maintenance program so as to assure that the facilities are fit for their intended purpose and that they are safe and secure.
- h. 49 USC Section 5325, requiring, among other things that procurement of engineering services be based on a qualifications based procurement process and that the procurement of engineering services comply with the "Brooks Act", 40 USC Sections 1101 through 1104, and that third party contracts awarded hereunder are awarded in accord with the dictates of section
- i. Compliance with the Common Grant Rules and the FTA Circular for bond requirements that include and require a Bid Guarantee, a Performance Bond and a Payment Bond, all with an acceptable surety; and
- j. Seismic Safety in accord with 42 USC Sec. 7701, et seq, and DOT Seismic Safety, 49 CFR Sections 41.117 and 41.120, implementing the Earthquake Hazards Reduction Act of 1977, as amended at 42 USC, Sections 7701, et seq.; and

- k. Value Engineering in accord with the Common Grant Rules; and
- 1. Equal Employment Opportunity (EEO) in accord with the Common Grant Rules that require that third party construction contracts include provisions ensuring compliance with Department of Labor regulations included at 41 CFR Chapter 60; and
- m. 49 USC Section 5333(a), Davis Bacon Act, requires prevailing wage protections for laborers and mechanics employed on FTA assisted construction, alteration or repair project, and Common Grant Rules that require third party contracts for construction, alteration or repair at any contract tier exceeding \$2,000.00 to include provisions requiring compliance with Davis-Bacon Act, 40 USC Sections 3141 et seq, and implementing Department of Labor regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Cosntction,29 USC Part 5; and
- n. Section 1 of the Copeland "Anti-Kickback" Act, at 18 USC Section 874; and
- o. Common Grant Rules that require compliance with Construction Safety regulations found at Section 107 of the Contract Work Hours and Safety Standards Act, 40 USC Section 3704 and its implementing Department of Labor regulations ("Safety and Health Regulations for Construction", 29 CFR 1926; and
- p. Buy America regulations as set forth in 49 USC 5323(j) and in 49 CFR Part 661, and any amendments thereto; and
- q. Americans with Disabilities Act (ADA) and all rules, regulations and guidelines associated therewith, including Appendix A of 49 CFR Part 37 modifying the Americans with Disabilities Act Accessibility Guidelines (ADAAG), thereby requiring that building and facilities must comply with the ADAAG and DOT regulations found at 42 USC Sections 12101, et seq.
- r. U.S. Department of Transportation, Title VI Regulations at 49 CFR 21.9(d) and as further defined and described in Chapter IV, Section 5 of FTA Circular C 4702.1A and associated rules and regulations
- s. Terms and conditions of the FTA Master Agreement by and between the Florida Department of Transportation and the FTA.

JPA Modifications

- 1. Delete subparagraph 4.10 [c] in its entirety.
- 2. Add the following sentence at the end of the existing paragraph 7.40: "Such records shall be maintained by the Agency for five years after final payment and made available upon the Department's request."
- 3. Add the following paragraph at the end of the existing paragraph 8.11: "Invoices shall indicate the percentage of project completion and shall be signed by a responsible employee of the Agency certifying that the invoice accurately reflects the actual progress of the project."
- 4. Delete the following language from the end of paragraph 8.30: "and costs attributable to goods and services received under a contract or other arrangements which has not been

approved in writing by the Department."

- 5. Delete paragraphs 12.10 and 12.20 in their entirety and replace it with the following language "It is understood and agreed by the parties hereto that participation by the Department in this project is contingent on the agency complying in full with all provisions of Chapter 287, Florida Statutes." Florida Counsel for the Agency shall provide written certification to the Department of the Agency's compliance with Chapter 287, prior to request for reimbursement.
 - "Department shall give City 20 days written notice and opportunity to cure any alleged violation of any law or regulation which the City must comply with pursuant to this contract. City will not be in default if it cures any failure to comply with such law or regulation within the 20 day cure period. If the violation cannot be cured in 20 days, then City shall not be in default if it commences cure within the cure period and continues to work in good faith to achieve cure within a reasonable period of time."
- 6. Delete the following language from paragraph 22.00 "Upon receipt, the Department has five (5) working days to inspect and approve the goods and services unless bid specifications, purchase order or contract specifies otherwise," and replace it with the following language: "Upon receipt, the Department has twenty (20) working days to inspect and approve the goods and services unless bid specifications, purchase order or contract specifies otherwise."

The Parties further agree that all terms and conditions of the JPA not specifically modified or amended by this exhibit shall remain in full force and effect.

EXHIBIT "D"

Federal Resources Awarded to the Recipient Pursuant To This Agreement Consist Of The Following:

Federal Agency: Federal Transit Administration, Department of Transportation

Authorization: 49 U.S.C. 5309

CFDA #: 20.500 Federal Transit Capital Investment Grants

Amount: \$ 950,000.00

Compliance Requirement:

Allowed Activities:

Funds may be used to assist State and local governmental authorities in financing: capital projects for new fixed guideway systems, and extensions to existing fixed guideway systems, including the acquisition of real property, the initial acquisition of rolling stock for the systems, and the acquisition of rights of way, and relocation, for fixed guideway corridor development for projects in the advanced stages of alternatives analysis or preliminary engineering; capital projects, the acquisition, construction, reconstruction and improvement of facilities and equipment for use by operation or lease or otherwise in mass transportation service, including property and improvements needed for an efficient and coordinated mass transportation system, including buses and bus facility equipment; the capital costs of coordinating transit with other transportation; and the introduction of new technology, through innovative and improved transportation; and the introduction of new technology, through innovative and improved products. Consideration may also be given for projects which enhance urban economic development; establish new or enhanced coordination between transit and other transportation; or enhance the effectiveness of a transit project and are related physically or functionally to that transit project. It could also include financing for transit projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities; for the development of corridors to support fixed guideway systems, including protecting rights of way through acquisition, construction of dedicated bus and high occupancy vehicle lanes and park-and-ride lots, and other nonvehicular capital improvements that the Secretary may decide would result in increased transit usage in the corridor.

Eligibility:

Applicant Eligibility

Public agencies, including States; municipalities and other subdivisions of States; public agencies and instrumentalities of one or more States; and public corporations, boards, and commissions established under State law. Applicant must have legal, financial, and technical capacity to carry out proposed project, including safety and security aspects, and maintain facilities and equipment purchased with Federal assistance. Fixed Guideway formula funds are apportioned by formula to urbanized areas over 200,000 population with fixed guideway segments at least one mile long that are over seven years old. Bus and New Starts programs are allocated entirely to projects designated by Congress. Private non-profit organizations are not eligible direct recipients.

Beneficiary Eligibility

The general public, both users and non-users of public transportation. Public agencies, although private transportation companies may participate through contractual arrangements with public agency grantee.

Compliance Requirements Applicable To The Federal Resources Awarded Pursuant To This Agreement Are As Follows:

The recipient of Formula Grants for Federal Transit Capital Investment Grant funding must comply with the statutory requirements in 341.053 Florida Statutes, 49 USC 5309, and guidance of FTA Circular 9300.1A.

ATTACHMENT ONE

1). Detailed Project Description:

E2009-BUSP-217 Amtrak Station Construction and Improvements, Winter Park, \$950,000, local share \$237,500, total project cost \$1,187,500, for the development of railway station design, architectural plan development, engineering development, and building reconstruction of the Winter Park Train Station to serve railway passengers, with passenger amenities, possibly including mixed use features such as concessions, retail, etc. to accommodate rail passengers.

Operating for the service of Amtrak and its passengers, the existing Winter Park Train Station, constructed in 1962, is owned by the City of Winter Park. At 1,163 square feet of passenger lobby and ticket office space, reconstruction of a new train station building, affording increased public space, is needed to provide upgraded facilities and technological amenities to all rail passengers. The construction of a new replacement train station that makes more efficient use of this 24,254 square-foot parcel will provide for larger public spaces, modern amenities, and concessions thereby improving the rail experience in Winter Park, Florida. This Amtrak Station Construction project calls for the reconstruction of the existing train station building, at its same current location, for the same current use, with no alterations to the existing railroad tracks. Therefore, no impact to the number of employees or cars will result.

In relation to existing transit, LYNX, the bus transit provider for the Orlando Urban area, currently has two routes that serve the Winter Park/Amtrak Station. Link 102, a major north-south route, serves the station Monday thru Sunday and holidays with 30 minute headways. Service on Link 102 begins at 5:00 a.m. and ends at midnight. Link 443, an east-west route, serves the station Monday thru Sunday and holidays with one-hour headways. Service on Link 443 begins at 5:00 a.m. and ends at 8:20 p.m. LYNX receives FTA Section 5307 funding for bus service. The Winter Park/Amtrak Station will also be served by a second connection to transit when the SunRail project is completed.

2). Deliverables:

100% construction plans, construction documents, final report, as-built plans.

3).	Task	Activity	Start	Complete
	1	Grant Award Process & Executed Grant Agreement Complete	9/2011	12/2011
	2	100% Construction Plan Development	1/2012	3/2012
	3	FDOT Construction Plan Approval	4/2012	5/2012
	4	FDOT Bid Document Approval	5/2012	6/2012
	5	Notice to Proceed issued to Winter Park by FDOT	7/2012	7/2012
	6	Project to Bid and City Commission Award	8/2012	9/2012
	7	Pre-construction Meetings and preparation	10/2012	11/2012
	8	Project Construction	1/2013	8/2013
	9	Project Closeout and Final Payment Request	9/2013	10/2013

Poitras, Diane

From: Sent:

The job FI989HLR

Wednesday, July 20, 2011 3:31 PM

To:

Poitras, Diane

Subject:

FUNDS APPROVAL/REVIEWED FOR CONTRACT AQD32

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION FUNDS APPROVAL

Contract #AQD32 Contract Type: AH

Method of Procurement: G

Vendor Name: WINTER PARK Vendor ID: VF596000456002

Beginning date of this Agmt: 07/25/11

Ending date of this Agmt:

12/30/13

Contract Total/Budgetary Ceiling: ct = \$950,000.00

Description:

To provide funding for the Amtrak Station construction and i mprovements in Winter Park,

ORG-CODE

*EO *OBJECT *AMOUNT

*FIN PROJECT *FCT *CFDA

(FISCAL YEAR)

*BUDGET ENTITY

*CATEGORY/CAT YEAR

AMENDMENT ID *SEQ. *USER ASSIGNED ID *ENC LINE(6S)/STATUS

Action: ORIGINAL

Funds have been: APPROVED

55 052000531 *PT *790072 *

950000.00 *42679119401 *683 *20.500 *088809/12

2012 0001 *55100100 *00

*0001/04

TOTAL AMOUNT: *\$

950,000.00 *

FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER

DATE: 07/20/2011

4). Total project cost - \$1,187,500.00 Earmarked E2009-BUSP-217 Funding = \$950,000.00

City of Winter Park Required 20% Match = \$237,500.00

\$ 110,000

Architectural & Engineering for Construction Plan Development Includes typical architectural and engineering services for the development of final site design, station elevations, floor plans, site evaluations, civil engineering, and construction plans for the construction of the new train station.

Project Administration \$80,000 Includes responsibility for typical construction administrative services

such as: contract management, progress meetings, payout applications, EEO/DBE requirements

Construction Management \$ 50,000

Oversee the day to day construction tasks of the project

Construction \$ 947,500

Demolition, site clearing, site grading, and construction of the new train station building and exterior areas

TOTAL \$1,187,500

RFQ for Continued Architectural Services

RFQ

October 17, 2011 – RFQ for Continuing Contracts for Professional, Architectural and Engineering Services was issued.

January 11, 2012 – Following presentation of four top ranked firms the Selection Committee agreed to contract with Associated Consulting International (ACi) and Helman Hurley Charvat Peacock (HHCP) for continued architectural services.

February 13, 2012 – City Commission approved the continued architectural services contracts for ACi and HHCP.

AGREEMENT CITY OF WINTER PARK CONTINUING CONTRACT FOR SERVICES

This is a continuing contract agreement made this 13 day of February, 20 1, by and between the City of Winter Park, hereinafter referred to as the "City", and Associated Consulting International (ACi), hereinafter referred to as the "Consultant".

WITNESSETH

For the consideration stated herein and mutual agreements hereinafter mentioned, the adequacy of which is acknowledged to be sufficient consideration, the parties do agree as follows:

- 1. Continuing Contract. For the term of this Contract, the Consultant agrees to provide the services hereinafter mentioned. The work provided by Consultant will be of the specified nature outlined in this Contract. The Contract is for a fixed term with a renewal clause as provided herein, and a termination clause. The Consultant agrees that from time to time during the term hereof, the City may assign work under this Contract by issuing a work order that describes the scope, schedule and work required. The procedures for the issuance of the work order will be described hereinafter, and the work subject to this Contract are provided hereinafter. The Consultant agrees that the City has no obligation to issue work orders, and this is not a requirements contract of any type, and the sole purpose of this Contract is to allow the City to obtain the services subject to this Contract when the policies and procedures of the City allow such purchase to be made pursuant to the Continuing Contract because of the dollar value or nature of the purchase consistent with the procedures and policies of the City.
- 2. <u>Consultant</u>. The Consultant is: an Architectural Firm with a principal address at 955 North Pennsylvania Avenue, Winter Park, FL 32789. Consultant certifies that it is fully qualified for the work subject to this Contract and has all licenses and permits required for the work subject to this Contract.
- 3. <u>Scope of Services</u>. Consultant agrees to furnish services as specified hereinafter: See Exhibit A ACi 2012 Standard Rate Schedule.

Pricing for the services are set out on the basis of units established in this paragraph, hereinabove.

4. <u>Procedure For Work Order</u>. The City will issue a work order describing the scope, schedule and other details deemed essential by the City for each project assigned to the Consultant. Consultant will complete each assigned work order within the time period mutually agreed between the parties. The mutually agreed time for completion shall be set out in the work order. The Consultant shall comply with all City specifications and Codes in effect at the time the work is performed.

Consultant will furnish all services as described herein and in accordance with the work orders and contract documents, including but not limited to mobilization, insurance, supervision, and other miscellaneous items necessary to provide completed services, products or materials as set out in the work order and to the satisfaction of the City. The compensation payable to the Consultant shall be based upon the Rate Schedule set out hereinabove and stipulated in the work order. No other compensation shall be due Consultant.

- 5. Assignment of Work. This is not a requirements contract and the City retains full discretion whether to award work orders to the Consultant. Although the City reserves its discretion regarding issuance of awards, it is typical that the City has selected other firms as providers of the same or substantially similar and equivalent services and has entered similar continuing contract agreements with said firms. If there are multiple firms, then the City, at its sole discretion, may select which firm to purchase such services. It is the City's intention to distribute work equitably among the selected firms. The City reserves the right to remove any firm at the sole discretion of the City.
- 6. Term of the Contract. The term of this Continuing Contract is one year with an option, assuming mutual agreement, to renew on an annual basis, not to exceed five years. Either party may terminate its obligations under this Continuing Contract by delivering written notice to the other party. Termination is effective upon delivery of notice. However, unless there is a default that is not cured within five (5) days of written notice, neither party shall terminate the other when a work order is in progress. Notwithstanding the foregoing, the City reserves the right to terminate the Contract at any time if the Consultant is in a material breach of the Continuing Contract that in the reasonable determination of the City adversely affects municipal operations or the interest of the citizens of the City of Winter Park.

7. <u>Miscellaneous Legal Provisions</u>.

- a. <u>Venue</u>. Venue of any dispute or litigation between the parties shall be in the court of appropriate jurisdiction in Orange County, Florida. This is a mandatory forum selection clause and in no event will venue be appropriate in any other county other than Orange County, Florida.
- b. No Waiver of Sovereign Immunity. By entering this Contract, the City does not waive its sovereign immunity in any litigation, and is only obligated for the express requirements and dollar values set out in this Continuing Contract and work orders issued pursuant to the Continuing Contract. In no event will the City be liable for any amount in excess of the amounts due under work orders issued pursuant to this Continuing Contract.

- c. Warranty. The standard of care for all professional services performed or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with Consultant's services.
- d. <u>Insurance and Indemnity</u>. The City will require the following schedule and value (coverage amounts) of insurance:

Commercial General Liability \$1M each/\$2M aggregate coverage Automobile Liability \$1M each/\$2M aggregate coverage Workers Compensation Insurance \$1 Million coverage Professional Liability Insurance \$2 Million coverage

Consultant shall indemnify and hold harmless the City of Winter Park from and against any and all claims by third parties to the extent caused, during performance of services under this Agreement, by the negligent acts, errors and omissions of the Consultant. Additionally, the parties reserve all rights and remedies provided by Florida law. Consultant acknowledges separate and adequate consideration paid by City to support this indemnity, which will be \$500.00 from the first assigned work order with said \$500.00 being deducted from the balance otherwise due under the work order.

e. Additional Services. If Consultant contends that any work assigned is outside the express scope of the services set out in this Continuing Contract, hereinabove, then Consultant shall notify the City in writing before commencing the work that additional services will be charged. The work will not begin until such time as the parties reach mutual agreement regarding the appropriate amount that will be paid for additional services, and this will be expressly set out in the work order for the job. In such event, the City reserves the right to go to the next Consultant on the rotation list and may use that vendor in the event that Consultant determines that additional services are not presented with respect to the work order at issue.

f. Effective Date. This Contract is effective on the first date written hereinabove.

CITY OF WINTER PARK ATTEST CONSULTANT Printed Name: Title: Freside Date: O(·

STATE OF FLORIDA COUNTY OF <u>ORANG</u>E

The foregoing instrument was acknowledged before me this 26 day of January, 2012 by LARRY H Actures, Te, who is personally known to me or who has produced as identification and who did take an oath and who acknowledged to me that he/she executed the same for the purposes set forth herein.

NOTARY PUBLIC

SUZANNE M. DiBerrardine
(Name typed or printed)

Commission Expires: 4/13/2014

EXHIBIT A

ACi

2012 Standard Hourly Rate Schedule

Principal	200.00/Hour
Project Manager	150.00/Hour
Project Design Architect	115.00/Hour
Project Architect	115.00/Hour
Senior Job Captain	100.00/Hour
Intern Architect	80.00/Hour
Job Captain	80.00/Hour
Designer	80.00/Hour
Typist	65.00/Hour

(Note: above rates are subject to annual salary increases)



AGREEMENT CITY OF WINTER PARK CONTINUING CONTRACT FOR SERVICES

This is a continuing contract agreement made this 13 day of February, 2013 by and between the City of Winter Park, hereinafter referred to as the "City", and Helman Hurley Charvat Peacock/Architects, Inc. (HHCP), hereinafter referred to as the "Consultant".

WITNESSETH

For the consideration stated herein and mutual agreements hereinafter mentioned, the adequacy of which is acknowledged to be sufficient consideration, the parties do agree as follows:

- 1. Continuing Contract. For the term of this Contract, the Consultant agrees to provide the services hereinafter mentioned. The work provided by Consultant will be of the specified nature outlined in this Contract. The Contract is for a fixed term with a renewal clause as provided herein, and a termination clause. The Consultant agrees that from time to time during the term hereof, the City may assign work under this Contract by issuing a work order that describes the scope, schedule and work required. The procedures for the issuance of the work order will be described hereinafter, and the work subject to this Contract are provided hereinafter. The Consultant agrees that the City has no obligation to issue work orders, and this is not a requirements contract of any type, and the sole purpose of this Contract is to allow the City to obtain the services subject to this Contract when the policies and procedures of the City allow such purchase to be made pursuant to the Continuing Contract because of the dollar value or nature of the purchase consistent with the procedures and policies of the City.
- 2. <u>Consultant</u>. The Consultant is: an Architectural Firm with a principal address at 222 West Maitland Blvd, Maitland, FL, 32751. Consultant certifies that it is fully qualified for the work subject to this Contract and has all licenses and permits required for the work subject to this Contract.
- 3. <u>Scope of Services</u>, Consultant agrees to furnish services as specified hereinafter: See Exhibit A HHCP 2012 Standard Rate Schedule.

Pricing for the services are set out on the basis of units established in this paragraph, hereinabove.

4. Procedure For Work Order. The City will issue a work order describing the scope, schedule and other details deemed essential by the City for each project assigned to the Consultant. Consultant will complete each assigned work order within the time period mutually agreed between the parties. The mutually agreed time for completion shall be set out in the work order. The Consultant shall comply with all City specifications and Codes in effect at the time the work is performed.

Consultant will furnish all services as described herein and in accordance with the work orders and contract documents, including but not limited to mobilization, insurance, supervision, and other miscellaneous items necessary to provide completed services, products or materials as set out in the work order and to the satisfaction of the City. The compensation payable to the Consultant shall be based upon the Rate Schedule set out hereinabove and stipulated in the work order. No other compensation shall be due Consultant.

- 5. Assignment of Work. This is not a requirements contract and the City retains full discretion whether to award work orders to the Consultant. Although the City reserves its discretion regarding issuance of awards, it is typical that the City has selected other firms as providers of the same or substantially similar and equivalent services and has entered similar continuing contract agreements with said firms. If there are multiple firms, then the City, at its sole discretion, may select which firm to purchase such services. It is the City's intention to distribute work equitably among the selected firms. The City reserves the right to remove any firm at the sole discretion of the City.
- 6. Term of the Contract. The term of this Continuing Contract is one year with an option, assuming mutual agreement, to renew on an annual basis, not to exceed five years. Either party may terminate its obligations under this Continuing Contract by delivering written notice to the other party. Termination is effective upon delivery of notice. However, unless there is a default that is not cured within five (5) days of written notice, neither party shall terminate the other when a work order is in progress. Notwithstanding the foregoing, the City reserves the right to terminate the Contract at any time if the Consultant is in a material breach of the Continuing Contract that in the reasonable determination of the City adversely affects municipal operations or the interest of the citizens of the City of Winter Park.

7. <u>Miscellaneous Legal Provisions</u>.

- a. <u>Venue</u>. Venue of any dispute or litigation between the parties shall be in the court of appropriate jurisdiction in Orange County, Florida. This is a mandatory forum selection clause and in no event will venue be appropriate in any other county other than Orange County, Florida.
- b. No Waiver of Sovereign Immunity. By entering this Contract, the City does not waive its sovereign immunity in any litigation, and is only obligated for the express requirements and dollar values set out in this Continuing Contract and work orders issued pursuant to the Continuing Contract. In no event will the City be liable for any amount in excess of the amounts due under work orders issued pursuant to this Continuing Contract.

- c. Warranty. The standard of care for all professional services performed or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with Consultant's services.
- d. <u>Insurance and Indemnity</u>. The City will require the following schedule and value (coverage amounts) of insurance:

Commercial General Liability \$1M each/\$2M aggregate coverage Automobile Liability \$1M each/\$2M aggregate coverage Workers Compensation Insurance \$1 Million coverage Professional Liability Insurance \$2 Million coverage

Consultant shall indemnify and hold harmless the City of Winter Park from and against any and all claims by third parties to the extent caused, during performance of services under this Agreement, by the negligent acts, errors and omissions of the Consultant. Additionally, the parties reserve all rights and remedies provided by Florida law. Consultant acknowledges separate and adequate consideration paid by City to support this indemnity, which will be \$500.00 from the first assigned work order with said \$500.00 being deducted from the balance otherwise due under the work order.

e. Additional Services. If Consultant contends that any work assigned is outside the express scope of the services set out in this Continuing Contract, hereinabove, then Consultant shall notify the City in writing before commencing the work that additional services will be charged. The work will not begin until such time as the parties reach mutual agreement regarding the appropriate amount that will be paid for additional services, and this will be expressly set out in the work order for the job. In such event, the City reserves the right to go to the next Consultant on the rotation list and may use that vendor in the event that Consultant determines that additional services are not presented with respect to the work order at issue.

f. Effective Date. This Contract is effective on the first date written hereinabove.

CITY OF WINTER PARK ATTEST Date: CONSULTANT Printed Name: Mid Title: PRESIDENT Date: 1.31.12 STATE OF FLORIDA COUNTY OF Orange The foregoing instrument was acknowledged before me this 3/ day of January, 2012 by m: chard Charles, who is personally known to me or who has produced as identification and who did take an oath and who acknowledged to me that he/she executed the same for the purposes set forth herein. Clasud 6. Brig NOTARY PUBLIC Elizabega E. Bridges
(Name typed or printed)

(Seal)

Commission Expires: 03/09/2014

Notary Public State of Florida My Commission DD965414 Expires 03/09/2014



EXHIBIT A

Helman Hurley Charvat Peacock/Architects, Inc. 2012 STANDARD RATE SCHEDULE

(Effective Date of Revision 1/1/2012)

Shareholder/Senior V.P.	\$200.00/hour
Officer/Vice President	\$180.00/hour
	·
Senior Designer	\$185.00/hour
Designer 1	\$1 <i>55</i> .00/hour
Designer 2	\$120.00/hour
Designer 3	\$110.00/hour
Senior Project Manager	\$175.00/hour
Project Manager 1	\$170.00/hour
Project Manager 2	\$145.00/hour
1 Tojout Istanager 2	φ110.00/11041
Senior Project Coordinator	\$160,00/hour
Project Coordinator 1	\$150.00/hour
Project Coordinator 2	\$115.00/hour
Project Coordinator 3	\$85.00/hour
C.,	/1
Specifier 1	\$155.00/hour
Specifier 2	\$105.00/hour
Construction Contract Administrator 1	\$130.00/hour
Construction Contract Administrator 2	\$100.00/hour
Construction Contract Administrator 3	\$75.00/hour
CADD Support	\$75.00/hour
Creative Dir./Graphics	\$105.00/hour
Architectural Support 1	\$100.00/hour
Architectural Support 2	\$85.00/hour
Architectural Support 3	\$65.00/hour
Draftsperson	\$60.00/hour
Administrative Connect 1	### OO/I
Administrative Support 1	\$65.00/hour
Administrative Support 2	\$55.00/hour
Administrative Support 3	\$45.00/hour

HELMAN HURLEY CHARVAT PEACOCK / ARCHITECTS, INC.

222 West Maitland Blvd - Maitland, FL 32761 USA

office : 407.614.2656 fax : 407.628.3269

www.hhcp.com

Other Related Actions – Commuter Rail

Commuter Rail

August 11, 2008 – City Commission accepted the three voluntary architects (Drew Krecicki, Steve Feller and Jack Rogers) to develop the conceptual designs for the Commuter Rail canopies design to provide the FDOT with direction for design.

September 8, 2008 – City Commission approved the recommended style for the Commuter Rail canopy and structure design as advocated by the architects (Craftsman Style) to provide the FDOT with direction for design.

Donald Marcotte

From:

Cindy Bonham

Sent:

Friday, February 17, 2012 10:38 AM

To: Cc: Donald Marcotte Randy Knight

Subject:

Architects - commuter rail minutes

I believe this is what you are looking for.

8/11/2008:

MINUTES

Action Item f): Commuter rail stop project timeline and architectural style decision making process.

Assistant Public Works Director Don Marcotte explained that on May 27, 2008 the City Commission accepted the public input summary provided by staff and appointed a sub-committee to discuss the design of the City's commuter rail stop. The sub-committee consisting of Commissioners Anderson and Dillaha met on June 2, 2008 and compiled a list of questions in order to review the status of the commuter rail project in general. Staff provided responses to these questions based on available data, the commuter rail task force final report, the executed interlocal agreement, and discussions with the FDOT. He provided the Commission handouts on responses from FDOT and spoke about the timeline of the project which was included on their packet.

Florida Department of Transportation (FDOT) representative Tawney Olore provided a power point presentation regarding commuter rail. She spoke about the commuter rail transit overview; the operating plan; project update on Federal transit, procurement activities, CSX transportation; Amtrak; right-of-way acquisition; station design and location; Winter Park station concepts; and what's next such as secure full funding grant agreement from Federal transit administration, continue advancing station design concepts and continue procurement activities. She also spoke about the Winter Park station timetable. Ms. Olore answered Commission questions.

Commissioner Dillaha voiced concerns about obligating money without knowing if they have to repay it if we opt out and the insurance portion that has not been worked out at the State level. She wondered about the ramifications if that does not go to the next Legislative session next spring. Commissioner Bridges shared Commissioner Dillaha's concern about the City obligating themselves moving forward (even with the canopy design) without the assurance that this is moving forward. Ms. Olore expressed that the interlocal agreements that the Commission approved remains fully in place today. Commissioner Bridges asked if FDOT wants to know their exact design as to what they want the canopies to look like by September 15, 2008. City Manager Knight stated they want to know whether it is Mediterranean or Craftsman style.

Commissioner Anderson clarified that FDOT currently needs a conceptual design of what the City's station and canopy will look like and then take it from a concept to a schematic/design development style. Ms. Olore agreed and stated that they did that in their 60% plans; will submit that to the Commission on October 7, 2008 and the Commission will give their feedback and changes (on design elements) by November 4, 2008.

City Manager Knight explained that they recommend using three local architects to volunteer to help the City Commission choose whether they want the Mediterranean or Craftsman style of design. He stated that the three architects agreed and after Commission approval, the architects will return with their joint recommendation on a style that FDOT will work with and will return with a formalized design for Commission comments and approvals.

Commissioner Dillaha addressed the \$3.75 million in Federal funds. Ms. Olore expressed that a portion comes from that money but the majority is associated with construction. City Manager Knight explained the signed agreement concerning opting out. Attorney Cheek spoke about his recollection and understanding of this.

Mayor Strong commented that they are currently doing long term budgeting and as part of that budget they are assuming they will repay \$3-\$3.5 million if they choose to opt out. He stated they are going to budget a reserve for that time period because it appears that the operating costs that they are responsible for are significant now and have grown significantly since they started this process a few years ago. He asked if she had an updated estimated cost of operations for this system. Ms. Olore expressed that they do not but they will be doing that as part of final design looking at other funding sources that they would get as being a part of the commuter rail system.

Mayor Strong explained that as a City they need to set aside enough money in the next ten years to opt out of the agreement if they choose to. He asked that they be continually updated on the estimated costs that the City will need to budget every year in the absence of a dedicated funding source. Ms. Olore agreed and commented that they will share any additional information they have as they are updated.

Mayor Strong asked if there was anything that the City needs to spend directly. Engineer Don Marcotte explained that FDOT will move forward with the design and the City may incur some percentage of that cost as an obligation to them. Ms. Olore stated they should know everything by the next Legislative session. Commissioner Anderson commented that there are some questions that have a bearing on the budget that they still need to get from FDOT. Mr. Knight agreed.

Mayor Strong commented that they need to determine if they are comfortable with the three architects (Drew Krecicki, Steve Feller and Jack Rogers) volunteering their time to make a recommendation to the Commission on the architectural style.

Motion made by Commissioner Bridges to accept the three voluntary architects to develop the conceptual designs for the commuter rail canopies design; seconded by Commissioner Diebel. Mayor Strong commented that they also need to communicate to DOT that Winter Park will submit canopy design plans by September 15, 2008. He stated they will need to hear the architect's recommendations at their first meeting in September and if they cannot complete their work by September 8, 2008, they may need to find other volunteers. There was a consensus. The motion carried unanimously with a 5-0 vote.

9/8/2008:

MINUTES

Action Item b): Accept the commuter rail canopies conceptual architectural style as prepared by HHCP Design and reviewed by the three selected local Winter Park architects, Jack Rogers, Drew Krecicki and Steve Feller.

Planning Director Jeff Briggs explained that based on the timeline presented by FDOT to the City Commission an architectural style must be determined by September 15, 2008 in order to continue on schedule with design. He stated that three selected local Winter Park architects, Jack Rogers, Drew Krecicki and Steve Feller helped work through the design selection and all agreed that the Craftsman style (versus Mediterranean style) was the appropriate and historically accurate choice for Winter Park. He stated that Jim Fadal (architect) with HHCP Design provided illustrations of the commuter rail Craftsman concepts and illustrations of the station if they had additional monies left over to redo the station. Mr. Briggs reiterated that September 15, 2008 is the deadline and if the City does not give their input, FDOT will design the standard canopy model and move forward. He commented that staff recommends the Commission choose the Craftsman style of design. Mr. Briggs answered questions.

Mr. Krecicki, Mr. Rogers and Mr. Feller spoke about the historical precedence of the Craftsman style in relation to the old station that was in the park and the direction provided to FDOT for the continuation of their design efforts.

Commissioner Dillaha expressed her issue of \$3 million waiting for the City for the station once they signed the agreements but does not know where that money is. Assistant Public Works Director Don Marcotte and Public Works Director Troy Attaway answered questions regarding the \$3 million grant, the amount of funds available

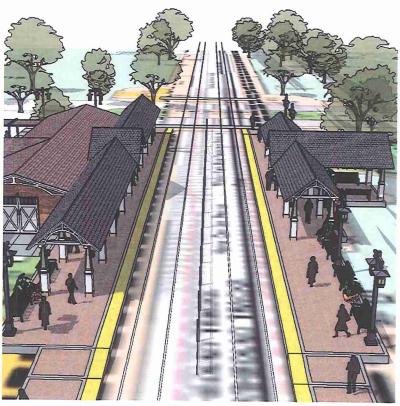
to the City in federal and state funds and how they will use that money, and the costs associated with enhancements to the Amtrak station. Commissioner Bridges thanked the architects for their efforts.

Motion made by Commissioner Diebel to approve the recommended style for the canopy and structure design as advocated by the architects (Craftsman style); seconded by Commissioner Anderson. Commissioner Dillaha commented that she wanted a follow up of the \$3 million grant. Mayor Strong commented that was a work session discussion. The motion carried with a 4-1 vote. Commissioner Dillaha voted no.











item type	Public Hearing	meeting date	April 23, 2012	
prepared by department division	George Wiggins – Building & Code Enforcement Department Brett Railey – Police Department	approved by	■ City Manager■ City Attorney■ N A	
board approval		∏yes □ no ■	N A final vote	

Subject

Second Reading - Adoption of City Ordinance relating to Pain Management Clinics and Pharmacies & repealing of the moratorium (2840-11) on Pain Management Clinics adopted by the City Commission on April 25, 2011.

motion | recommendation

Recommend approval

background

On June 3rd of 2011, Mayor Jacobs announced the formation of a comprehensive Prescription Drug Task Force to address the escalating problem of prescription drug abuse. The task force consisted of healthcare, pharmacy, law enforcement, prevention and treatment professionals. The proposed ordinance was created by utilizing recommendations made by the Prescription Drug Task Force.

Many Police Departments in the State of Florida have reported that a pattern of illegal drug use and distribution has been linked to Pain Management Clinics. On December 2, 2010, the Florida Department of Law Enforcement released the Florida Medical Examiners Commission 2010 Interim Report on Drugs Identified in Deceased Persons. The report aggregated toxicology reports submitted to the Florida Medical Examiners Commission and found that during January through June of 2010, of the 89,900 deaths occurring in Florida from all causes, 4,150 were drug-related. Of the 4,150 drug-related deaths, the report found as follows:

Prescription drugs accounted for 81% of all drug-related deaths when excluding deaths related to Ethyl Alcohol. 1286 people died with at least one prescription drug in their system that was, in the opinion of the medical examiner, the cause of death. The drug that caused the most deaths during the study period (715 decedents) was Oxycodone (trade names include OxyContin). In the Ninth Medical Examiner District (consisting of Orange and Osceola Counties) 63 deaths were related to Alprazolam (trade names include Xanax) 27 deaths were related to Diazepam (trade names include Valium) 76 deaths were related to Oxycodone (trade names include OxyContin) 30 deaths were related to Hydrocodone (trade names include Vicodin and Lortab) and 15 deaths were related to Proxyphene (trade names include Darvon and Darvocet).

Studies have found that the abuse of prescription pain medication can and does lead to property crimes, violent crime, drug dependency, debilitating sickness and death.

The creation of the proposed City Ordinance regulating Pain Management Clinics is not intended to interfere with legitimate medical clinics or the lawful prescription and use of controlled substances.

The new ordinance adopts the same provisions as proposed within Orange County's proposed pain management ordinance which will not go into effect until June. Certain provisions that are applicable to Winter Park and our Zoning Code are included. We are establishing that in Winter Park, pain management clinics may only be located within the Limited industrial and warehouse (I-1) Zoning District. In addition, strict parking criteria parking criteria is included to ensure that the use does not create traffic or parking problems at any potential site of a pain management clinic.

alternatives | other considerations

N/A

fiscal impact

None

strategic objective

Quality Government services.

ORDINANCE NO. ____-12

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, RELATING TO PAIN MANAGEMENT CLINICS AND PHARMACIES; REPEALING THE MORATORIUM ON PAIN MANAGEMENT CLINICS ADOPTED BY ORDINANCE NO. 2840-11 AS EXTENDED BY ORDINANCE NO. 2872-12; ESTABLISHING REGULATIONS OF PHARMACIES AND PAIN MANAGEMENT CLINICS; TO BE CODIFIED AS ARTICLE II, CHAPTER 54 WINTER PARK CITY CODE; CREATING REGISTRATION AND SUPPLEMENTAL MONTHLY REPORTING REQUIREMENTS FOR ALL PAIN MANAGEMENT CLINICS: CREATING SUPPLEMENTAL ZONING REGULATIONS FOR NEW PAIN AMANGEMENT MANAGEMENT CLINICS; CREATING SUPPLEMENTAL REGULATIONS FOR ALL PHARMACIES; PROVIDING THAT PHARMACIES AND PAIN MANAGEMENT CLINICS SHALL NOT CO-LOCATE: ALLOWING FOR APPLICATION FOR VARIANCE FROM THE COLOCATION BAN: CREATING A REQUIREMENT FOR ALL PHYSICIANS AND PHARMACISTS TO CHECK THE PRESCRIPTION DRUG MONITORING PROGRAM PRIOR TO PRESCRIBING OR DISPENSING DANGEROUS DRUGS: DEFINITIONS, TO ADD A DEFINITION FOR "PAIN MANAGEMENT CLINIC" AND TO EXCLUDE PAIN MANAGEMENT CLINIC FROM THE TERM "CLINIC": AMENDING SECTION 58-78 PERMITTED ZONING USES TABLE, ADDING PAIN MANAGEMENT CLINIC AS A PERMITTED USE IN THE I-1 ZONING DISTRICT; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND **RESOLUTIONS CONFLICTS**, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Winter Park City Commissioners are advised that a pattern Formatted: Indent: First line: 0.5", Right: and distribution of certain dangerous drugs has been linked in large part to certain pain more activities. 1.81" operating in and around the Central Florida area, including the City of Winter Park; and

WHEREAS, certain opiate analgesic dangerous drugs, that may be safe when u Formatted: Indent: First line: 0.5" properly, have been shown to be particularly dangerous when overprescribed by doctors in specialized businesses that are primarily focused on treating large numbers of persons who complain of any pain with very high doses of opiate drugs and have been shown to be particularly dangerous when over-consumed by citizens and visitors who may obtain a large number of such opiate drugs by engaging in doctor shopping to obtain multiple prescriptions, close in time, from multiple doctors, by failing to disclose prior recent prescriptions to subsequent doctors, and then obtaining the prescriptions from multiple dispending pharmacies, often by using multiple and false identities at both medical clinics and pharmacies; and

WHEREAS, the dangerous overprescribing and excessive consumption of high Formatted: Indent: First line: 0.5" dangerous opiate prescription drugs has resulted in increased addiction of persons, increased crime associated with such activity, and resulted in a high number of deaths in the Central Florida area and around the City of Winter Park related to prescription drug abuse and has created an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of the citizens of the City of Winter Park; and

WHEREAS, the State of Florida has implemented a Prescription Drug Monitori Formatted: Indent: First line: 0.5" could be an effective tool in the City of Winter Park to reduce successful doctor shopping, or multiple prescriptions, or multiple pharmacy filling of prescriptions and dispensing of potentially dangerous opiate drugs, if local physicians are careful to check the database before prescribing potentially dangerous opiate drugs; and, if reports are made to the database immediately when potentially dangerous opiate drugs are prescribed by local physicians or dispensed by local pharmacies so that other physicians and pharmacies can know that information; and

WHEREAS, on April 25, 2011, the City Commission adopted Ordinance No.*2840 Formatted: Indent: First line: 0.5" moratorium on the issuance of any new Business Tax Receipts for pain management clinics, to direct City staff to analyze the effects of pain management clinics on our community and prepare recommendations to better promote, protect and improve the health, safety and welfare of the citizens for the City by local regulation of pain management clinics, to restrict cash only operations, and to regulate hours of operation of existing clinics through the period of the moratorium (as extended by Ordinance No. 2872-12); and

WHEREAS, on July 19, 2011, Orange County Mayor Teresa Jacobs' Prescription Formatted: Indent: First line: 0.5" (Task Force) began a series of meetings to address the serious issue of prescription drug abuse in the Orange County community through law enforcement, healthcare and pharmacies, prevention education, and public policy; and

WHEREAS, the Task Force identified negative adverse secondary effects as Formatted: Indent: First line: 0.5" management clinics that necessitate a recommendation for certain changes to the City of Winter Park Code that will result in additional substantive and zoning regulations for pain management clinics and pharmacies in the City of Winter Park; and

WHEREAS, with the adoption of this Ordinance, the City Commission intends-to Formatted: Indent: First line: 0.5" implemented in Ordinance No. 2840-11 (as extended by Ordinance No. 2872-12) and impose those substantive and zoning regulations on pain management clinics and pharmacies in the City of Winter Park.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF WINTER Formatted: Indent: First line: 0.5" ORDAINS, AS FOLLOWS:

<u>Section 1</u>. Repeal of Moratorium Ordinance. The moratorium ordinances-ag Formatted: Indent: First line: 0.5" management clinics implemented by Ordinance No. 2840-11 and Ordinance No. 2872-12, are hereby repealed.

<u>Section 2.</u> Creation of Pain Management Clinic Ordinance. A Pain Managem Formatted: Underline

Ordinance is hereby created by amending Chapter 54 – Health and Sanitation to insert Formatted: Indent: First line: 0.5"

include make existing text as Section 54-1 – Smoking, Article 1 and adding to read as follows, to be codified at a new Article II, Chapter 54 to read as follows:

<u>ARTICLE II</u>

Sec. 54-2. Findings of Fact; Intent and Purpose.

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(a) The City of Winter Park Board of City Commissioners are advised and informed that a pattern of illegal drug use and distribution of certain

City of Winter Park
Ordinance No. _____-12
Page 2 of 14

dangerous drugs has been linked in large part to certain pain management clinics operating in and around the Central Florida area and the City of Winter Park and distributing or prescribing dangerous drugs; and

- (b) Certain opiate analgesic dangerous drugs, that may be safe when used moderately or properly, have been shown to be particularly dangerous when overprescribed by doctors in specialized businesses that are primarily focused on treating large numbers of persons who complain of any pain with very high doses of opiate drugs; and have been shown to be particularly dangerous when over-consumed by citizens and visitors who may obtain a large number of such opiate drugs by engaging in doctor shopping to obtain multiple prescriptions, close in time, from multiple doctors, by failing to disclose prior recent prescriptions to subsequent doctors, and then obtaining the prescriptions from multiple dispending pharmacies, often by using multiple and false identities at both medical clinics and pharmacies; and
- (c) The dangerous overprescribing and excessive consumption of high amounts of those dangerous opiate prescription drugs has resulted in increased addiction of persons, increased crime associated with such activity, and resulted in a high number of deaths in Central Florida related to prescription drug abuse and has created an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of the citizens of the City of Winter Park; and
- (d) The State of Florida has implemented a Prescription Drug Monitoring Program which could be an effective tool in the City of Winter Park to reduce successful doctor shopping, or multiple prescriptions, or multiple pharmacy filling of prescriptions and dispensing of potentially dangerous opiate drugs, if local physicians are careful to check the database before prescribing potentially dangerous opiate drugs; and, if reports are made to the database immediately when potentially dangerous opiate drugs are prescribed by local physicians or dispensed by local pharmacies so that other physicians and pharmacies can know that information; and
- (e) Certain opiate analgesic drugs have been shown to be particularly dangerous when over-prescribed by doctors or over-consumed by citizens and visitors; and
- (f) The illegal distribution of these dangerous prescription drugs, increased crime associated with such activity, and the nigh number of deaths in Central Florida, relating to prescription drug abuse has created an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of the City of Winter Park citizens; and
- (g) On July 19, 2011, Orange County Mayor Teresa Jacobs' Prescription Drug Task Force (Task Force) began a series of meetings to address

the serious issue of prescription drug abuse in Orange County through law enforcement, healthcare and pharmacies, prevention education, and public policy; and

- (h) The Florida Legislature has identified concerns regarding the increased use and abuse of substances controlled by federal and/or state law and the frequency of injury and death occurring as a result of the increased availability of controlled substances and certain dangerous prescription drugs via medical practitioners operating in pain management clinics or facilities; and
- (i) Florida Statutes require physicians and other persons dispensing prescription drugs through pain management clinics, facilities or offices, to register with the State Department of Health in order to conduct such business; and
- (j) The negative adverse secondary impacts associated with certain pain management clinics includes the congregation of drug users and drug addicted persons outside of pain management clinics in a manner that has a negative effect on the willingness of residents to patronize nearby business and which disturbs nearby residents all hours of the day but particularly in the early morning and late evening hours thus disrupting other businesses and disturbing the peace and quiet of affected parts of the community; and
- (k) It is not the intent of this Ordinance to interfere with the legal and safe prescription, dispensation, or use of controlled substances. It is the excessive distribution of a narrow class of opiate analgesic prescription drugs that are Schedule II and III controlled substances (except Buprenorphine (Subutex®) and Buprenorphine-naloxone (Suboxone®), which are used for treating addiction) that this Ordinance seeks to regulate; and
- (I) Under its home rule authority, the City of Winter Park can pass additional legislation to further regulate pain management clinics and pharmacies as long as these additional regulations are not preempted in the law and are not inconsistent with the statutory provisions.

Sec. 54-3. Definitions.

For purposes of this article, the following terms, whether appearing in the singular or plural form, shall have the following meanings. All other terms used in this article shall have the meaning provided in Chapter 2011-141, Laws of Florida, as it may be amended from time to time.

Acute Pain means the normal, predicted, physiological response to an adverse chemical, thermal, or mechanical stimulus and is associated with surgery, trauma, or illness. It is generally short-lived. Acute Pain responses may

vary between patients and between pain episodes within an individual patient. Acute Pain episodes may be present in patients with Chronic Pain.

Chronic Pain means pain, which includes one or more of the following characteristics: (a) the pain persists beyond the usual course of a disease that is the cause of the pain; (b) the pain persists beyond the expected time for healing from an injury or trauma that is the cause of the pain; or (c) the pain is associated with a long-term incurable or intractable medical illness or disease and is not amenable to routine pain control methods.

Controlled substance means any substance named or described in Schedules I-V of Section §893.03, Florida Statutes.

Dangerous Drugs means a controlled substance, specifically an opiate analgesic, listed in Schedule II and Schedule III, in Section 893.03, Florida Statutes, but not including Buprenorphine (Subutex®) and Buprenorphinenaloxone (Suboxone®).

Health Care Physician or Physician means any practitioner who is subject to licensure or regulation by the Florida Department of Health under Chapters 458 (physician) or 459 (osteopathic physician), Florida Statutes.

Pain means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. Categories of pain include Acute Pain or Chronic Pain.

Pain Management means the use of pharmacological and non-pharmacological interventions to control a patient's identified pain. Pain Management often extends beyond pain relief, encompassing the patient's quality of life, ability to work productively, to enjoy recreation, and to function normally in family and society.

Pain Management Clinic means any privately-owned clinic, facility or office, whatever its title, including but not limited to a "wellness center", "urgent care facility", or "detox center," which has at least one of the following characteristics:

- 1. Where a physician practices who issues prescriptions for a Dangerous Drug to more than twenty (20) patients in a single day;
- 2. It holds itself out through a sign or advertising in any medium as being in business to prescribe or dispense pain medication, whether for Acute Pain or Chronic Pain;
- 3. It holds itself out through a sign or advertising in any medium as being in business to provide services for the treatment or management of

pain and where the services are also accompanied with the prescription or dispensing of a Dangerous Drug for the treatment of pain, whether Acute Pain or Chronic Pain: or

4. It meets the definition of Pain Management Clinic in Section 458.3265, Florida Statutes, as may be amended from time to time, or is registered as a Pain Management Clinic with the State.

Exceptions. There is an affirmative defense that a business Formatted: No underline not a Pain Management Clinic if it has at least one of the following characteristics:

- 1. Licensed as a hospital or other licensed facility pursuant to *Chapter 395*, *Florida Statutes*, as may be amended;
- 2. The majority of the physicians who provide services in the clinic primarily provide surgical services;
- 3. Affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
- 4. Does not prescribe or dispense controlled substance for the treatment of pain; or
- 5. Operated for the sole purpose of service a governmental entity.

Pharmacist means any person licensed pursuant to Chapter 465, Florida Statutes, to practice the profession of pharmacy.

Pharmacy means the same as that term is defined in Section 465.003, Florida Statutes, as may be amended from time to time, and includes community pharmacy, internet pharmacy, and special pharmacy, but does not include institutional pharmacy or nuclear pharmacy, as each of those terms are used in that section.

Physician Primarily Engaged in the Treatment of Pain means a physician who prescribes or dispenses Dangerous Drugs when a substantial portion of the patients seen are prescribed or dispensed Dangerous Drugs for the treatment of chronic pain. For purposes of this definition, the term "substantial portion" means more than insignificant or incidental portion. The term "substantial portion" does not necessarily mean a majority or predominant amount.

Sec. 54-4. Registration and Operational Regulations for Pain Management Clinics.

- (a) Registration Required. Upon adoption of this Ordinance and annually thereafter, Pain Management Clinics shall register with the City by completing and submitting to the City Manager, or his/her designee, a registration form that is obtained from that official.
- (b) Persons Responsible. A physician shall be designated as responsible for complying with all requirements related to registration and operation of the Pain Management Clinic. The designated physician and all other persons operating the Pain Management Clinic shall ensure compliance with the following regulations. Failure to so comply shall be deemed a violation of this Ordinance and shall be punishable as provided in Section 54-10.
- (c) Supplemental Regulations. All registered Pain Management Clinics shall be subject to the supplemental regulations provided in this subsection.
- (d) Display of licenses. Any Pain Management Clinic shall be validly registered with the State of Florida, if required, and with the City, and shall prominently display in a public area near its main entrance copies of all state licenses, City licenses, and Occupational License/Local Business Tax Receipt, and the name of the owner and designated physician responsible for compliance with state and city law. A Pain Management Clinic shall register with the City by completing and submitting to the City Manager, or his/her designee, a registration form that is obtained from that official.
- (e) Controlled Substances. The on-site sale, provision, or dispensing of controlled substances at a Pain Management Clinic shall be prohibited except as is specifically set forth in applicable federal or state law.
- (f) Alcoholic beverages. Alcoholic beverages shall be prohibited from being consumed or served on the premises, including in the parking areas, sidewalks, or adjacent right-of-way.
- (g) Adequate inside waiting area required. No Pain Management Clinic shall provide or allow outdoor seating areas, queues, or customer waiting areas. All activities shall be conducted within the building and adequate indoor waiting areas shall be provided for all patients and business invitees. The Pain Management Clinic shall not direct or encourage any patient or business invitee to stand, sit (including in a parked car), gather, or loiter outside of the building where the clinic operates, including in any parking area, sidewalk adjacent, right-of-way, or neighboring property for any period of time longer than that reasonably required to arrive and depart. The Pain Management Clinic shall post a conspicuous sign stating that no loitering is allowed on the property.
- (h) Operating hours. A Pain Management Clinic may operate only Monday through Friday and only during the hours of 7:00 a.m. to 7:00 p.m.

Exception – It is an affirmative defense that the business was open after the abovestated hours for a bona fide medical emergency reported by an established patient who had been previously treated at that Pain Management Clinic.

- (i) Monthly business records. Each business day a Pain Management Clinic shall record, and shall provide to the City Manager or his or her designee, on a monthly basis, by the fifth day of each calendar month, a sworn summary of certain limited information from the prior calendar month that is prepared by the medical director and/or the person in charge of prescribing the drugs that month. To the extent such information is not otherwise required to be maintained by any other law, the back-up for the required monthly summary shall be maintained by the Pain Management Clinic for at least 24 months. The monthly summary shall include the following information for the previous calendar month:
- (1) The total number of prescriptions written for Dangerous Drugs listed separately by each physician;
- (2) The total number of persons seen by the Pain Management Clinic;
- (3) The state of residence of each person to whom Dangerous Drugs were prescribed or dispensed; and
- (4) A log of all attempts, whether successful or unsuccessful, to access and revise the state-maintained Prescription Drug Monitoring Program.
- (i) Personnel Records. A Pain Management Clinic shall maintain personnel records for all owners, operators, employees, workers, and volunteers on site at the Pain Management Clinic, and make those records available during any inspection. The Pain Management Clinic shall forward a sworn personnel record containing items (1), (2) and (3), below to the City Manager, or his/her designee, on a monthly basis by the fifth day of each calendar month for the previous calendar month. Personnel records shall, at a minimum, contain the following information about each of the above-described persons present for any day in the previous calendar month:
 - (1) name and title;
 - (2) current home address, telephone number, and date of birth;
 - (3) a state or federally-issued driver's license or other identification number:
 - (4) a copy of a current driver's license or a government issued photo identification; and
 - (5) a list of all criminal convictions (if any), whether misdemeanor or felony for all persons hired in the previous calendar month, to be updated annually.
- (k) Compliance with other laws. A Pain Management Clinic shall at all times be in compliance with all federal and state laws and regulations and the City of Winter Park City Code.

Sec. 54-5. Requirements for New Pain Management Clinics.

- (a) *Intent.* It is the intent of this article that the lawful use of any building, structure, or land existing at the time of adoption of this article may be continued although such use, building or structure does not conform with the provisions of this article provided the following conditions in the subsequent sections of this article are met.
- (b) Zoning and Location. Any new Pain Management Clinic shall only be permitedpermitted within the Limited Industrial and Warehouse (I-1) Zoning District, and shall be prohibited as a home occupation. Any new Pain Management Clinic applicant shall complete the appropriate building permit or Use permit applications and submit these application(s) to the City Building Division for review and approval prior to issuance of any permits.
- (c) Separation distances. A new Pain Management Clinic shall not co-locate on the same property as a pre-existing Pharmacy. Furthermore, a new Pain Management Clinic shall not operate within one thousand (1,000) feet of any pre-existing pharmacy; school; as that term is defined in Sections 1002.01 or 1003.01, Florida Statutes, as it may be amended; day care center; or home; or religious institution. Distance requirements shall be documented by the applicant and submitted to the Building Division with the application. All distance requirements pertaining to Pain Management Clinics shall be measured by drawing a straight line from the nearest property line of the pre-existing use to the nearest property line of the proposed use. Applicant may request a variance from the requirements of this paragraph as provided in Section 58-92 of this Code.
- (d) Parking. Any parking demand created by a Pain Management Clinic shall not exceed the parking spaces located or allocated on site, as required by the City's parking regulations. An applicant shall be required to demonstrate to the appropriate City staff that on-site traffic and parking attributable to the Pain Management Clinic will be sufficient to accommodate traffic and parking demands generated by the Pain Management Clinic; based upon current traffic and parking study prepared by a certified professional. Traffic and parking analyses shall be predicated in part upon traffic and parking impacts from other existing pain management clinics in Florida but shall in no case be less than one (1) space per 100 sq. ft. of gross floor square feet as defined in Section 58-95 of this code. The source of any such information shall be provided to the City for purposes of verification. City staff shall be required to verify the information contained in traffic and parking study(ies) with the appropriate official(s) of the local government(s) where the comparable information is derived. The owner of the Pain Management Clinic shall be responsible for ensuring that there is no queuing of vehicles in the public right-of-way.

Sec. 54-6. Landlord Responsibility.

- (a) Any landlord, leasing agent or owner of property upon which a pain management clinic operates who knows, or in the exercise of reasonable care should know, that a Pain Management Clinic or Pharmacy is operating in violation of the Winter Park City Code, or applicable Florida law, including the rules and regulations promulgated by the Department of Health, Board of Medicine, or Board of Osteopathic Medicine, must prevent, stop, or take reasonable steps to prevent the continued illegal activity on the leased premises.
- (b) Landlords who lease space to a Pain Management Clinic or Pharmacy after the effective date of this article must expressly incorporate

language into the lease or rental agreement stating that failure to comply with the Winter Park City Code is a material breach of the lease and shall constitute grounds for termination and eviction by the landlord.

Sec.54-7. Certification Affidavit by Applicants for Related

Uses.

- (a) Certification Affidavit by Applicants for Related Uses. Any application for a business certificate under Chapter 94, Article II as a pain management clinic as defined in section 54-3, shall be accompanied by an executed affidavit certifying registration with the State of Florida, and the City of Winter Park as a Pain Management Clinic. The failure of an applicant to identify a business in the application for a business certificate as a pain management clinic, which meets the definition of pain management clinic as defined in section 54-3, will result in the immediate expiration of the business certificate and immediate ceasing of all activity conducted in the pain management clinic.
- (b) Any applicant's application for a business certificate and executed affidavit relating to use as a Pain Management Clinic, where applicable, shall be provided to the City Building Division at the time of the proposed use.

Sec. 54-8. Regulation of Pharmacies.

- (a) All Pharmacies shall be subject to the following supplemental regulations:
 - (1) Identification Requirement. Prior to filling or dispensing any prescription for a Dangerous Drug, for or to a person for whom verification of insurance or health plan coverage through a statelicensed insurance company, has not been done, a Pharmacist or the Pharmacist's agent shall require and photocopy, scan, or otherwise digitally record at least one (1) form of identification of the patient for whom the medication is prescribed or, if a minor, the minor's parent or guardian. Identification shall be also obtained and recorded in the same manner from the person who picks up or obtains the Dangerous Drugs, if not the same person for whom the Dangerous Drugs are prescribed. Such identification shall consist of an original or certified copy of one of the following and must include a photograph of the applicant and have both the applicant's full name and date of birth:
 - (a) Current driver's license;
 - (b) Current federal or state issued

identification card;

(c) United States valid Passport or

Passport Card;

- (d) Unexpired foreign passport with valid, unexpired United States visa affixed accompanied by the approved I-94 form documenting applicant's most recent admittance to the United States;
- (e) Valid United States Citizenship and Immigration Services (USCIS) documents (Certificate of Naturalization, Certificate of Citizenship, and/or Permanent Resident Card);

City of Winter Park
Ordinance No. ____-12
Page 10 of 14

(f) Military ID or dependent card with

photograph; or

- (g) State or Federal government employee identification card with name and photograph and/or physical description with or without a date of birth.
- (2) Verification of Prescription. Prior to filling a prescription for a Dangerous Drug about which the Pharmacist has any reasonable cause to doubt the validity of the prescription, a Pharmacist or the Pharmacist's agent shall personally contact the prescribing physician or the prescribing physician's agent in order to verify the prescription. Based on the contact, the Pharmacist or pharmacist's agent shall document, in writing, the date and name of contact.
- (3) Records. A Pharmacy shall keep records of all prescriptions fillsed in compliance with Section 893.07, Florida Statutes, for no less than two (2) years, and records of Dangerous Deg Drug prescription fills shall be made available to law enforcement or code enforcement within seventy-two (72) hours of the request and which shall include:
- (a) All information required by Section 893.07, Florida Statutes;
- (b) Copies of all personal identification obtained by the Pharmacist in compliance with this Article; and
- (c) If applicable, all written verification records required in this Article.

In the event that a records request is made by code enforcement personnel, the Pharmacist shall redact all identifying information of the patient or person who requested medication before providing the requested records in compliance with this section; provided however, this requirement to redact does not apply to lawful requests by law enforcement personnel.

- (4) Pharmacist compensation. It shall be unlawful to pay any Pharmacist a bonus, incentive compensation, or reward solely for filling a prescription for a specific Dangerous Drug.
- (5) Compliance with other laws. A Pharmacy shall, at all times, be in compliance with all federal and state laws and regulations and the Winter Park City Code.
- (b) Separation distances. A new Pharmacy shall not co-locate on the same property as a pre-existing Pain Management Clinic; provided, however, that an Applicant for a new Pharmacy may request a variance from the requirements of this paragraph as provided in Section 58-92 of this Code.

Sec. 54-9. Prescription Drug Monitoring Program.

(a) Requirement of prescribing physician or physician's agent to check Prescription Drug Monitoring Program. Medication shall only be prescribed on the

business premises and shall only be prescribed during regular office hours. Within 24 hours prior to prescribing any Dangerous Drug to a patient, the prescribing physician or physician's agent shall access the information for the purpose of reviewing the patient's controlled drug description history in the Prescription Drug Monitoring Program described at Section 893.055, Florida Statutes.

- (b) Requirement of pharmacist or pharmacist's agent to check Prescription Drug Monitoring Program. Prior to dispensing any Dangerous Drug for or to a person for whom verification of insurance or health plan coverage through a state-licensed insurance company has not been done, the dispensing Pharmacy shall access the information in the Prescription Drug Monitoring Program for the purpose of reviewing the patient's controlled drug history and shall report the Dangerous Drug dispensed and to whom the Dangerous Drug will be dispensed in the Prescription Drug Monitoring Program described at Section 893.055, Florida Statutes.
- (c) When the Prescription Drug Monitoring Program is not available. Compliance with the requirements of sub-sections (a) and (b) is not required before prescribing or dispensing dDangerous dDrugs if the Prescription Drug Monitoring Program is not available, or does not reasonabley respond, and three good-faith but unsuccessful attempts have first been made to access and review the statemaintained Prescription Drug Monitoring Program. A record of the dates and times of such attempts to access the state maintained Prescription Drug Monitoring Program shall be kept and maintained for 24 months. A Pain Management Clinic shall also include such log information with the daily summary record required in this Ordinance.

Sec. 54-10. Penalties.

Any person violating any of the provisions of this Article shall be deemed guilty of an offense punishable as provided in section 1-7, Article II Code Enforcement Citations, revocation of a business certificate and code enforcement violations referred to the Code Enforcement Board.

Section 3. Amendments to Zoning Code. The Winter Park Land Develor Formatted: Indent: Left: -1", Right: -1.37" Article III, Chapter 58 is hereby amended as follows:

Section 58-78(b) is amended to add under Permitted Uses, new paragraph 13, Pain Management Clinics under Permitted Uses.

Section 58-86(b) is amended to add under "Specific Requirements," new paragraph 28 to read:

Section 58-86.

b) Specific Requirements for various uses and buildings.

(28) "Pain Management Clinics: one parking space for each 100 square foot of gross floor space in the building."

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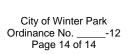
Section 58-95 is amended by adding a new definition: "Pain Management Clinic", means as defined in Section 2 of this Ordinance hereinabove in Section 54-3 of this Code.

Section 4. Chapter 94, Article II, Section 94-31 "Definitions" under "Loc Formatted: Indent: Left: -1", First line: 0.5", amended to read as follows: Local business tax receipt means and includes the certifical Right: -1.81"
be issued by the city business tax officer evidencing payment of the business tax initially imposed and required for the issuance thereof, and shall be called "business certificate" in city applications and
documents under this Article.
Section 5. Repeal of Prior Inconsistent Ordinances and Resolutions: - Al Formatted: Indent: Left: -1", Right: -1.81"
ordinances and resolutions adopted by the City Commission, or parts of prior ordinances and resolutions in
conflict herewith, are hereby repealed to the extent of the conflict. Conflicts. All ordin Formatted: Font: (Default) Arial, 12 pt
ordinances in conflict with any of the provisions of this ordinance are hereby repealed.
Section 6 Sovershillty If any section subsection contains clause phrase word or
Section 6 . Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent
jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a
separate, distinct and independent provision, and such holding shall not affect the validity of the remaining
portions of this Ordinance.
portions of this ortalitation.
Section 7. Effective Date. This Ordinance shall become effective immediately upon adoption
by the City ¢ommission of the City of Winter Park, Florida , and pursuant to City Charter .
ADOPTED by the City Commission of the City of Winter Park, Florida, in a regular meeting held on
the day of, 2012.
Kenneth W. Bradley, Mayor
Attest:
Cynthia S. Bonham, City Clerk
Cynthia C. Bormani, Oity Clerk

City of Winter Park Ordinance No. _____-12 Page 13 of 14

Approved as to legal form and sufficiency for the City of Winter Park, Florida only:		
Usher L. Brown, City Attorney		
First Reading:Second Reading:	, 2012 , 2012	

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item type	Public Hearing	meeting date	April 23, 2012	
prepared by department division	Lindsey Hayes Planning Department	approved by	City Manager City Attorney N A	
board approval	Historic Preservation Board	■yes □ no □	N A 5 - 0 final vote	

subject

Aimee and Michael Spencer, the owners of 1509 North Orange Avenue, are requesting the listing of their house at 1509 North Orange Avenue in the Winter Park Register of Historic Places.

motion | recommendation

The Historic Preservation Board voted unanimously on March 14, 2012 to recommend listing 1509 North Orange Avenue in the Winter Park Register of Historic Places. The listing is finalized by resolution of the City Commission. (attached)

summary

1509 North Orange Avenue retains its architectural integrity and is significant for its association with the early development of the Orwin Manor subdivision. It is a fine example of the Spanish Eclectic style in Winter Park. (HPB staff report follows)

board comments

The board voted in favor of listing 1509 North Orange Avenue on the Winter Park Register of Historic Places.

RESOLUTION NO.	RESOLUTION NO.	
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A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, DESIGNATING THE PROPERTY LOCATED AT 1509 NORTH ORANGE AVENUE, WINTER PARK, FLORIDA, AS A HISTORIC RESOURCE IN THE WINTER PARK REGISTER OF HISTORIC PLACES.

WHEREAS, there are located within the City of Winter Park historic sites, areas, structures, buildings, improvements and appurtenances, both public and private, both individual properties and in groupings, that serve as reminders of past eras, events, and persons important in local, state and national history; or that provide significant examples of past architectural styles and development patterns and that constitute unique and irreplaceable assets to the City; and

WHEREAS, the City Commission recognizes that the sites and properties of historical, cultural, archaeological, aesthetic and architectural merit contribute to the public health, welfare, economic well being and quality of life of the citizens of Winter Park; and

WHEREAS, there is the desire foster awareness and civic pride in the accomplishments of the past for current and future generations; and

WHEREAS, the property located at 1509 North Orange Avenue, Winter Park, Florida is associated with the early development of Orwin Manor, represents an example of Spanish Eclectic style architecture, retains its historical integrity and meets the criterion for historic resource status,

NOW, THEREFORE, be it resolved by the City Commission of the City of Winter Park, Florida that:

The City Commission of the City of Winter Park hereby supports and endorses the designation of the property located at 1509 North Orange Avenue as a historic resource on the Winter Park Register of Historic Places.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park held in City Hall, Winter Park on this 23rd day of April 2012.

	Kenneth W. Bradley Mayor
ATTEST:	
City Clerk Cynthia S. Bonham, MMC	



CITY OF WINTER PARK HISTORIC PRESERVATION COMMISSION

Staff Report March 14, 2012

HDA 12-002 Request of Aimee and Michael Spencer to designate their property located at 1509 North Orange, Winter Park, Florida to the Winter Park Register of Historic Places; Zoned R-1A, Parcel ID #12-22-29-6432-07-110.

Description. 1509 North Orange Avenue was sold in 1926 by Walter Rose's Central Florida Development Company to Edith I. Babcock. The June 4, 1926 deed states that the property was sold as vacant land and states that the buyers "shall at no time erect any dwelling on the above described premises costing any less than \$7,500.00." Located on the southern border of the Westminster section of Orwin Manor, it is a Spanish Eclectic style house that was part of the initial construction of the Orwin Manor Westminster section. The Central Florida Development Company also held the right to approve the buildings in Orwin Manor. The architect remains unknown but it is a high style residence.

The two story house has a continuous raised foundation and an irregular footprint. The moderately-pitched combination gable and hipped roof is surfaced with regularly laid barrel clay tile. The wall finish is smooth stucco. The façade is asymmetrical with the entry under a front facing decoratively sculpted recess. The projecting bay of the front elevation has a series of round arched vents between belt courses. The roof-wall junction of this bay is coved. The roof wall junction elsewhere has decoratively carved exposed rafter tails. The projecting bay also has a second floor shallow ironwork balcony accessed by an arched French door flanked by arched sidelights. Below the balcony on the front elevation is a pair of divided light French doors. The east side wing also has an ironwork balcony on the second floor with French doors beneath on the ground floor. The east facing wing also has a one story open porch with arched openings. The west side elevation has an arched porte cochere with a sunroom above it on the second floor. The rear of the house has a shallow arch topped top door on a projecting bay, and two pairs of French doors on either side of a stucco chimney on the east facing wing. The chimney has an elaborated top. The broad chimney serves ground and second floor fireplaces. The windows are typically six over six double hung wood windows that have been restored. The property includes a freestanding, flat-roofed stucco two-car garage and work room at the rear of the property. The property also includes lot 12 to the west side. Lot twelve was included under the same ownership as the house by the late 1960s. The house is being restored to excellent condition.

Architecture. Found throughout Florida, the Spanish Eclectic style drew from the architecture of Spain and its New World colonies. It is generally associated with the 1915 Panama-California Exposition in San Diego. The exposition's chief architect, Bertram Grosvenor Goodhue, who had studied actual prototypes in Spain and Spanish America, developed a sophisticated, accurate interpretation of Spanish architecture that enjoyed wide popularity in the southwest, California and Florida during the 1920s.

Spanish Eclectic and Spanish Revival style architecture practically defined Florida's great 1920s boom era. Buildings of the style filled southeastern cities like Miami, Palm Beach and Boca Raton. The style was applied to every conceivable type of building, serving as a design theme for whole communities and subdivisions. Addison Mizner of Palm Beach and Boca Raton, the most prominent architect associated with the Spanish Eclectic and Spanish Revival styles in Florida began the trend in south Florida with his 1918 design of the Everglades Club at Palm Beach.

Identifying features of the style consisted of red clay barrel or Spanish tile; wrought-iron work, including balconies and balconets; stucco exterior finishes; paneled doors; decorative vents and rondels; arcades; and low pitched, usually gable roofs with little or no eave overhang.

Orwin Manor. In 1924 the property that would become Orwin Manor subdivision was sold to Walter Rose's Central Florida Development Company for \$260,000 at a rate of \$1,300 per acre. Central Florida Development Company had obtained their charter to sell real estate on February 23, 1924. Walter Washington Rose was the President of Central Florida Development Company. Earlier, Rose had developed Rosearden and Rosemere subdivisions in Orlando.

Walter Rose started his career as a Western Union operator after his school days in Athens, Georgia. He came to Orlando in November of 1909 to straighten out a Western Union management difficulty. After a few years he quit Western Union to take a sales position with a drug manufacturing firm, but in 1913 entered the real estate business here with twenty-five dollars. Walter Rose served Orange County and Florida with distinction and notable success as state senator from 1932-1949, totaling 16 years. He retired in 1949 after serving a term as senate president in 1943. As a senator, he fathered the Florida real estate license law which created the Florida Real Estate Commission. He served as chairman from 1925 through 1932, when he was then elected to the senate.

During the 1920s Florida Land Boom days, Rose's Central Florida Development Company launched its sixth development called Orwin Manor. The name 'Orwin' was a combination of Orlando and Winter Park, and was suggested by Louise Morton. The Westminster section bounded by Clay Street to the west, Harmon Avenue to the north and the railroad tracks to the east was platted in 1924 and developed first. It was closely followed by the Stratford section to the east of the railroad tracks.

The first structures in Orwin Manor were the great stuccoed gates spanning three corners at the intersection of Orange Avenue, Clay Street and Wilkinson Street. The remaining structures

were restored and designated an Orlando historic landmark in 1990. Similar gates flanking Orange Avenue just southeast of US 17/92 were demolished at some point. A sales office constructed in the Mediterranean revival style was soon constructed at 1701 North Orange Avenue along what was then the main and only two lane road (called Dixie Highway) between Orlando and Winter Park. The sales office was later demolished.

The first homes in Orwin Manor's Westminster Section were built starting in 1925. A June 10, 1926 article in The Winter Park Herald stated, ". . . in November of 1925 sales amounting to one-half million dollars were completed in twenty-six days. In this first (Westminster) section more than fifty homes are occupied or under construction." These homes were mostly Mediterranean themed styles which virtually defined Florida's great 1920's Land Boom era along with a variety of styles including Colonial Revival, Tudor Revival, Spanish Revival, Mission and Bungalow. Due to Walter Rose's foresight, the streets of Orwin Manor, marketed as 'The Great White Way', were lined with curbs, sidewalks, streetlights with underground wiring, oak trees and palms. When the Land Boom went bust, construction in Orwin Manor slowed and didn't seriously pick up again until the post World War II building boom when many vacant lots were developed with new homes. The restrictions included in the early sales agreements offers an interesting view into the patterns of development, culture and the standards of the times (see attached June 4, 1926 document).

Significance. The rehabilitation of this property is such that it retains it architectural integrity. 1509 North Orange Avenue retains its architectural integrity and is significant for its association with the development of the Orwin Manor subdivision. One of the first homes built in Orwin Manor; it is an excellent example of the Spanish Eclectic Revival style in Winter Park.

RECOMMENDATION:

Staff recommendation is for listing as a historic resource in the Winter Park Register of Historic Places.



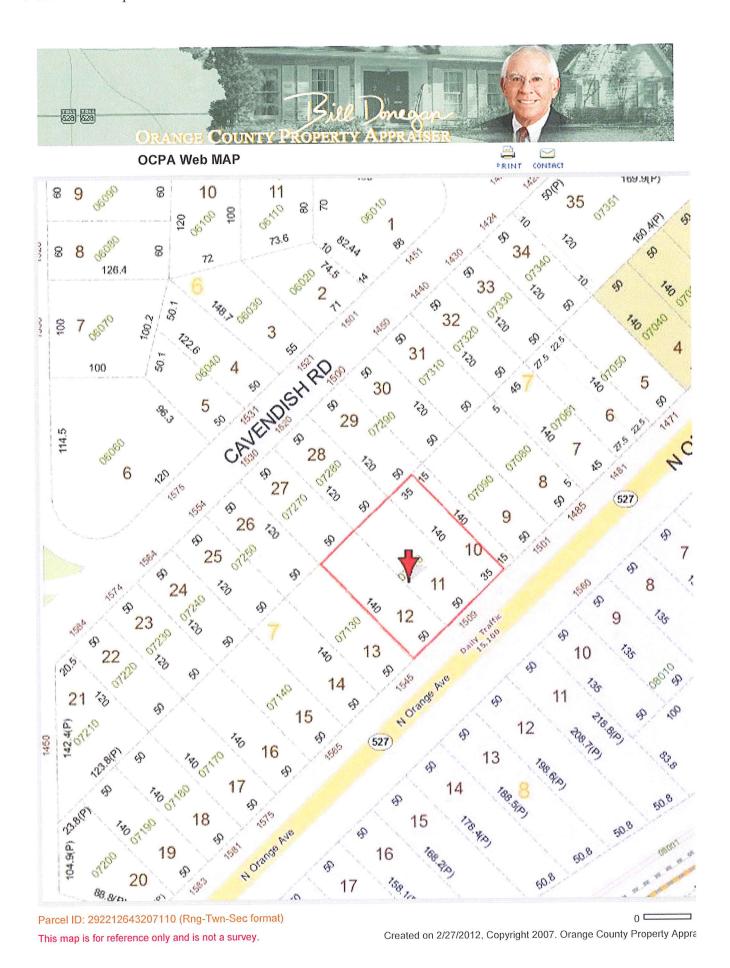
City of Winter Park Planning & Community Development Department 401 Park Avenue, South Winter Park, Florida 32789

407-599-3498

City of Winter Park Historic Designation Application

1.	1509 N URANGEAVENUE	5	- File	
	Building address		661-1	
	Dimer & Michael SAENCER	1569NDRANGE A	VE 323	
		lress	Telephone	
	Applicant's name (if different from above)	Iress	Telephone	
2.	I,			
	Owner's Signature Month	Date	2012	
	Historia Donoumation Com	unicaion Offica Usa		
	Historic Preservation Com	mission Office use		
	Criteria for D	esignation		
	A. Association with events that have made a significant contribution to the broad patterns of history including the local pattern of development; or B. Association with the lives of a person or persons significant in our past; or that C. Embodies the distinctive characteristics of a type, period, or method of construction or that represents the work of a master, or that possesses high artistic values or that represents a significant and distinguishable entity whose components may lack individual distinction; or D. Has yielded or are likely to yield information important in prehistory or history.			
	12-22-29-6432-07-110	$c \cdot l^c$	926	
	Legal description	Yea	r built	
	(Ros	TANTIAL ORWIN MANOR D. Historic district no	MSTRICT)	
	. Illistoric mimo of comming (4)	Historic aistrict ni	ine (ij uniy)	
	Date received:/-20-20/2	HPC Meeting: 3-14-20		
	Case File No.: 12-00 2	Florida Master Site File No.: <u>OR</u>	_0751	
	□ Local Historic Landmark	🗘 Local Historic Resource		

OCAP Web Map



http://paarcgis.ocpafl.org/Webmap3/Print_Map_Only.aspx?&pin=292212643207110&id=... 2/27/2012

ORWIN MANOR

Description

Westminster

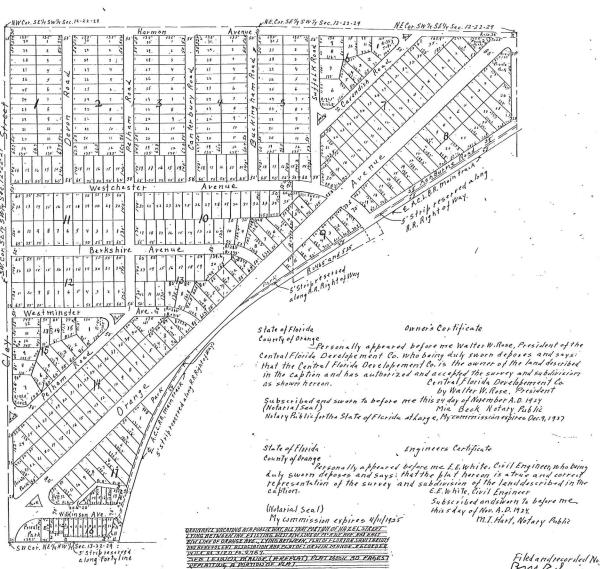
Section

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Date: November, 1924.

Orlands Florida.

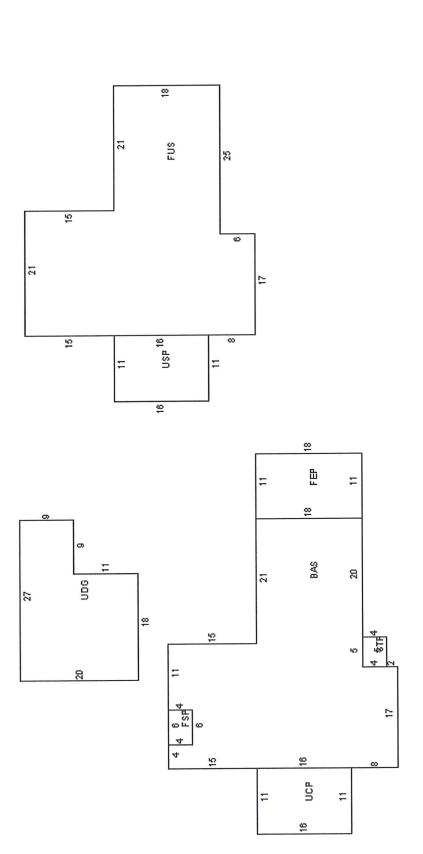
Reg. Cert. Mos



Filed and recorded Nov. 24, 1924 at 10A.m. Bowl obing one Clerk By mastrward D.C.

Building Details - 1509 N Orange Ave - Building #1

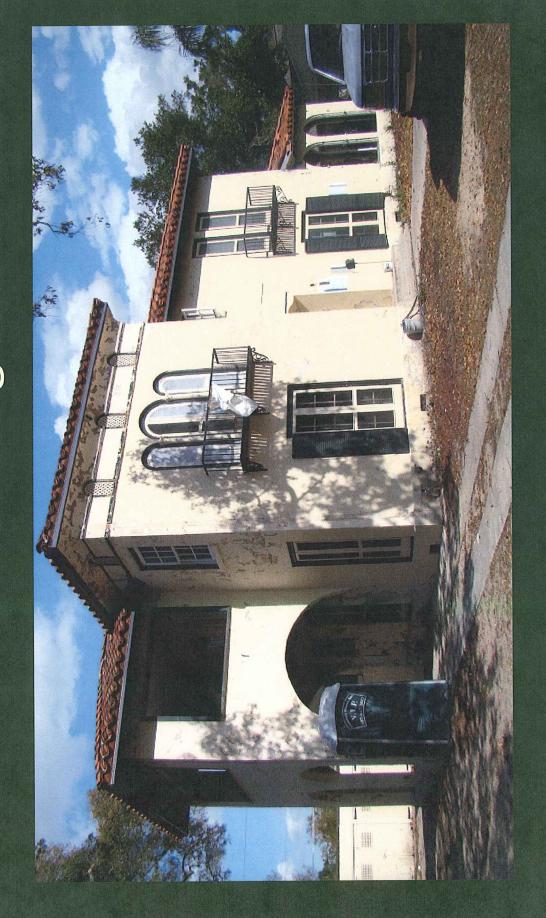
1509 N Orange Ave

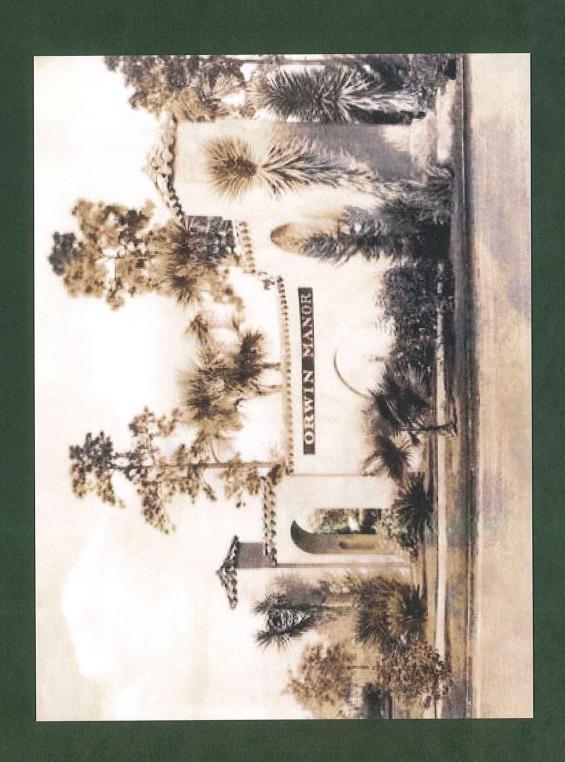


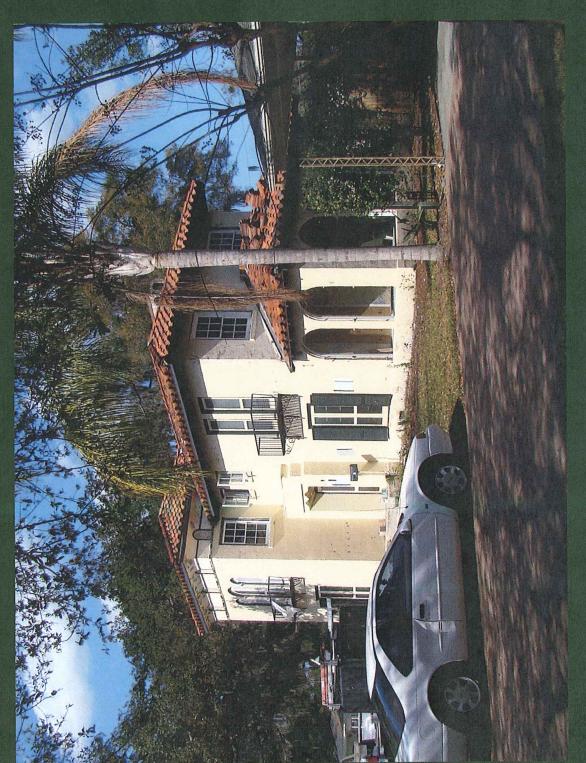
Sqft

1/23/2012

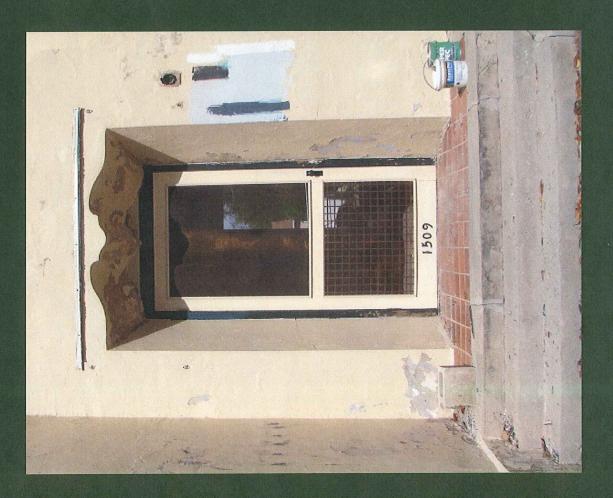
1509 North Orange Avenue



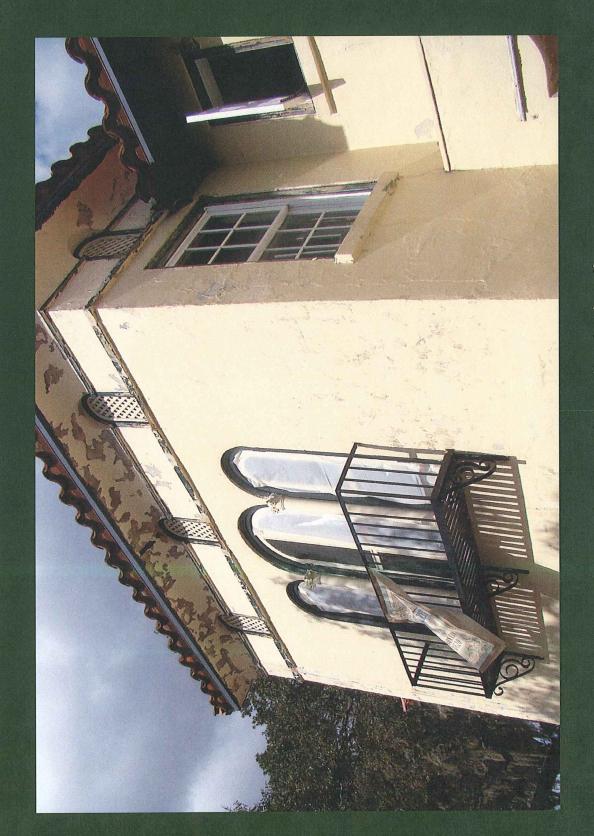




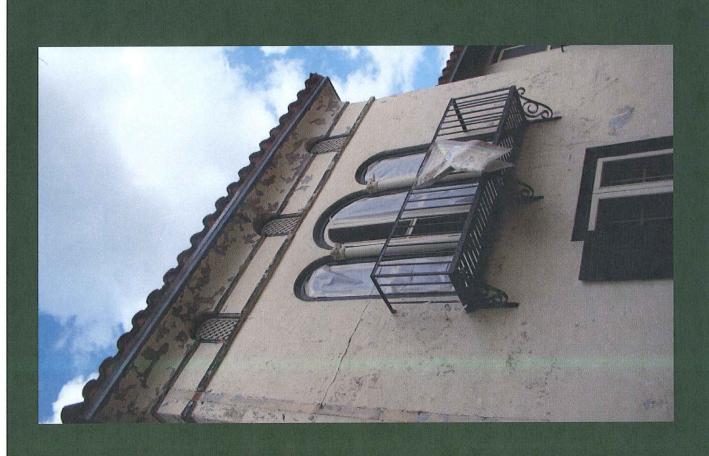
Front elevation facing northwest

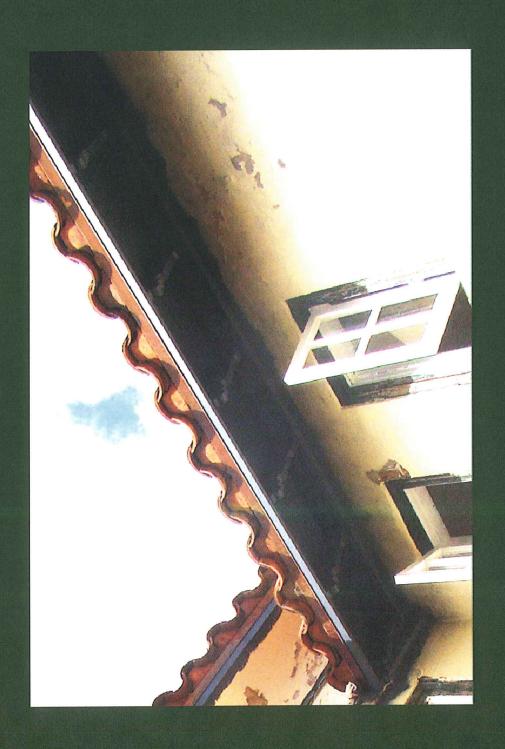


Scalloped recessed entry detail

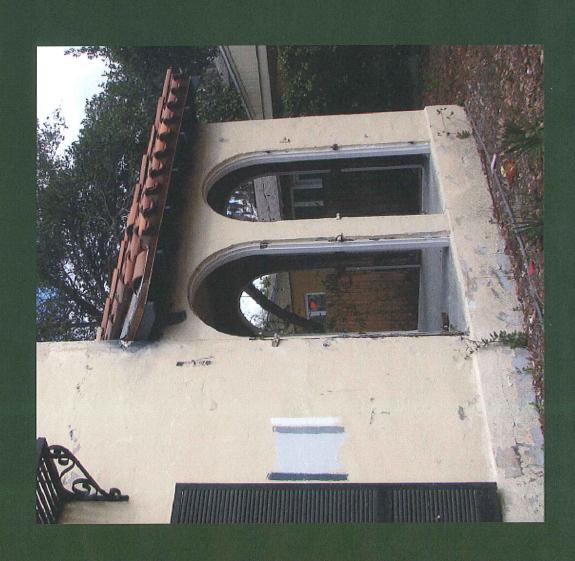


Extensive Spanish eclectic details

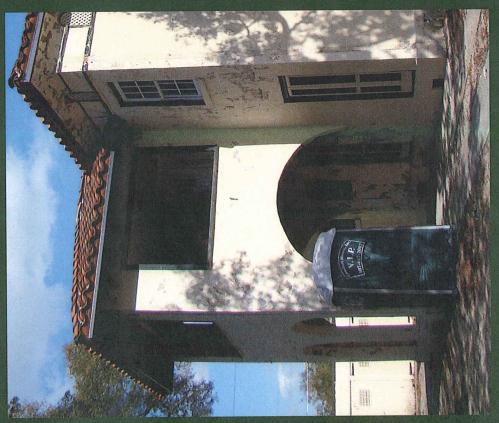




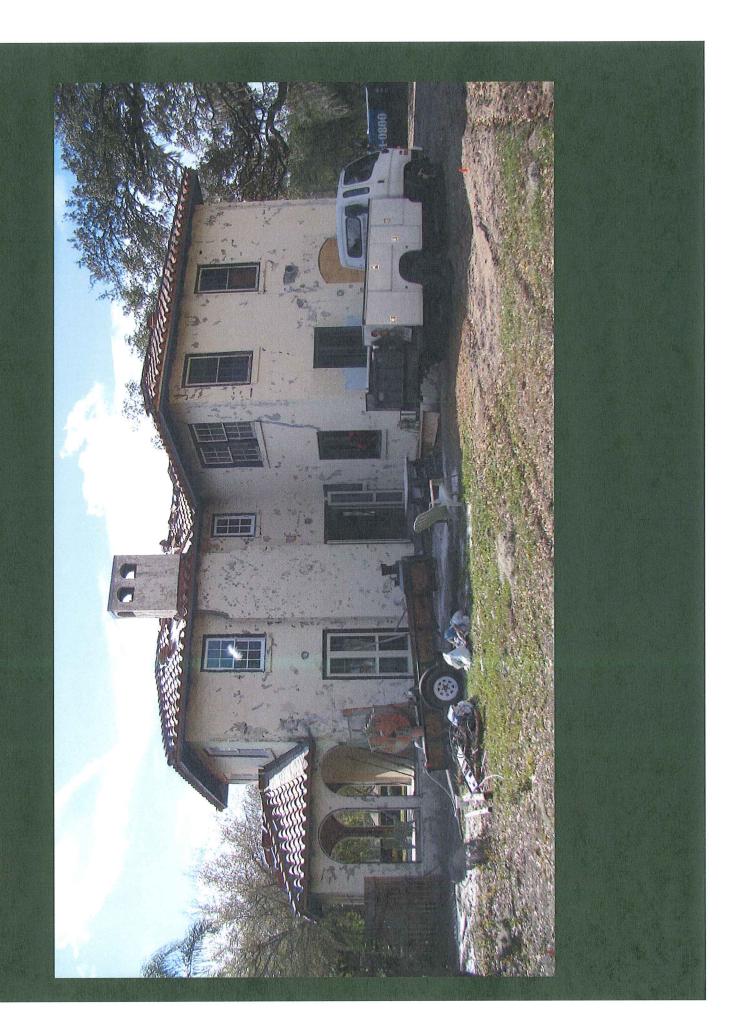


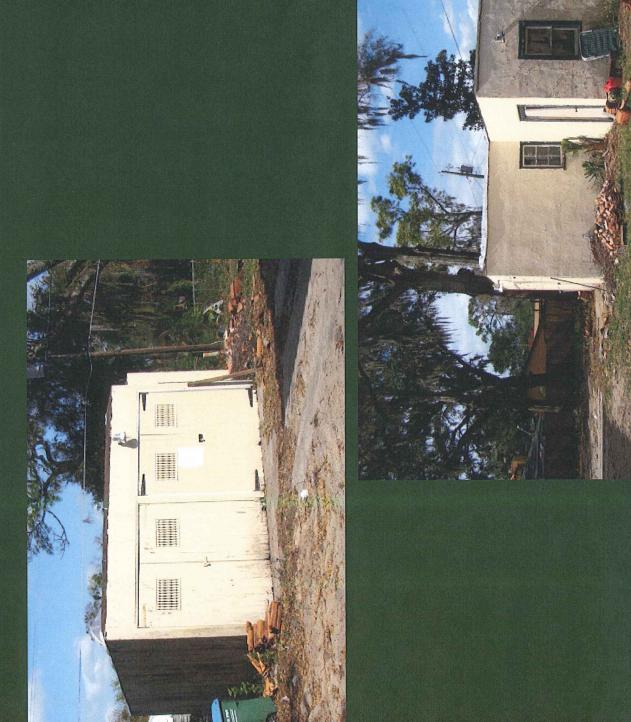


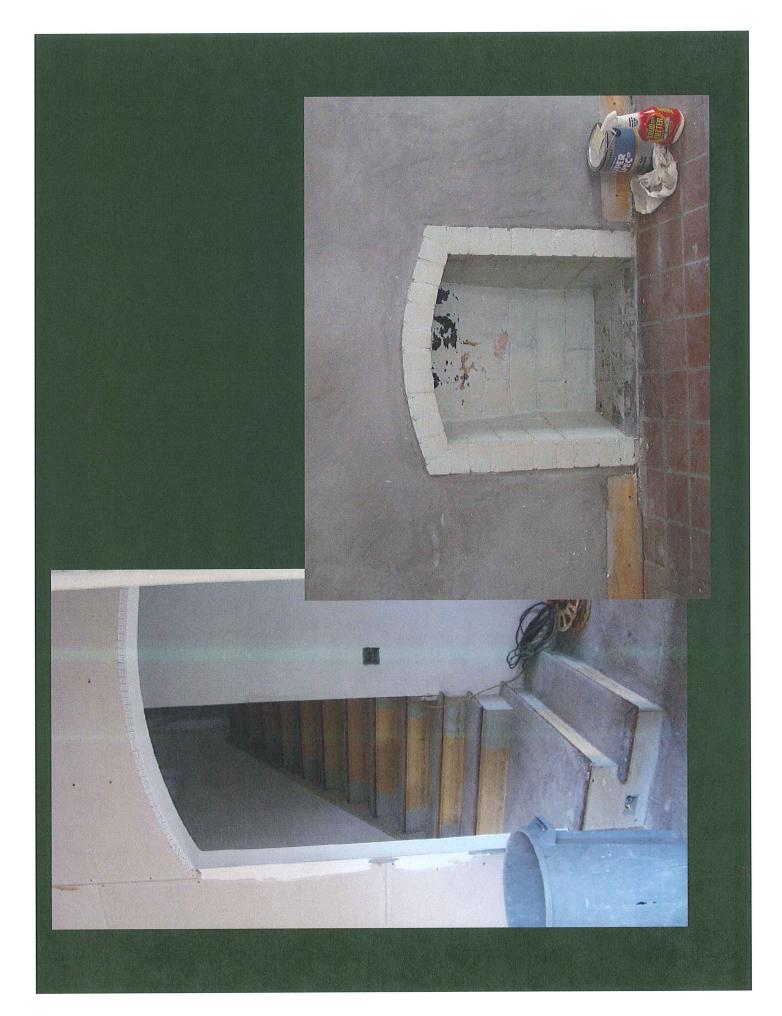


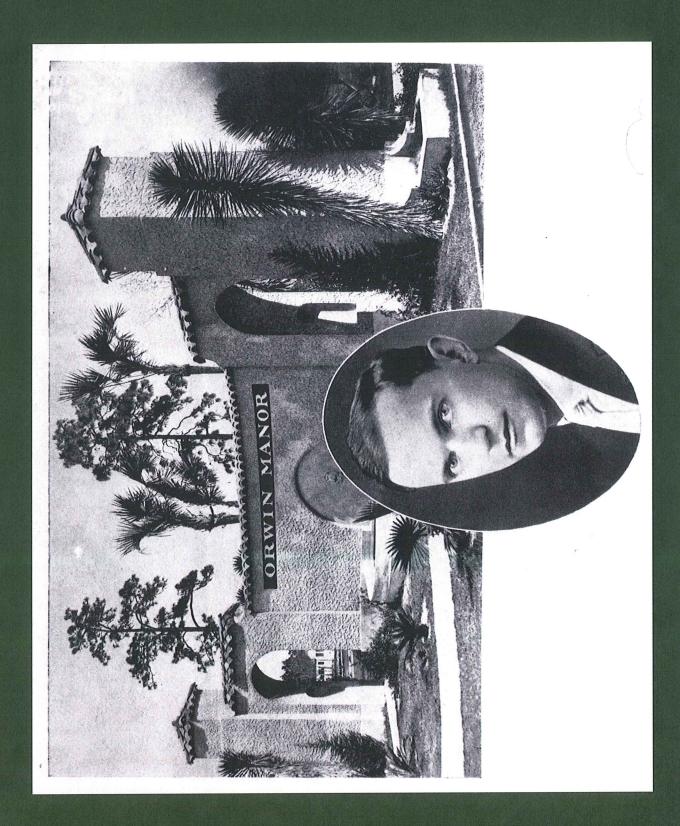












Page 1 of 1 1509 N Orange Ave

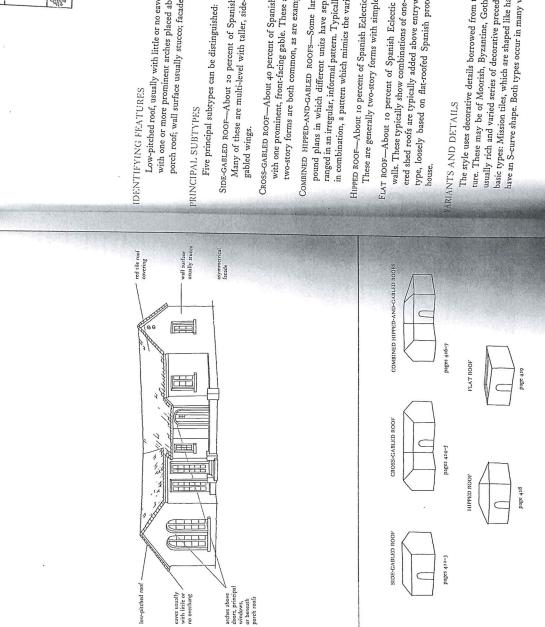
Parcel Photos - 1509 N Orange Ave



BEFORE REHABILITATION

292212643207110 02/13/2007

PRINCIPAL SUBTYPES



Spanish Eclectic

1915-1940

ECLECTIC HOUSES

Low-pitched roof, usually with little or no eave overhang; red tile roof covering; typically with one or more prominent arches placed above door or principal window, or beneath porch roof; wall surface usually stucco; facade normally asymmetrical.

Many of these are multi-level with taller, side-gabled sections bounded by lower, side-SIDE-GABLED ROOF—About 20 percent of Spanish Edectic houses have side-gabled roofs.

CROSS-GABLED ROOF—About 40 percent of Spanish Eelectic houses have cross-gabled roofs with one prominent, front-facing gable. These are usually L-plan houses; one-story and two-story forms are both common, as are examples with wings of differing heights.

COMBINED HIPPED-AND-GABLED ROOFS—Some landmark examples have rambling, compound plans in which different units have separate roof forms of varying heights arranged in an irregular, informal pattern. Typically both hipped and gabled roofs are used in combination, a pattern which mimics the varied roof forms of Spanish villages.

HIPPED ROOF—About 10 percent of Spanish Eclectic houses have low-pitched hipped roofs. These are generally two-story forms with simple rectangular plans.

FLAT ROOF-About 10 percent of Spanish Eclectic houses have flat roofs with parapeted walls. These typically show combinations of one- and two-story units. Narrow, tile-covtype, loosely based on flat-roofed Spanish prototypes, resembles the Pueblo Revival ered shed roofs are typically added above entryways or projecting windows. This sub-

usually rich and varied series of decorative precedents. The typical roof tiles are of two basic types: Mission tiles, which are shaped like half-cylinders, and Spanish tiles, which The style uses decorative details borrowed from the entire history of Spanish architecture. These may be of Moorish, Byzantine, Gothic, or Renaissance inspiration, an unhave an S-curve shape. Both types occur in many variations depending on the size of the

Eclectic Houses: Spanish Eclectic

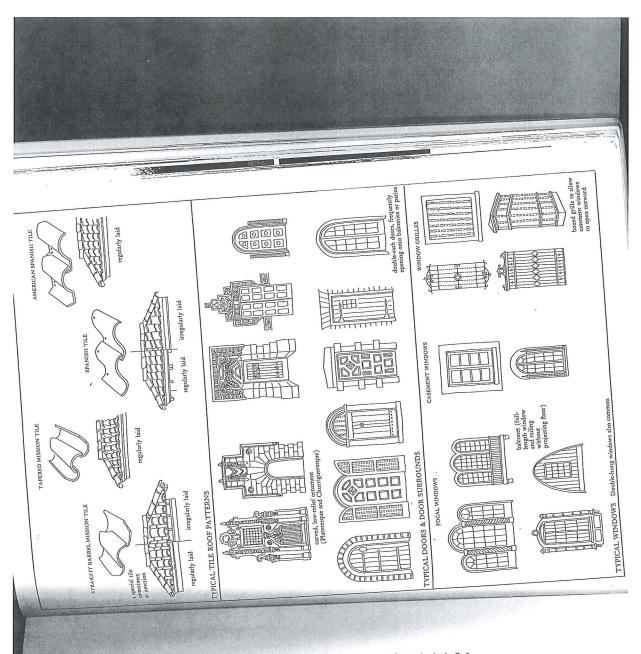
tiles and the patterns in which they are applied. Dramatically carved doors are typical of Spanish architecture; these are more common on high-style Spanish Eclectic houses but also occur on modest examples. Doors are usually emphasized by adjacent spiral columns, pilasters, carved stonework, or patterned tiles. Less elaborate entrance doors of heavy wood panels, sometimes arched above, are also common. Doors leading to exercior gardens, patios, and balconies are usually paired and glazed with multiple panes of recrangular glass. Many examples have at least one large focal window. These are commonly of triple-arched or parabolic shape and may be filled with stained glass of varying design. Decorative window gilles of wood or iron are common, as are similar balustrades on cantilevered balconies, which occur in a variety of shapes and sizes. Other typical details include tile-roofed (and otherwise decorated) chimney tops; brick or tile vents; fountains, arcaded walkways (usually leading to a rear garden); and round or square towers.

OCCURRENCE

Spanish Eclectic is most common in the southwestern states, particularly California, Spanish Eclectic and Texas, and in Florida, all regions where original Spanish Colonial building occurred and continued into the 19th century. Landmark houses in this style are rare outside of Florida and the Southwest but, as in the related Mission style which preceded it, scattered vernacular examples are found in suburban developments throughout the it, scattering the 1920s, many new communities in Florida and southern California country. During the 1920s, many new communities in Roicida and southern California fornia) sought to affect a Spanish Colonial image.

COMMENTS

Domestic buildings of Spanish precedent built before about 1920 are generally free adapDomestic buildings of Spanish precedent built the Panama-California Exposition, held in
rations in the Mission style. It was not until the Panama-California Exposition, held in
San Diego in 1915, that precise imitation of more elaborate Spanish prototypes received
San Diego in 1915, that precise imitation of more elaborate Spanish prototypes received
wide attention. The exposition was designed by Bertram Grosvenor Goodhue, who had
previously authored a detailed study of Spanish Colonial architecture. Goodhue wanted
to go beyond the then prevalent Mission interpretations and emphasize the richness of
Spanish precedents found throughout Latin America. Inspired by the wide publicity
given the exposition, other fashionable architectus soon began to look directly to Spanish
cource material. There they found a still longer and richer sequence of architectural trasource material. There they found a still longer and richer sequence of architectural trasource material. Because of, its broad roots we prefer the more inclusive name Spanish
fielectic. The style reached its apex during the 1920s and early 1930s and passed rapidly
from favor during the 1940s.



Clerk's No. 163207

THIS INDENTURE, Made this fourth day of June A.D. 1926 BETWEEN CENTRAL FLORIDA DEVELOPMENT COMPANY, a corporation existing under the laws of the State of Florida having its place of business in the County of Orange and State of Florida, party of the first part, and Edith 1. Babcook of the County of Orange and State of Florida, party of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of Ten and no/100 and other valuable considerations Dollars, to it in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part and her heirs and assigns forever, all that certain parcel of land, lying and being in the County of Urange and State of Florida more particularly described as follows:

Lot No 11 and South 35 feet of Lot 10 of Block 7 of Orwin Manor, according to Plat Book J, Page 118, Records of Orange County, Florida.

The above lot or parcel of land is sold subject to following restrictions:

1. That no unlawful or immoral use shall be made of the premises hereby agreed to be conveyed nor shall the same nor any part thereof, nor any interest therein, be sold, leased or otherwise conveyed to any person other than of the Caucasian race, provided that nothing herein contained shall prevent the keeping and maintaining of servants on the said property for reasonable family use.

- 2. That the Grantee his heirs or assigns, shall at no time erect any dwelling on the above described premises costing less than \$ 7,500.00 and that no part of said dwelling or any other structure shall be within 30 feet of the front property line of said premises and that such dwelling shall face upon Orange Avenue.
- 3. No building shall be constructed or erected on any of the above lots in Orwin Manor until after the plans, specifications and location of same shall have been approved by the CRANTOR, its successors or assigns.
- 4. No garage or other outbuilding shall be used for residential purposes until the main residence shall have been erected.
- 5. No outside toilet shall be permitted in any part of said orwin manor, but there shall be constructed by said Grantee in connection with any residence on any of said lots a septic tank in accordance with specifications approved in writing by GRANTOR.
- 6. The privilege is hereby reserved to the Grantor, its successors or assigns, to erect and maintain electric and telephone poles, and suitable equipment for any other utilities and lay water mains on or in the rear three feet of the land hereby conveyed or on or in the three foot strip along the side lines thereof, when necessary to gain access to the three foot strip reserved along the rear lines of lots in Urwins manor for utility purposes, and for such purposes as well as to repair, remove or replace said poles, equipment and mains, the said GRANTOR shall have the right for itself, its agents and employees to enter upon said premises in reasonable manner and at reasonable times.
- 7. The lots hereinabove described shall not at any time be sub-divided nor sold except each lot as a whole, but this restriction shall not prevent the GRANTEE from conveying any part of said lot or lots to theowner or owners of lots adjoining the lot or lots hereby agreed to be conveyed.
- 8. The GRANTOR, ith successors or assigns shall have the right from time to time to release any of the above or foregoing restrictions, conditions or limitations by sealed instrument duly executed in accordance with the ways of the State of Florida, for the conveyance of real state.

- 9. No servant's quarters, garages or outbuildings of any kind or nature, excepting only garden and ornamental landscape structures, shall be erected or constructed on the lot or lots hereinabove described, excepting on that portion of the lot to the rear of the house and on the inside portion of corner lots.
- 10. No horses, cows, cattle, or hogs shall be kept or raised on SAID LANDS, and no poultry shall be kept within 100 feet of any sidewalk line.
- 11. No bill boards, outdoor advertising, display or other signs of any kind shall be constructed, erected used or placed upon the land hereby conveyed without the express written consent of the Grantor, its successors or assigns.
- 12. No fence or fence walls of any kind shall be constructed or maintained in or around any portion of the said lands except that portion to the rear of the back line of the house, provided, that on corner lots no fence or wall shall be constructed or maintained closer to the side street than the side of the house. Coping of ornamental design, approved by the Grantor, not more than eighteen inches in height, may be used in lieu of fences.
- 13. The above described premises shall be used only for residential purpose, and not more than one one-family residence and one private garage shall be erected on the lot or each of the lots hereinabove described. Nothing herein contained, however, shall prohibit the construction or erection of servant's quarters in connection with the garage on SAID LAND, but it is expressly understood that no such servant's quarters, garage or other outbuildings shall be constructed prior to the construction of the main house as shown on plans, specifications and location approved by the Grantor.
- 14. That said premises or any buildings erected thereon shall not for a period of thirty years from date be used or occupied for the purpose of any trade, manufacturing, or business of any description, nor as a public school, hospital or charitable institution.

It is mutually agreed by and between the parties as a part of the consideration of this instrument that the breach of the foregoing restrictions shall work a forfeiture of this contract, and the rights herein provided for, and the said above described premises shall automatically revert to the Grantor and the Grantor shall have the right to re-enter and repossess said property, or at its option the Grantor shall have its remedy by injunction to compel the observances of said restrictions; reservations in this provision shall be inlouded in Deed and shall inure to the benefit of all subsequent grantees who afterwards become grantors, and shall be a covenant running with the land.

TOCETHER with all the tenements, hereditaments and appurtenances, with every privilege, right title, interest and estate, reversion, remainder and easement thereto belonging or in anywise appertaining; TO HAVE AND TO HOLD the same in fee simple forever.

And the said party of the first part doth covenant with the said party of the second part that it is lawfully seized of the said premises; that they are free of all incumbrances, and that it has good right and lawful authority to sell the same; and the said party of the first part does hereby warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed in its name by its President and its corporate seal to be afrixed, the day and year above written.

CENTRAL FLORIDA DEVELOPMENT CO.

(Corporate Seal)

By Walter W. Rose

President.

Signed, sealed and delivered in our presence:

Anna L. Rhodes

Madeline Rogers

STATE OF FLORIDA SS COUNTY OF ORANGE

I HEREBY CERTIFY, That on this 4th day of June, A.D. 1926, before me personally appeared Walter W. Rose President of CENTRAL FLORIDA DEVELOPMENT COMPANY, a corporation under the laws of the State of Florida, to me known to be the person described in and who executed the foregoing conveyance to Edith 1. Baboock and who acknowledged the execution thereof to be his act and deed as such officer for the uses and purposes therein mentioned; and that he affixed thereto the official seal of said Corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at "rlando in the County of Orange and State of Florida, the day and year aforesaid.

Anna Laura Rhodes (SEAL)

BY

Notary Public for the State of Florida at large,

(Notarial Seal)

My commission expires Oct. 8 , 1929.

Filed in office and recorded this 28th day of July, A.D. 1926, at 4;20 P.M

AMMAissay Clerk

Clerk s No. 163174.

THIS INDENTURE, Made the 3rd day of April in the year of our Lord one thousand nine hundred and twenty-six, between S.E. Mote and Bessie E. Mote, his wife, Elizabeth A. Mote, (widow), Mabel E. Mote, (single), all of Darke County, Ohio; John H. Mote, (single), of

Lassen County, California; W. Edgar Mote, (single), Zerelda Mote (widow), Myrtle A. Fuller and Frank S. Fuller, her husband, Hazel Brown and George 1. Brown, her husband, Mary Berande and Eugene Berande, her husband, of Alameda County, California; Alvin J. Mote and Anna W.K. Mote, his wife, of Dade County, Florida, heirs at law of Joseph Mote, deceased, parties of the first part, and Walter H. Mote, of Charlotte County, Florida, party of the secondpart; WITNESSETH: That the parties of the first part, for and in consideration of the sum of one dollar and other valuable considerations, lawful money of the United States, to them in hand paid by the party of the second part at or before the ensealment and delivery of these presents, the receipt whereos is hereby acknowledged have granted, bargained, sold, aliened, remised, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and his heirs and assigns forever all that certain lot, tract or piece of land lying and being in the County of urange State of Florida, described as follows:

Being all of Blocks 10, 31, 32 and 33 and Lots 1, 2 and 3 in Block 30, in Tyner's Platte of Pinecastle.

Also the NW% of the NW% and the NB% of the SW% and the NW% of the SW% and the SB% of the SW of Section twenty-seven (27) Township Twenty-four (24) South, Range Twenty seven (27) East;

(The grantors and the grantee herein being the sole and only heirs at law of Joseph Mote, deceased, and all being over the age of twenty-one years)

together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise apportaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and also all the estates, rights, title, , interest, dower and right of dower, separate estate, property, possession, claim and demand whatsoever as well

1509 Orange Ave. Winter Park

1509 Orange Ave. was one of the two first houses built in this block of Orwin Manor. The other, three or four lots to the west, was the "Moorish" specimen at 1565, built at about the same time and first owned by my parents, Mr.& Mrs. Howard A. Gross. We moved in early in 1927, when I was four years old, and I lived at 1565 until 1942. My younger brothers, George and Leroy (b.1932) lived there longer than I. Our mother was there until 1972.

1509 was incomplete in 1927. As was the case with many houses at the collapse of the Boom, construction apparently had been interrupted short of completion. Certainly there was no garage at that time. I believe the room above the portecochiere was a later addition also.

1509 was occupied by a series of families, I think as a rental property, for a number of years. Some occupants were there only briefly, and I believe there were a few periods when it stood empty. I never heard who the owner was during that time.

One family that lived there quite early may have been named Terry. I am certain they had a daughter about my age, because she once gained my attention quite forcibly, with a toy hammer.

Another family that lived at 1509, perhaps the first, was named Babcock. They had at least one son, named Friedland (Freeland?), and older sons or cousins. The Babcocks kept chickens in a coop out back. The rooster of the flock had a nasty disposition and a bad attitude toward small boys. I entered the chicken coop only once. Later, the chicken coop disappeared and a garage was built.

At one time the portecochiere at 1509 was graced by the presence of a large touring car with a strange front end. This was a Franklin, and I learned that air-cooled motors don't have radiators. I don't remember who lived there then, but I thought they must be affluent.

1509 Orange Ave. Winter Park

During part of the thirties, 1509 was occupied by the family of Harlow G. Frederick, a realtor in Orlando. There were three or four daughters; one was named Audentia, another Bettye. There was one snn, Harlow, Jr., about my age. I believe the Frederick real estate operation was continued in later years by some or all of the Frederick children.

Later on, 1509 was occupied by Dean Nance of Knowles Chapel at Rollins, and his family. Still later, in the mid-forties (after I was gone), the McCords lived there, with two daughters. They may have been there at the time of my fathers death in 1969.

1509, like 1565, had an unusual feature for houses of this period. In addition to fireplaces, there was a small cellar with a wood-burning furnace delivering hot air by natural convection thru registers in the first floor. In very cold weather this system did little good upstairs. I suppose at some time it was converted to oil as fuel with forced convection through ducts, but I do not remember when.

In 1928 or 1929, another house was built just east of 1509. This was built by a carpenter from Ohio, Mr. Guest, with his own hands. I thought it remarkable that a man could build a house all by himself. He wouldn't let me help.

These three houses, 1509, 1565, and the Guest house, were the only ones on this block until about 1940. The rest of the block contained tall pine trees (good for stringing antenna wires), a few good oak climbing trees, and many sandspurs. There was also bare ground where extensive earthworks had been thrown up by small boys, in the course of various wars. Some tunneling was attempted between 1509 and 1565 now and then, but parental panic always stopped those projects early.

After the war ($\mbox{WW II}$), houses erupted rapidly on the block. The bare ground andmost of the trees now are gone.

John H. Gross

John H Gorn 9 November 1986

item type	Public Hearing	meeting date	April 23, 2012
prepared by department division	Jeff Briggs Planning Department	approved by	■ City Manager□ City Attorney□ N A
board approval	Planning and Zoning Board	☐ yes ☐ no ☐	N A 5-0 final vote

Subject: Subdivision/Lot Split at 1200 Howell Branch Road

This item is a subdivision or lot split request by Mr. Barry Render for the property at 1200 Howell Branch Road to split the property into two single family lots and provide for special setbacks.

Recommendation:

The Planning and Zoning Board voted 5-0 to approve the lot split and establish 15 foot rear setbacks and 5 foot side setbacks on the interior/common property line. P&Z approved the request with the condition that the resultant house plans be subject to review and approval by the Planning Board following notice to neighbors prior to issuance of building permits.

Summary:

This property at 1200 Howell Branch Road is the second house east of the corner of Via Tuscany. There are four single family homes in this "block". The property has 165 feet of lot width or frontage and a lot size area of 13,700 square feet.

Purpose for the Request: The applicant, Barry Render owns the large 2.2 acre property to the rear (south) at 2630 Via Tuscany. Mr. Render bought this property at 1200 Howell Branch Road with an existing house in a deteriorated condition because of problems with previous renters in the house and so that someone would not buy it and just 'band-aid' the house and put more problem tenants in there. In this way he could control its destiny and its effect upon his property. However, now that he owns the property, Mr. Renders does not feel (and staff concurs) that this is an economically viable location for a new 3,000-4,000 square foot home on Howell Branch Road with 39,000 cars a day going by. Mr. Render's idea is to build two small one story homes of about 1,500 sq. ft. in size.

Technically the R-1AA zoning requires 100 feet of lot width and 10,000 square feet of lot area. A subdivision variance is requested for the respective lot widths of 82.5 feet and lots areas of 6,850 square feet. There are many other 75-90 foot wide lots in this area fronting on Howell Branch Road.

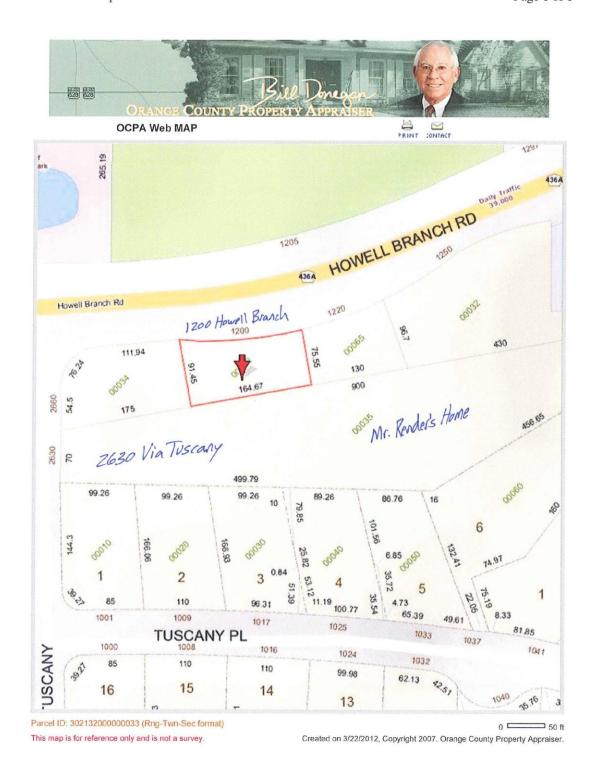
The lot shape (long and narrow) presents problems with respect to the physical layout for two homes. This subdivision process also allows the specific building setbacks to be permitted as a condition of the approval. The original plans presented to P&Z contemplated two attached homes with zero setbacks between the lots. There were three neighbors at the P&Z meeting that objected to this particular development plan since it was, in effect, a duplex. The P&Z Board after discussions with the applicant and neighbors agreed that two "stand alone" new homes would be a better result.

P&Z further agreed that the new homes would meet the required front setback of 25 feet and also meet the standard side setbacks to the adjacent properties on either side. However, due to the shape of the property, it was agreed that the rear setback could be the same 15 feet that exists for the existing home to be demolished (since only Mr. Render is affected) and that the two homes could utilize a 5 foot side setback to the new interior common lot line (as only the homes are affected).

Staff Recommendation:

In the past every time one of these four properties in this "block" has come up for sale, the planning staff gets repeated phone calls asking about rezoning possibilities to office. The surrounding neighbors have always been adamantly opposed to any rezoning to office. As a result, the staff viewed this request very positively. The construction of two new homes will demonstrate that single family residential is still a viable use, even along this very busy road. There is no negative effect upon the adjacent neighbors from the special setbacks established, except for the applicant's property.

OCAP Web Map Page 1 of 1



March 1, 2012

To the Winter Park Planning and Zoning Commission:

My name is Barry Render and I am a long time Winter Park resident who has lived at my home at 2630 Via Tuscany for over 20 years. I retired about 3 years ago from being a professor in Rollins' MBA program, which I joined in 1989. My wife, Donna, is a 3rd generation Orlando native who also has roots here. One of our sons graduated from Winter Park High School last year, and our youngest starts there next fall.

For the past decade, we have carefully watched the sad denigration of a property at 1200 Howell Branch that borders our home. It has been vacant for several years, but prior to that housed first, drug dealers, and then, violent sexual predators. Most recently, while bank-owned, squatters occupied the dilapidated house, living without electricity and somehow tolerating the mold and rotted windows and doors.

After a long period of debate, we decided to buy the property from the bank. Our goal is to tear down the existing 1,000 square foot bunker-style building, and to redevelop the property with an attractive new building that will increase the city's tax base and bring quality tenants who appreciate the wonderful city we live in.

We come to your group to request permission to split the 165 foot wide lot into two equal parts and to build a duplex which would span the two lots. The new building would be approximately 3,000 square feet in total, with 3 bedrooms and 2 baths, plus a 2 car garage in each unit. We intend to own the property and manage it ourselves, as it adjoins our own home.

We believe it is not economically feasible to build a large \$400,000 single family residence on Howell Branch, as the street is noisy and has traffic of 30,000 or so cars per day. But we do want to invest in our neighborhood and make the area a more attractive residential block. We believe our neighbors will provide written support of this variance in the city's code.

Thank you for your consideration.

Barry and Donna Render

To the Winter Park Planning and Zoning Commission

Support for the demolition of the house at 1200 Howell Branch Road and splitting of the property into two parcels, each buildable with one house.

I am in favor of the proposal of Donna and Barry Render to change the land use to allow for the lot to be split and for two homes to replace the current structure.

Name (printed)	Signature	Addre	SS
Mary J. Lir	Suev Man	g). Findnes	2660 Na JUSCIENCY WEP. 32789 1220 HOWELL Br. Rd. 32789 2615 VIN TUSCANY, WP. 32789
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Stacey Hectus

From: Sent:

Jeffrey Briggs

To:

Friday, March 30, 2012 10:57 AM

Stacey Hectus

Subject:

Fw: 1200 Howell Branch Rd.

Send out to P-Z. Jeff Briggs

Sent from my BlackBerry Wireless Handheld

From: Pauline Sanfilippo [mailto:PSanfilippo@unipak.com]

Sent: Friday, March 30, 2012 10:50 AM

To: Jeffrey Briggs

Cc: 'Planning&Zoning' < Commission@cityofwinterpark.org >

Subject: 1200 Howell Branch Rd.

Dear Mr. Briggs:

We reside at 1033 Tuscany Place and also, own the property abutting to the east, 1037.

As property owners in this neighborhood, we oppose the requested splitting of the property at 1200 Howell Branch Road into two parcels. This would result in lot sizes approximately 68% of the required 10,000 sq. ft. minimum and would, most likely, require other variances for construction.

We, also, oppose the construction of a duplex on this property. Through the years, residents have opposed multi-family, commercial, assisted living, etc. zoning. (RE: Clayton Property)

Hoping the commission will deny requested variance.

Edward A. Coutant Eleanor P. Coutant

To: City Of Winter Park Planning and Zoning Board

From: Richard and Yuki Clarke

Concerning: Request for Zoning Variance at 1200 Howell Branch Road

To the Planning Board,

This letter is to provide our opposition to the idea of creating a subdivided lot at 1200 Howell Branch Road.

Although there may be good reasons to subdivide the lot, and to gain two incomes from the property, this is not a unique situation. There are other properties in the area that could be restructured to provide greater income. Setting this precedent would make it much more likely that other property owners would pursue similar subdivisions. This is especially true considering that the proposed unit is a multi-family home, needed to squeeze the two units onto the small lot.

It is precisely to prevent such subdivisions, and multi-family homes, that the zoning ordinances are in place. It is generally understood that smaller homes on smaller lots, and multi-family units have a deleterious effect on the aesthetic and financial value of a traditionally single family unit neighborhood.

With due consideration, we believe that allowing for this variance would likely harm the long-term value of the adjacent homes, and the nearby communities.

As owners of a home on Tuscany Place, directly behind the 1200 Howell Branch Road property, we oppose the variance. We believe that the owners of 1200 Howell Branch Road have other choices that can help them offset the cost of their investment, without setting a precedent that would provide strong precedent for others to pursue subdividing their property, or building multi-family housing.

Thank you for your consideration.

Sincerely,

Richard and Yuki Clarke

1025 Tuscany Place

Winter Park, Florida 32789

Dr. Paul E. Schmid 1000 Tuscany Place Winter Park, FL 32789 RECEIVED
MAR 2 9 2012

CITY OF WINTER PARK PLANNING DEPARTMENT

City of Winter Park Planning and Zoning Commission 401 Park Avenue South Winter Park, FL 32789

Attention: Jeff Briggs

26 March, 2012

Dear Mr. Briggs,

Last week a Mr. Barry Render approached me to endorse a petition to obtain a variance to subdivide a lot he recently purchased at 1200 Howell Branch Road, Winter Park. At first the proposal seemed reasonable, so I agreed to sign his petition. However, after talking to neighbors who would be directly affected by the lot subdivision, I have changed my mind. My neighbors on the North side of Tuscany Place feel that a lot subdivision requiring a variance for smaller lot sizes would negatively affect their property values and quality of life. As a 23 year resident of the Tuscany Place neighborhood, I feel it is important to support my Tuscany Place Homeowners Association neighbors in requesting that this variance for lot subdivision be denied. I hereby withdraw my pervious endorsement of Mr. Render's proposal to obtain a variance to subdivide the lot at 1200 Howell Branch Road.

The City Commission is scheduled to rule on this issue at their meeting on Tuesday, April 3, 2012. I would urge the commission to deny this request for a variance.

Sincerely,

Dr. Paul E. Schmid

Paul & Schmid



PUBLIC NOTICE

NOTICE is hereby given that a public hearing will be held by the Planning and Zoning Commission of the City of Winter Park, Florida on Tuesday, April 3, 2012 at 7:00 p.m. in the Welcome Center/Chamber of Commerce Building at 151 W. Lyman Avenue and by the City Commission on Monday, April 23, 2012 at 3:30 p.m. in the Winter Park Civic Center at 1050 W. Morse Boulevard, Winter Park, Florida, to consider the following PUBLIC HEARINGS:

REQUEST OF CNL COMMERCIAL REAL ESTATE FOR: CONDITIONAL USE APPROVAL UNDER THE LARGE BUILDING AND DRIVE-IN ORDINANCES TO CONSTRUCT A THREE STORY, 85,000 SQUARE FOOT, OFFICE BUILDING ON THE SITE OF THE FORMER STATE OFFICE BUILDING AT 941 W. MORSE BOULEVARD, ZONED (O-1).

REQUEST OF MR. BARRY RENDER FOR: SUBDIVISION APPROVAL TO SPLIT THE PROPERTY AT 1200 HOWELL BRANCH ROAD INTO TWO SINGLE FAMILY LOTS, ZONED R-1AA. A VARIANCE IS REQUESTED FOR THE RESPECTIVE LOT WIDTHS OF 82.5 FEET IN LIEU OF THE REQUIRED 100 FEET AND LOTS AREAS OF 6,850 SQUARE FEET IN LIEU OF THE REQUIRED 10,000 SQUARE FEET.

REQUEST OF ALL SAINTS EPISCOPAL CHURCH FOR: CONDITIONAL USE APPROVAL TO EXPAND THE CHURCH'S EXISTING PARKING LOT ON E. LYMAN AVENUE ONTO THE PROPERTIES AT 388 E. LYMAN AVENUE AND 421 E. FAIRBANKS AVENUE, ZONED (R-4).

All interested parties are invited to attend and be heard. Additional information is available in the Planning Department so that citizens may acquaint themselves with each issue and receive answers to any questions they may have prior to the meeting.

NOTE: If a person decides to appeal any decision made by the Commission with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (F.S. 286.0105). Persons with disabilities needing assistance to participate in any of these proceedings should contact the Planning Department at 407-599-3453 at least 48 hours in advance of the meeting.

we are offosed to splitting
the lot into 2 parcels

Paid Rhinehast
1041 Tuscany Ph-

/s/:

Cindy S. Bonham, CMC City Clerk

PUBLISH: Thursday, March 15, 2012, Orlando Sentinel



CITY OF WINTER PARK Planning & Zoning Board

Regular Meeting Welcome Center April 3, 2012 7:00 p.m.

MINUTES

Acting Chair Mrs. Whiting called the meeting to order at 7:00 p.m. in the Welcome Center. Present: Acting Chair Sarah Whiting, Tom Sacha, Peter Gottfried, Randall Slocum and Robert Hahn. Absent: Chairman Drew Krecicki, George Livingston and James Johnston. Staff: Planning Director Jeffrey Briggs, and Recording Secretary Lisa Smith.

REQUEST OF MR. BARRY RENDER FOR: SUBDIVISION APPROVAL TO SPLIT THE PROPERTY AT 1200 HOWELL BRANCH ROAD INTO TWO SINGLE FAMILY LOTS, ZONED R-1AA. A VARIANCE IS REQUESTED FOR THE RESPECTIVE LOT WIDTHS OF 82.5 FEET IN LIEU OF THE REQUIRED 100 FEET AND LOTS AREAS OF 6,850 SQUARE FEET IN LIEU OF THE REQUIRED 10,000 SQUARE FEET.

Planning Director Jeffrey Briggs said that this item is a subdivision or lot split request for the property at 1200 Howell Branch Road to split the property into two single family lots. He gave the Board an overview of the request as far as site and context; the purpose of the request, zoning history, and the effect on the neighbors. He summarized by stating that staff is pleased that Mr. Render has purchased this property and desires positive redevelopment to the existing deteriorated structure. The property shape poses hardships with respect to the building setbacks and the property location on busy Howell Branch Road justifies the lot size variances. Staff recommended approval for the subdivision split into two lots and the establishment of the building setbacks as requested per the attached plans. Mr. Briggs responded to Board member questions and concerns.

Barry Render, the applicant, 2630 Via Tuscany, provided Board members with the history of the subject property, known to many as the "predator" house. He stated that there have been so many problems over the years with undesirable renters in this house that he decided to buy it so that this property would not be a nuisance to the neighborhood. He also responded to board member questions concerning vehicular movement for the proposed project.

Jim Koegh, 1024 Tuscany Place, stated that he is opposed to the redevelopment proposal presented by the applicant because the plans are essentially for a duplex. he stated that he is pleased Mr. render has bought the property but he cannot support what is in effect a duplex as this would be precedent setting and it would have a negative impact on the surrounding residential neighborhood property values.

Edward Coutant, owner of 1033 and 1037 Tuscany Place, opposed the zero lot line part of this request (duplex) and said he feels that he would look out of character for the neighborhood.

Paul Morgan, 1056 Tuscany Place, expressed concern with if the request is approved, does it set a precedent.

Dee Morgan, 1056 Tuscany Place, requested clarification that the property will remain R-1AA.

Mr. Render spoke again and said that he and his neighbors are great friends and that he is not offended that they are in opposition. He indicated his willingness to construct two smaller "stand alone" single-family Planning & Zoning Board

Page 1

April 3, 2012

residences as he is not married to the attached homes concept. He asked for some relief on the setbacks between the two new houses if the lot split is granted. He said that he is financially not able to construct a bigger home at this time.

No one else wished to speak concerning the request. Public Hearing closed.

The Board members discussed the pros/cons of the applicant's proposal. Mr. Sacha said that he feels that the issue should be tabled in order to allow the applicant an opportunity to come back with more substantive plans for the property. They discussed the pros/cons of the applicant's proposal to construct two smaller homes, the requested setback variances and traffic circulation for the property. Mr. Briggs noted that the lot split could be approved and the applicant is required to go thru the P&Z public process for the home design via the site plan review process, as we have done this many times in the past. That way the neighbors will see the exact homes to be built and can voice any concerns they have at that time.

Motion made by Mr. Gottfried, seconded by Mr. Sacha to approve the lot split together with 15 foot rear and interior five-foot setbacks and that the house designs come back to P&Z for review and approval following public notice to the neighbors. Motion carried unanimously with a 5-0 vote.

NEW BUSINESS:

There were no items of new business.

There was no further business. Meeting adjourned at 9:22 p.m.

Respectfully submitted,

Lisa M. Smith, Recording Secretary

item type	Public Hearing	meeting date	April 23, 2012
prepared by department division	Jeff Briggs Planning Department	approved by	City ManagerCity AttorneyN A
board approval	Planning and Zoning Board	ges no g	N A 4-0 final vote

Subject: Conditional Use Approval for the Redevelopment of the State Office Building Property at 941 W. Morse Boulevard

This item is a request for preliminary conditional use approval by CNL Commercial Real Estate to redevelop the former State Office Building property at 941 W. Morse Blvd. with a new three story 88,366 square foot office building. It is a conditional use because it is over 10,000 square feet and because it has a drive-in teller component. A city-wide notice of the public hearings were mailed to all 14,500 households in the City as well as notices mailed to the property owners within 1,500 feet.

Planning Board Recommendation:

The Planning and Zoning Board voted 4-0 to recommend preliminary conditional use approval of the request subject to the following conditions:

- 1. That the dumpster is relocated to the rear of the property.
- 2. That the drive-in teller component be screened substantially from view from the property to the west (Bank First) and that the direction of the car traffic be reversed so that it is a one-way exit onto Morse Boulevard.
- 3. That the two parking spaces along Denning Drive at the northeast corner of the site/parking lot are eliminated in order to increase the landscape frontage and visual appeal of the site.
- 4. That the building height variance be approved as requested (4.5 feet) and that any variance needed for the building height screen wall for the rooftop AC/mechanical be also granted to match the specifications for the height of that equipment. The parapet will be equal or less than three feet and that the mechanical/AC equipment is to be screened and recessed from the edge for visual purposes. That the site be granted the minor parking variances to accommodate for the dumpster relocation, drive-in teller screening, increased landscaping on Denning and usable/leasable floor area of the building.
- 5. Relocation of the building approximately 2.5 feet to the west so that all floors of the building rotunda meet the 10 foot setback from Denning Drive.
- 6. That the street landscape strip be according to code which is 7 feet.

Project Summary:

Site and Context: The former State Office Building property at the NW corner of Morse Blvd. and Denning Drive is five acres in size. The existing 76,600 sq. ft. building will be demolished and the site redeveloped. The site is zoned office (O-1) and has a three story maximum height per the Comprehensive Plan. To the west is the Bank First building and to the north, the vacant 4.24 acre DMV property owned by the WP Village.

Property History: The City re-acquired this property and vacant building from the State of Florida in October 2005. On November 28, 2012 the City Commission after a formal process agreed to swap this property for the 'Progress Point' property at 1150 N. Orange Avenue. This conditional use request fulfills the commitments made by the applicant for the redevelopment of this property with a Class A office building.

Development Request: The application package for "preliminary" conditional use approval includes the detailed site plans, 3-D architectural perspective images of the building facades, conceptual landscape and storm water retention design, as required for the "preliminary" approval.

On the site plan, you will note there is no new development proposed (other than the existing driveway permitted to remain) within the 65 foot deep "tree conservation easement" along the Morse Boulevard frontage that was a condition to the sale to CNL. Those 17 existing mature oak trees will significantly screen the view of this new office building and drive-in teller component from the Morse Boulevard perspective. Thus, in order to give the project some visual 'presence' the new building is located at the minimum 10 foot setback from the Denning Drive property line.

Parking: There are 346 parking spaces provided (including the required handicapped spaces) which is slightly below the code requirements of one space for each 250 sq. ft. of "gross" building. It is important to point out that the parking ratio is calculated based on the "gross" 88,366 square foot building size. There is 12,360 sq. ft. devoted to lobby, restrooms, electrical rooms, mechanical rooms, elevator equipment room, stairwells, elevators, etc. that are not considered usable spaces. It is also important to point out that using the industry standard of "rentable' square footage - the 85,365 square feet actually used by tenants - the parking provided is in excess of one space for each 250 sq ft of "rentable" area. A typical efficiency in a multi-story office building like the one proposed is to have about 90% of the square footage as usable and the other 10% is core/mechanical, etc. The point is that the parking is more than adequate based on the "rentable" building dimensions. The staff's experience is that with the larger office buildings in the City, the parking code tends to over-park because of the larger amounts of floor space not usable by employees/visitors. This is not apparent in smaller office buildings but when you look at larger building like Bank First, Commerce National Bank, Mercantile Bank, SunTrust, etc. one sees a surplus of parking. However, in the eyes of the applicant and in the world of competitive office leasing there is no such thing as too much parking.

Building Height: The zoning code height limit for properties zoned office (O-1) prior to 2009, was 55 feet of building height to the roof plus a 5 foot parapet wall. That is similar to the existing Bank First building height next door. In the 2009 LDC revisions the height was reduced to 42.5 feet for any three story building plus the 5 foot parapet. This is an effective visual height of 47.5 feet. The Code allows, as part of this conditional use approval process, up to a five foot variance. The applicant is requesting a 4.5 foot variance. The roof top parapet will be

three feet vs. the five feet allowed for an effective visual height of 50 feet. The two elements together then would change the visual height by 2.5 feet. The applicant's submittal shows how this height change enhances the internal 'floor to ceiling' heights. It allows the building to transition from 9 foot floor to ceiling heights internally on all three floors to 10-12 foot tall floor to ceiling heights. That is what is being requested so that the internal floor to ceiling heights befit a Class A office building. Staff supports this variance request since the City's goal in this process has been to encourage the redevelopment of this property into a Class A office site. It also is less than the visual height of the adjacent Bank First building.

Architectural Elevations: The elevations befit an attractive Class A office building. There is ample articulation of the building facades. The round architectural features meet the code limit of eight feet maximum above the roof height. In order to break up long continuous building facades, the code requires the third floor to be terraced back when a building exceeds 200 feet of length (in this case 280 feet along Morse Blvd.). However, in this circumstance, with the extensive screening of the existing oak trees along Morse Blvd. that design feature is not necessary to be implemented. The building frontage length along Denning Drive is 110 feet.

Tree Preservation: As mentioned previously, there are 17 existing oak trees totaling 403 inches that are being preserved in the "tree conservation easement" area. There are 14 other oak trees totaling 202 inches (depending upon the condition of the tree) that will be either replanted on-site, as part of the new landscape plan package (submitted for the "final" conditional use approval) or compensated via the 'fee-in-lieu'.

Storm Water Retention: The site currently has no storm water retention and all the rainfall runoff goes directly into the street drainage system and then into Lake Island. The redevelopment of this property will retrofit the site to conform to the storm water retention requirements of the City and St. Johns River Water Management District. This will greatly enhance water quality. The soil borings demonstrate that the conceptual design to use an underground ex-filtration system will work on this site. The detailed plans and design and calculations are submitted for the "final" conditional use.

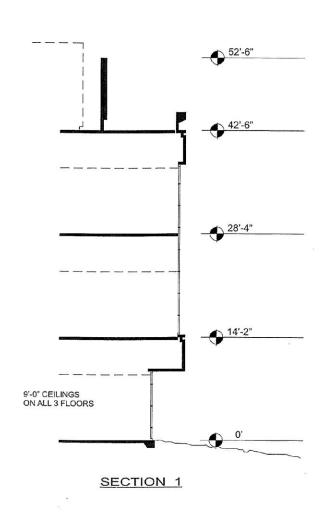
Landscaping: Overall with the "tree conservation area" this project greatly exceeds the landscaping/pervious area requirements. The maximum impervious coverage per code is 85% and this project is 80% impervious. For this five acre site that translates into 10,890 square feet of added 'green' area compared to minimum code requirement. As a result, the parking lot landscape areas are slightly less in size than code, with the internal landscape islands at 10 feet wide versus 12 feet and the street edge landscape strip at 5 feet versus 7 feet. These could all meet code with the elimination of the pedestrian walkway thru the parking lot but that is a valuable pedestrian safety corridor. These are minor variances in the staff's opinion. The specific detailed landscape plan with types, sizes, quantities, etc is reviewed at the "final" conditional use step.

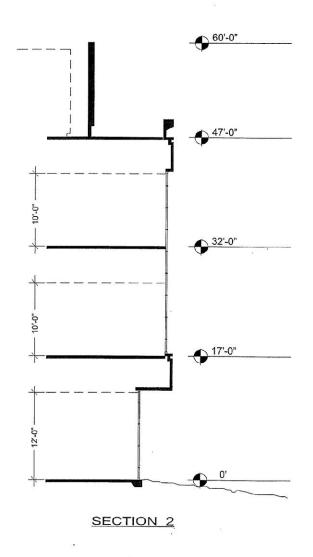
Drive-in Tellers: The site plan depicts two drive-in tellers for a CNL branch banking facility within the building. There will not be a "roll-out" deposit tray. All transactions will be thru the pneumatic tube. The desire is for some separation of the teller canopy from the building façade in order to maintain the visual appeal of that western façade. The primary reason for making drive-tellers a conditional use is to insure adequate stacking exists without backup queues that interfere with the parking lot circulation or into the street. The analysis of the stacking requirements for this CNL branch bank was based on actual counts on the peak day and time (Friday at the noon hour) for the CNL Bank at the Lawrence Center building on Knowles/Lyman Avenues in downtown. The peak queue in all teller lanes was one vehicle at any time. While we might expect more teller traffic in this location, it will still be minor as is customary with

'community' banks. Thus, the proposed configuration accommodates that maximum stacking for the peak period. One observation however, is that it might be better to reverse the traffic flow direction and have the exit onto Morse Blvd.

One design goal of the City along Morse Blvd. has been to screen drive-in tellers from view. The drive-in tellers at Bank First, Federal Trust and Regions Bank are all in the rear of the building. These proposed drive-in tellers will be screened from view from Morse Blvd. by the existing "tree conservation area. It is also important to accomplish that same end result with respect to screening from Bank First both visually and for sound protection. Staff will be suggesting a condition of approval that some of the parking immediately west of the tellers be converted to landscape area in order to accomplish that goal with the design and planting to be approved at the 'final' conditional use step. Any loss of parking to accomplish this will be minimal in the overall picture.

Other Site Issues: One minor issue is the location of the dumpster. To improve the view of the building and the view from Bank First, the staff is requesting relocation of the dumpster to a location in the back of the parking lot. The loss of 2-3 parking spaces for this will be deminimus.





SCALE: 1/8" = 1'-0"

MORSE BOULEVARD OFFICE BUILDING

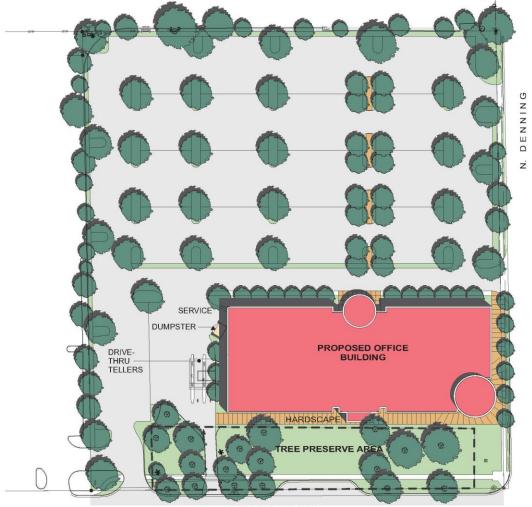
Winter Park, Florida March 21, 2012

CNL.

Preliminary Conditional Use Submittal Morse Boulevard Office Building prepared by: CNL Commercial Real Estate 420 S. Orange Ave., Suite 950 Orlando, FL 32801 March 5, 2012 CNL Commercial Real Estate



SITE PLAN



SITE DATA

Site Area +/- 5 Acres

Building Area 85,000 SF

Floors 3 Floor Plate 28,333 SF

SITE PLAN

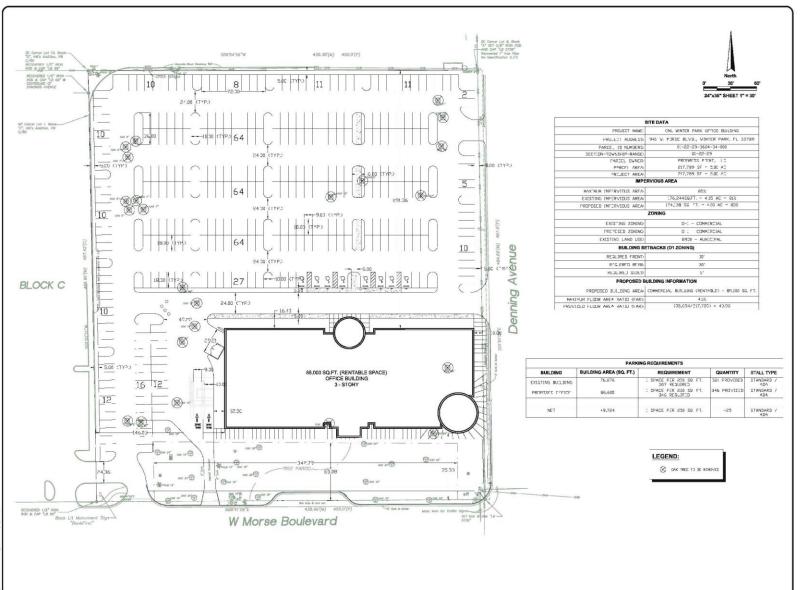


MORSE BLVD.

MORSE BOULEVARD OFFICE BUILDING

Winter Park, Florida March 13, 2012

Hunton Brady







RICK V. BALDOCCHI P.E. #38092

CNL

CNL WINTER PARK OFFICE BUILDING

SITE PLAN

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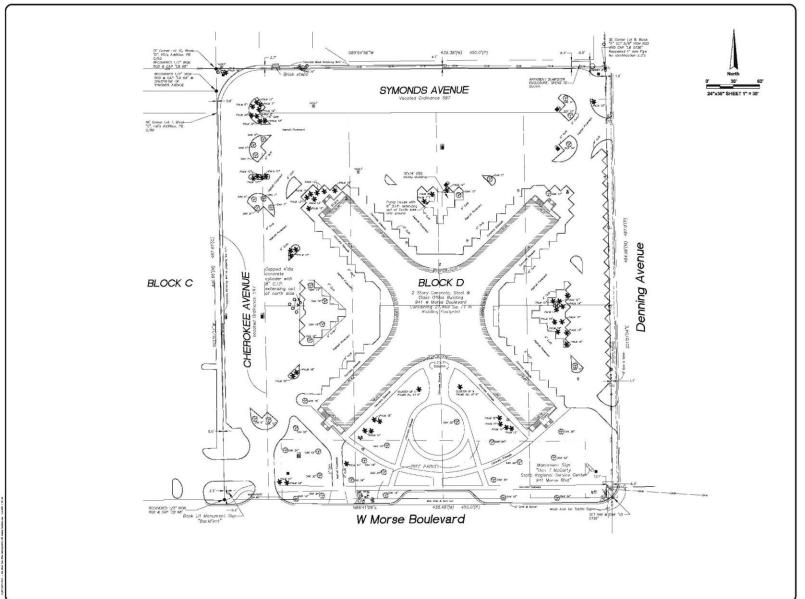
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SHEET NUMBER

C-200



EXISTING CONDITIONS SURVEY





CNL CNL WINTER PARK OFFICE BUILDING

EXISTING SITE CONDITIONS

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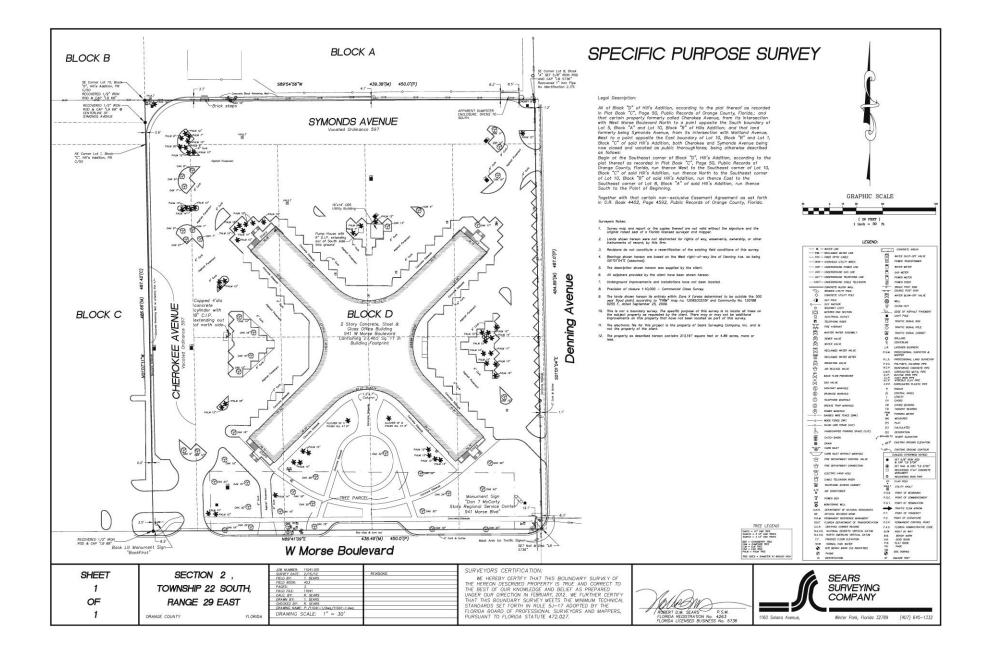
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AVCON PROJECT No.			No. 2011.154.0	

SHEET NUMBER

C-100



TREE SURVEY





PRELIMINARY DRAINAGE NARRATIVE/ CALCULATIONS

CNL Winter Park Office Building Narrative

Stormwater

The project is located within the 318 acre Lake Island/Lake Killarney drainage basin. The on-site storm water for this property is currently untreated and flows offsite via overland sheet flow with a portion being collected within catch basins and routed through underground pipes into the city's storm system. With the re-development of this property the storm water collection and treatment will be modified as such to be collected and treated entirely on-site. The redesigned storm water system will utilize an underground exfiltration system with an outfall into the City of Winter Park system to support the new development. Storm water calculations and associated permitting will be completed during the design phase for the proposed development. A permit modification will be submitted to the St. Johns Water Management District and the City of Winter Park for review and approval prior to any construction activities.

Vehicle Maneuvering

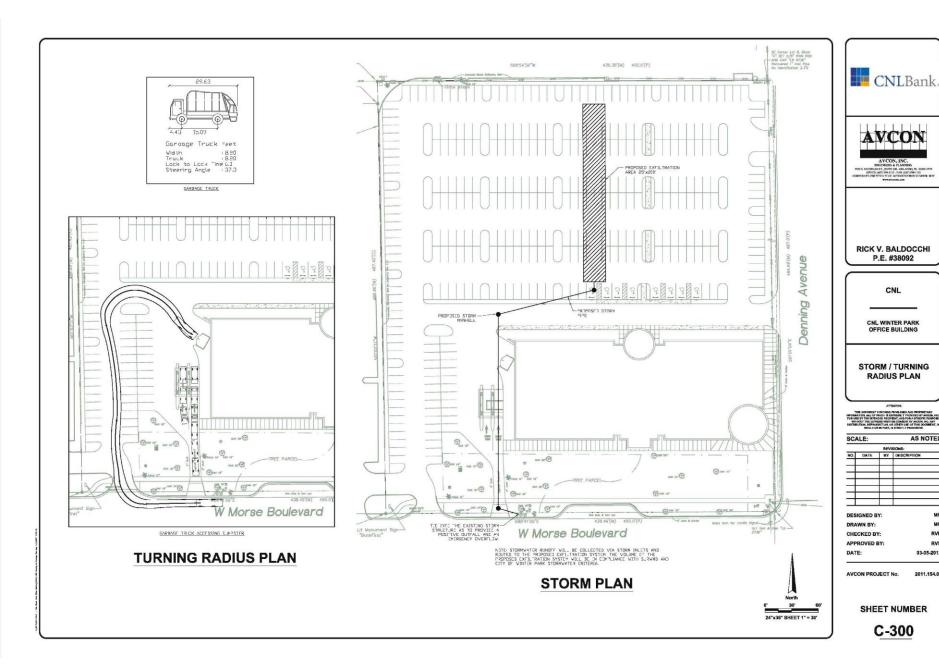
The proposed development will require large vehicle access for deliveries and waste management pick-up which has been analyzed and preliminarily designed, refer to sheet C-300 for vehicle maneuvering templates.

Parking

The on-site parking configuration has been designed to work with the newly proposed building layout while also meeting the City of Winter Park office building parking requirements. Analyzing the new configuration for the parking, the overall parking counts and parking space dimensions can be found on sheet C-200.

Traffic Study

The proposed re-development of the CNL Bank Property at 941 W. Morse Blvd results in a total of 192 PM peak hour trips, which is a net increase of 27 PM peak hour trips. Based on the observed queue at the existing CNL Bank, the design of the proposed drive-in CNL Bank should provide for a maximum queue of one vehicle; however, since this location may experience more traffic, the proposed design accommodates nine queued vehicles. Refer to the provided Traffic Analysis for a complete trip generation and queuing analysis.



AS NOTED

03-05-2012



TRAFFIC NARRATIVE/ STUDY



AVCON, INC. ENGINEERS & PLANNERS

5555 E. Michigan St., Suite 200 Orlando, Florida 32822

> Phone: (407) 599-1122 Fax: (407) 599-1133 www.avconinc.com

March 5, 2012

Mr. Jeff Briggs, Director City of Winter Park - Planning Department 401 Park Avenue South Winter Park, Florida 32789-4386

Re.: CNL Bank Property Site Re-Development Conditional Use Traffic Analysis

Dear Mr. Briggs:

Per your e-mail dated January 19, 2012, AVCON, INC. has performed the requested traffic analysis for the conditional use permit application for the CNL Bank Property Re-Development at 941 W. Morse Blvd. The results of the trip generation and drive-in queue analysis are summarized below.

Trip Generation

The trip generation analysis is based on the Institute of Transportation Engineers' (ITE) <u>Trip Generation</u>, 8th Edition, and <u>Trip Generation Handbook</u>, 2nd Edition. (See attached spreadsheet.)

Existing

Per the Orange County Property Appraiser's records, the existing vacant government building is comprised of 76,652 gross square feet (gsf) of office space. While ITE Code 730 – Government Office Building is most like the previous occupant land use, the limited study size and available data made this use unreliable. Therefore, ITE Code 710 – General Office (Fitted Curve Equation) was used since it is applicable to "a location where affairs of businesses, commercial or industrial organizations, or professional persons or firms are conducted." The existing 76,652 gsf of office space results in 165 PM peak hour (of adjacent street) trips for ITE Code 710 – General Office.

Proposed

The proposed re-development is comprised of approximately 75,000 sf of office space and 10,000 sf of drive-in bank with two drive-in teller lanes. ITE Code 710 – General Office and ITE Code 912 – Drive-In Bank were used for this analysis. The proposed 85,000 sf of office space results in 163 PM peak hour trips, and the proposed drive-in bank with two drive-in lanes results in 55 PM peak hour trips. The combined total of PM peak hour trips is 218.

Mr. Jeff Briggs February 29, 2012, Page 2

Pass-By Trips Adjustment

Pass-by trips are those attracted from traffic passing the development on adjacent roadways or roadways having direct access to the development, without route diversion. They are already on the roadway network making intermediate stops over retails/shopping centers or other convenience-oriented land uses en-route between an origin and a primary trip destination. Since they are not trips generated from the development, pass-by trips are usually deducted from gross trips for the purposes of determining traffic concurrency.

Based on the ITE <u>Trip Generation Handbook</u>, the PM peak hour trips for the proposed drive-in bank may be reduced by 26 pass-by trips, resulting in a combined total of 192 PM peak hour trips for the office space and drive-in bank. Therefore, the net difference for the proposed re-development is 27 more PM peak hour trips than the existing development.

Drive-In Queue Analysis

To determine adequate stacking for the proposed re-development, maximum queue counts were performed at the existing CNL Bank located at 200 E. New England Ave. on Friday, February 10, 2012. This facility has three drive-in lanes plus one drive-up ATM lane. The mid-day peak hour of the generator (the bank) was determined to be 12-1 PM on a Friday, which typically coincides with payday for many people. During this time, the maximum total queue in all lanes was one vehicle. Only four vehicles used the drive-in lanes during the entire hour.

Conclusion

The proposed re-development of the CNL Bank Property at 941 W. Morse Blvd results in a total of 192 PM peak hour trips, which is a net increase of 27 PM peak hour trips. Based on the observed queue at the existing CNL Bank, the design of the proposed drive-in CNL Bank should provide for a maximum queue of one vehicle; however, since this location may experience more traffic, the proposed design accommodates nine queued vehicles.

Please contact us if you have any questions regarding this analysis.

Sincerely, AVCON, INC.

Rick V. Baldocchi, P.E.

Vice President



ARCHITECTURAL NARRATIVE



CNL-MORSE OFFICE BUILDING

Design Narrative

March 5, 2012

Purpose:

To establish the quality and character of the building design for the CNL-Morse Office Building.

Building Mass:

The building is located on the southeast corner of the site to create a more urban frontage on Morse and Denning while maintaining distance from the Tree Preserve area located along Morse Boulevard. Parking for the building is located primarily to the north side of the building to reduce its visual impact on the streetscape. A round corner element is located on the corner of the building to address the corner of Morse and Denning architecturally. Primary building entrances will occur on both the north and south sides of the building.

Pedestrian Oriented Spaces:

A pedestrian area will be located on the south side of the area under the preserved trees to create activity on the ground level along Morse. The glass windows on the first floor of the building will be recessed to create a pedestrian friendly base of the building. The service area and drive through tellers are located on the west side of the building which keeps trash pickup and service traffic away from the primary pedestrian areas.

Finish Materials

The exterior envelope of the building shall be finished with durable, high-quality materials that will provide aesthetic beauty over time with minimal maintenance required. It is anticipated that the exterior wall will be an architectural precast concrete panel system with integrated aluminum and glass glazing systems. The precast concrete will have a sandblasted finish that will expose the natural stone aggregate for a natural looking material finish and texture.

Building Heights

This site is zoned to allow a 3-story building. In order to accommodate standard Class A building components, CNL requests flexibility on the City of Winter Park Code for the allowable height of the building and building elements. The roof of the current plan is proposed to be within 47'-0", which will provide the ability to achieve 12' ceilings on the first floor and 10' ceilings on the second and third floor. We are also proposing a mechanical screen wall that is 13'-0" in height to screen the standard roof top mechanical equipment needed for a building this size. Architectural features like the one on the corner of Morse and Denning and the one at the building entrance will still project within the 8' allowance above the roof.



3D BUILDING ELEVATIONS











MORSE BOULEVARD OFFICE BUILDING

Hunton Brady











CITY OF WINTER PARK Planning & Zoning Board

Regular Meeting Welcome Center

April 3, 2012 7:00 p.m.

MINUTES

Acting Chair Mrs. Whiting called the meeting to order at 7:00 p.m. in the Welcome Center. Present: Acting Chair Sarah Whiting, Tom Sacha, Peter Gottfried, Randall Slocum and Robert Hahn. Absent: Chairman Drew Krecicki, George Livingston and James Johnston. Staff: Planning Director Jeffrey Briggs, and Recording Secretary Lisa Smith.

Approval of minutes – March 6, 2012

Motion made by, seconded by to approve the March 6, 2012, meeting minutes. Motion carried unanimously with a 6-0 vote.

PUBLIC HEARINGS:

REQUEST OF CNL COMMERCIAL REAL ESTATE FOR: CONDITIONAL USE APPROVAL UNDER THE LARGE BUILDING AND DRIVE-IN ORDINANCES TO CONSTRUCT A THREE STORY, 88,366 SQUARE FOOT, OFFICE BUILDING ON THE SITE OF THE FORMER STATE OFFICE BUILDING AT 941 W. MORSE BOULEVARD, ZONED (O-1).

Mr. Hahn announced that he has a conflict and will not be voting on this issue.

Mr. Briggs stated that this item is a request for preliminary conditional use approval by CNL Commercial Real Estate to redevelop the former State Office Building property at 941 W. Morse Blvd. with a new three story 88,366 square foot office building. It is a conditional use as it is over 10,000 square feet and has a drive-in teller component. A city-wide notice of these public hearings has been mailed to all 14,500 households in the City as well as notices mailed to the property owners within 1,500 feet. In addition he noted that a work session was held with the P&Z Board and the applicant on March 21st. He reviewed the site and context of the request, provided property history, the current project request, details on parking, building height, architectural elevations, tree preservation, storm water retention, landscaping and the drive—in tellers. Staff recommended preliminary approval of the request subject several conditions being included in the plans submitted for "final" conditional use approval. Mr. Briggs responded to Board member questions and concerns.

Tom Cunningham, of CNL Real Estate represented the applicant. He reiterated their request for preliminary conditional use approval. He introduced the members of the development team. He stated that they are in agreement with the staff report and in agreement with the conditions recommended by staff. Steve Belflower, with Hunton Brady, presented the architectural elevations of the proposed project. He responded to Board member questions and concerns. Rick Baldocchi, Avcon Engineering, presented the site plan descriptions detailing the design parameters for drainage, the drive thru, service areas for loading and unloading, landscaping and parking. He added that the dumpster will be relocated as previously discussed. In addition they are in agreement with the change to the drive-thru tellers. He responded to Board member questions and concerns.

Samir Jallad, 1830 West Fawsett Road, spoke in support of the request. He said that he feels that the City needs to make an effort to attract more businesses that require class "A" office space. He added that he feels that it will be an attractive project.

Lurline Fletcher, 790 Lyman Avenue, expressed concern with the proposed height of the building and the effect that the glare from the building will have on the adjacent residential neighborhood.

Jim Barnes, owner of the Bank First Building, 7 Isle of Sicily, spoke in support of the project. He said that he feels that it will be complimentary to his building and he feels that the issues that were important to Bank First (relocation of the dumpster and landscape screening of the drive-thrus) have been addressed by the applicant. He said that he supports the additional height as it is needed in order to be a class "A" building.

The P&Z Board asked questions concerning the design of the storm water exfiltration system, the landscaping design, building and floor to ceiling heights, mechanical equipment heights, methods to screen the tellers, traffic flow design and parking needs. Mr. Cunningham, Belflower and Baldocchi responded.

No one else wished to speak concerning the request. Public Hearing closed.

The Board members discussed the request. Ms. Whiting stated that she was in support of the project and felt the design was very well presented and that the project would be a great asset to the City. She asked for clarification of the variances to the width of the landscape islands. Mr. Briggs explained that the parking lot features a protected pedestrian walkway for pedestrian safety that is not required by Code. The trade-off is that the landscape islands are 1-2 feet narrower than code in order to create this walkway and still meet the parking numbers. Ms. Whiting also asked for further explanation for the building height variance which was addressed by the applicant. Mr. Sacha stated that he appreciated the presentation made by the applicant and also the detail on the height issue. He asked the Board to clarify in the motion that the traffic flow for the tellers would be reversed (as agreed to by the applicant) with exit onto Morse Blvd. He added that he feels that this is what the City needs to see at this location and that the conditions recommended by staff and agreed to by the applicant make it a better project. Mr. Slocum noted that he agreed this was a very good project and would like to see a condition added that addresses the flow of traffic exiting from the tellers and the setback on Denning. Mr. Gottfried stated that he thinks this is great project and that the minor landscape variances are insignificant when you consider they are adding landscaping to a "sea' of asphalt, providing retention and bringing the property up to Code in many respects.

Motion made by Mr. Gottfried, seconded by Mr. Sacha to grant preliminary conditional use approval of the request subject to the following conditions:

- 1. That the dumpster is relocated to the rear of the property.
- 2. That the drive-in teller component be screened substantially from view from the property to the west (Bank First) and that the direction of the car traffic be reversed so that it is a one-way exit onto Morse Boulevard.
- 3. That the two parking spaces along Denning Drive at the northeast corner of the site/parking lot are eliminated in order to increase the landscape frontage and visual appeal of the site.
- 4. That the building height variance be approved as requested (4.5 feet) and that any variance needed for the building height screen wall for the rooftop AC/mechanical be also granted to match the specifications for the height of that equipment. The parapet will be equal or less than three feet and that the mechanical/AC equipment is to be screened and recessed from the edge for visual purposes. That the site be granted the minor parking variances to accommodate for the dumpster relocation, drive-in teller screening, increased landscaping on Denning and usable/leasable floor area of the building.
- 5. Relocation of the building approximately 2.5 feet to the west so that all floors of the building rotunda meet the 10 foot setback from Denning Drive.
- 6. That the street landscape strip be according to code which is 7 feet.

Motion carried unanimously with a 4-0 vote. Mr. Hahn abstained.