



city commission agenda

Regular Meeting

January 12, 2015
3:30 p.m.
Commission Chambers

commissioners				mayor	commissioners			
seat 1	Steve 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.

Citizen comments at 5 p.m. and each section of the agenda where public comment is allowed are limited to three (3) minutes. The yellow light indicator will remind you that you have one (1) minute left. 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.

agenda

1	Meeting Called to Order	
2	Invocation Electric Director Jerry Warren Pledge of Allegiance	
3	Approval of Agenda	
4	Mayor's Report	*Projected Time *Subject to change
	a. Board appointments: <ul style="list-style-type: none">- Re-appointments to the Civil Service Board- Housing Authority Board (two members)	5 minutes
5	City Manager's Report	*Projected Time *Subject to change
	a. Discussion regarding USPS property	15 minutes

6	City Attorney's Report	*Projected Time *Subject to change
7	Non-Action Items	*Projected Time *Subject to change
8	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 <ul style="list-style-type: none"> a. Approve the minutes of December 8, 2014. b. Approve the execution of the following two agency grant agreements for improvements to the Mead Grove Wetlands: <ul style="list-style-type: none"> - Florida Department of Environmental Protection funding agreement; \$400,000. - Florida Fish & Wildlife Conservation funding agreement; \$50,000. c. Approve purchase order (PR156681) to Lou Bachrodt Freightliner for a 2015 Freightliner 18 Yard Dump Truck; \$100,606. d. Approve the revision to the City of Winter Park Billing Adjustments Tariff Sheet 3.100 as relates to the calculation of the Fuel Adjustment Factor (electric). 	*Projected Time *Subject to change 5 minutes
10	Action Items Requiring Discussion	*Projected Time *Subject to change
11	Public Hearings <ul style="list-style-type: none"> a. <u>THIS PUBLIC HEARING MUST BE HELD AFTER 5:00 P.M.</u> <u>Request of the Avis Budget Group, Inc.:</u> <ul style="list-style-type: none"> - Ordinance - Amending Chapter 58, Land Development Code, Article III, Zoning, Section 58-74 Commercial (C-1) District to provide for car rental agencies as a permitted use within a C-1 Commercial Zoning District. (1) - Ordinance - Amending Chapter 58, Land Development Code, Article III, Zoning, Section 58-74 Commercial (C-1) District to provide for car rental agencies as a conditional use within a C-1 Commercial Zoning District. (1) b. <u>Request of Sentio Investments LLC: - APPLICANT TABLED TO FEBRUARY 23 COMMISSION MEETING</u> <ul style="list-style-type: none"> - Ordinance - Changing the Future Land Use Designation of Single Family Residential to Medium Density Multi-Family Residential Future Land Use at 1500 S. Orlando Avenue; 1010 Garden Drive and 1021 Camellia Avenue (1) 	*Projected Time *Subject to change 30 minutes

- **Ordinance** – Changing the zoning of Single Family (R-1A) District to Medium Density Multi-Family Residential (R-3) District at 1500 S. Orlando Avenue; 1010 Garden Drive and 1021 Camellia Avenue (1)
- Conditional use approval to redevelop the St. John’s Lutheran Church parking lot at 1500 S. Orlando Avenue and the two church homes at 1010 Garden Drive and 1021 Camellia Avenue into a three story, 90 room assisted living and memory care residential facility of approximately 73,000 square feet.

12 City Commission Reports

- a. Commissioner Leary
- b. Commissioner Sprinkel
- c. Commissioner Cooper
- d. Commissioner McMacken
- e. Mayor Bradley

***Projected Time**
***Subject to change**

10 minutes each

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.”

Cindy Bonham

From: Cindy Bonham
Sent: Monday, November 17, 2014 11:25 AM
To: Cindy Bonham
Subject: New submission from Citizen Board Application - Zach Seybold P&Z, CRAB, Housing Auth.

From: Zach Seybold [<mailto:broker14@SeyboldRE.com>]
Sent: Monday, November 17, 2014 10:19 AM
To: Cindy Bonham; Michelle Bernstein
Subject: New submission from Citizen Board Application

Contact Information

Name

Zach Seybold

Email

broker14@SeyboldRE.com

Home Address

2494 Whitehall Cir
Winter Park, Florida 32792
United States
[Map It](#)

Business Address

PO Box 657
Winter Park, Florida 32790
United States
[Map It](#)

Your Requested Board(s)

Board 1

Planning & Zoning Board

Skills

16 years real estate broker and development experience and Vice Chairman of Orange County Board of Zoning Adjustment

Board 2

Community Redevelopment Advisory Board

Skills

16 years real estate broker and development experience and Vice Chairman of Orange County Board of Zoning Adjustment

Board 3

Housing Authority Board

Skills

16 years real estate broker and development experience and Vice Chairman of Orange County Board of Zoning Adjustment

Your Details

Are you a registered voter?

Yes

Are you a resident of the city?

Yes

Do you own property in the city?

Yes

Are you employed by the city?

No

May we automatically submit your application when vacancies occur?

Yes

Do you have any potential conflicts of interest that may arise from time to time if you serve on one of these boards?

No

Are you currently serving on a city board(s)?

No

Have you previously served on a city board(s)?

No

List any other community involvement

I have served for almost four years as the District 5 Commissioner to the Orange County Board of Zoning Adjustment and I am also currently the Vice Chairman and am pending confirmation as the new Chairman in December 2014.

List any work/career experience

Sixteen years of local real estate brokerage experience and land entitlement and development experience throughout Florida.

List your educational experience

Four year undergraduate degree from University of Cincinnati and Florida Real Estate Broker's course at IFREC and continuing education since 1998.

User's IP address: 107.146.19.121

Date received: 11/17/2014

Received from: Citizen Board Application (<http://cityofwinterpark.org/government/boards/citizen-board-application/>)

Cindy Bonham

From: Cindy Bonham
Sent: Thursday, November 06, 2014 12:40 PM
To: Cindy Bonham
Subject: New submission from Citizen Board Application - Kevin ORawe Housing Auth.; CRAB, P&Z

From: Kevin ORawe [<mailto:kdorawe@outlook.com>]
Sent: Thursday, November 06, 2014 12:13 PM
To: Cindy Bonham; Michelle Bernstein
Subject: New submission from Citizen Board Application

Contact Information

Name

Kevin ORawe

Email

kdorawe@outlook.com

Home Address

1833 Loch Berry Road
Winter Park, Florida 32789
United States
[Map It](#)

Business Address

Florida
United States
[Map It](#)

Your Requested Board(s)

Board 1

Housing Authority Board

Skills

See below

Board 2

Community Redevelopment Advisory Board

Skills

See below

Board 3

Planning & Zoning Board

Skills

See below

Your Details

Are you a registered voter?

Yes

Are you a resident of the city?

Yes

Do you own property in the city?

Yes

Are you employed by the city?

No

May we automatically submit your application when vacancies occur?

Yes

Do you have any potential conflicts of interest that may arise from time to time if you serve on one of these boards?

No

Are you currently serving on a city board(s)?

No

Have you previously served on a city board(s)?

No

List any other community involvement

Board of Directors for two communities, one in FL and one PUD in N CA.

Multiple BOD experience with Orlando area Affordable Housing organizations as well as those in S FL and N CA

List any work/career experience

Mortgage Banking executive for 30+ years with significant residential property appraisal audit experience.

List your educational experience

BS in Marketing with minor in Finance - USC

User's IP address: 107.72.162.82

Date received: 11/06/2014

Received from: Citizen Board Application (<http://cityofwinterpark.org/government/boards/citizen-board-application/>)

Cindy Bonham

From: Cindy Bonham
Sent: Tuesday, November 04, 2014 8:52 AM
To: Cindy Bonham
Subject: New submission from Citizen Board Application - Nishad Khan EDAB, Housing, Civil Service

From: Nishad Khan [<mailto:Nak@nishadkhanlaw.com>]
Sent: Monday, November 03, 2014 5:50 PM
To: Cindy Bonham; Michelle Bernstein
Subject: New submission from Citizen Board Application

Contact Information

Name

Nishad Khan

Email

Nak@nishadkhanlaw.com

Home Address

1335 Chapman Circle
Winter Park, Florida 32789
United States
[Map It](#)

Business Address

615 E Colonial Drive
Orlando, Florida 32803
United States
[Map It](#)

Your Requested Board(s)

Board 1

Economic Development Advisory Board

Skills

Keen sense of Winter Park developments and economic impact. Florida native and have seen and been part of the natural growth int his area.

Board 2

Housing Authority Board

Skills

Substantial knowledge of federal housing acquisition, leasing, construction and development.

Board 3

Civil Service Board

Skills

Management, delgation of duties, very good at reviewing and understanding city codes.

Your Details

Are you a registered voter?

Yes

Are you a resident of the city?

Yes

Do you own property in the city?

Yes

Are you employed by the city?

No

May we automatically submit your application when vacancies occur?

Yes

Do you have any potential conflicts of interest that may arise from time to time if you serve on one of these boards?

No

Are you currently serving on a city board(s)?

No

Have you previously served on a city board(s)?

No

List any other community involvement

President, Florida Literacy Coalition
Board Member, Make a Wish of Central Florida
Board Member, Better Business Bureau
Circuit Advisory Team, The FUND

List any work/career experience

Attorney/Partner- Nishad Khan PL 2007-2014
Real Estate Broker, 2014

List your educational experience

B.A. in International Studies, UCF, 1999
JD in Law, Seton Hall University, 2003

User's IP address: 97.68.26.66

Date received: 11/03/2014

Received from: Citizen Board Application (<http://cityofwinterpark.org/government/boards/citizen-board-application/>)

Cindy Bonham

From: Shanna Windle <no-reply@cityofwinterpark.org>
Sent: Friday, August 22, 2014 12:37 PM
To: Cindy Bonham
Subject: New submission from Citizen Board Application

Contact Information

Name

Shanna Windle

Email

shannawindle@yahoo.com

Home Address

1017 Via Tuscany Oaks Way
Winter Park, Florida 32789
United States
[Map It](#)

Business Address

Florida
United States
[Map It](#)

Your Requested Board(s)

Board 1

Housing Authority Board

Skills

Law degree, construction industry, real estate experience

Board 2

- Select one -

Board 3

- Select one -

Your Details

Are you a registered voter?

Yes

Are you a resident of the city?

Yes

Do you own property in the city?

Yes

Are you employed by the city?

No

May we automatically submit your application when vacancies occur?

Yes

Do you have any potential conflicts of interest that may arise from time to time if you serve on one of these boards?

No

Are you currently serving on a city board(s)?

No

Have you previously served on a city board(s)?

No

List any other community involvement

Real Property, Probate and Trust Law section of the Florida Bar
Orange County Bar Association
Samaritan's Purse

List any work/career experience

Corporate Counsel, Traffic Control Devices, Inc.
Partner, Windle Family Law Firm
Corporate Counsel, JTS Oil and Gas
Real Estate License 2012-current

List your educational experience

Juris Doctorate, University of Baltimore School of Law
B.S., Psychology, Davidson College
Human Resources Certification, Rollins College Crummer School of Business



city commission city manager's report

item type

City Manager's Report

meeting date

January 12, 2015

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
Quiet Zones	State funds approved for grant disbursement. City submitted grant applications for City quiet zones on July 23, 2014.	Applications deadline to State was October 15, 2014. Grant recipients are expected to be announced in January 2015.
Fairbanks electric transmission and distribution undergrounding	Engineering cost estimates have been completed indicating that the project can be completed within FDOT's available funding. Contracts among Duke, the City, and FDOT are currently in negotiation.	City Commission action expected February 2015.
New Hope Baptist Church Project	Construction on the site includes concrete drives, parking area, stormwater retention area and addition of landscaping in place. Pastor John Phillips continues pursuing licensing for the day care and school through DCF and obtaining required certifications for staff.	Approved Conditional Use will expire in September 2015.
Railroad crossing update	FDOT maintains all street crossings. The City of Winter Park maintains a list of the crossings in need of repair.	The City of Winter Park sends monthly reminders to FDOT requesting the necessary repairs.
Future tree plantings update	As of November 30th, 46 additional trees have been planted in the right-of-ways throughout the City. An additional 25-30 trees were planted in December.	GIS tree vacancy map is on the website.
Tree City awards	Tree City USA Award 2014 Tree City Growth Award 2014	
Dinner on the Avenue	Sold out in one hour on January 5, 2015.	April 11, 2015
MLK (Rollins) Restroom	Plans complete. Rollins will be contracting.	Completion will be Summer 2015.
Visioning	RFP with scope and proposal for Steering Committee make up will be on January 26 commission agenda	January 26 review

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.



2014 YEAR END REVIEW

Below is a recap of the commercial development projects that were completed in 2014 or began construction 2014:

Apartments at Winter Park Village (Paseo): The 204 unit apartment project at the former DMV property at 940 W. Canton Avenue, named the Paseo Apartments began construction in November 2013 with completion expected in early 2015.

Ravaudage: Construction is underway for an 18,000 square foot building next to the Ale House to hold a Tony Roma's (TR Firegrill) restaurant as well as another undetermined restaurant location.

Jewett Clinic: Construction began in October on a two-story, 25,000 sq. ft. medical building in conjunction with the Jewett Clinic at 1285 Orange Avenue.

Lombardi's Seafood: A new Lombardi's Seafood retail store with café at 1888 West Fairbanks Avenue to replace the existing location will open in early 2015.

Kid's Care: The first pediatric Centra Care facility in Central Florida called "Kid's Care" is under construction at 2525 West Fairbanks at the site of the former Chevron station adjacent to the on-ramp to I-4.

Thomas Lumber: The redevelopment of the former Thomas Lumber building at 784 N. Orange Avenue started in 2014 with conversion to interior design studios and a bike store.

New Restaurants in Winter Park: In April, the "The Coop" restaurant opened, the new concept from John Rivers at 610 W. Morse Blvd. In June "The Porch" at the former Levan's Catering building (643 N. Orange Avenue) opened as a new 155 seat restaurant by the same owners as the adjacent Meat House. In December the former Shipyard location at 200 W. Fairbanks Avenue was converted into a "Frank n Steins" restaurant of approximately 150 seats. Also in December the remodeled former "Circa/Matilda's" at 358 N. Park Avenue opened as the Boca restaurant and lounge. Under construction is a new Starbucks coffee shop at 2519 Aloma Avenue to replace the existing Jiffy Lube store.

Lakeside Winter Park: Construction started in September, 2013 and concluded this year for the Lakeside project at 111 N. Orlando Avenue comprised of 38,500 square feet of new retail and restaurant space. Trader Joe's opened in June and the new Shake Shack restaurant opened in August. Other tenants include a spa, workout facility and a Blue Cross/Blue Shield walk-in clinic which opened in December.

Winter Park Village: The redevelopment of the former Borders Books which began in October 2013, concluded in April, 2014. That redevelopment included a new Chase Bank on the corner of Webster Avenue and to the south a separate new building with a Starbucks coffee shop with drive-thru and Versona, a 7,000 sq. ft. woman's fashion store.

New Branch Banks: In addition to the Chase Bank, a new TD Bank branch opened in June at 810 N. Orlando Avenue as did the First Green Bank at 862 S. Orlando Avenue on the corner of Minnesota Avenue which opened in April.

ABC Liquors: The redeveloped ABC Liquors at 401 N. Orlando Avenue started construction in October 2013 and opened in August.

Winter Park Hospital: The new parking garage was started and completed in 2104.

Coming in 2015: There are several new projects in the works for 2015:

Whole Foods project: Redevelopment of the 11 acre former Corporate Square/WP Dodge properties for a Whole Foods grocery and another major retailer plus three out-parcels has been granted their development approvals by the City. One of the out-parcels is slated to become a new PNC Bank site. They are now working with the Orange County School Board on the acquisition of the land for the Lee Road extension.

Lakeside Crossing: The redevelopment proposed for the former Mt. Vernon Inn at 110 S. Orlando Avenue is to consist of 37,473 square feet of retail and restaurant space.

Blake's Corner: The building at 900 S. Orlando Avenue is slated for renovation in 2015 to new retail and possible restaurant space.

State Auto Body: The former State Auto Body building at 1280 N. Orange Avenue is also slated for renovation into retail and office space.

Ravada: In Ravada this coming year, the City may see the beginning of construction on a new six-story, 296 unit apartment complex, by American Land Ventures, as well as 53 townhouses by David Weekly Homes pending infrastructure improvements to support those projects.

For more information on these or other projects, please contact Jeff Briggs, Planning Manager at jbriggs@cityofwinterpark.org or at (407) 599-3440.



city commission agenda item

item type	City Manager's Report	meeting date	January 12, 2015
prepared by	City Manager	approved by	<input checked="" type="checkbox"/> City Manager
department	Administration		<input type="checkbox"/> City Attorney
division			<input type="checkbox"/> N/A
board approval		<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A	final vote
strategic objective	<input type="checkbox"/> Exceptional Quality of Life	<input type="checkbox"/> Fiscal Stewardship	
	<input type="checkbox"/> Intelligent Growth & Development	<input type="checkbox"/> Public Health & Safety	
	<input checked="" type="checkbox"/> Investment in Public Assets & Infrastructure		

subject

Status of negotiations to acquire United States Postal Service (USPS) property located at 300 N. New York Avenue.

motion | recommendation

Provide direction to city staff.

background

One of the long-range goals of the City Commission has been to acquire the USPS property on New York Avenue. Several months ago Congressman Mica arranged a meeting with the Mayor, City Manager and the Vice President of Facilities for the USPS to discuss what it would take to acquire the property. Since that time staff has been exploring options that would meet the requirements set by the USPS to acquire the property. Before staff spends a lot more time on the project we want to make sure that the parameters of the deal are in the range within which the Commission is willing to move forward.

In general, the requirements are as follows: The city would need to replace the carrier site or consolidate it with either the Metric Drive carrier site or the Orlando Fashion Square Mall carrier site. Specifications were provided for the space needs for each option. In addition, the USPS requires that the retail space remain in the downtown core of Winter Park and the space needs for that function were provided.

Another condition of the sale is that the market value of the property the USPS would be receiving must equal or exceed the market value of the New York property they would be giving up. If it is not at least equal, the city would need to make up the difference in cash.

Staff has located a property near the Fashion Square Mall that would accommodate the consolidation of the of the Winter Park and Fashion Square Mall carrier sites and is in negotiations to see if we can agree upon a price. The estimated cost to put the carrier site at that location, including the land acquisition is in the range of \$5.5 to \$6.5 million.

The retail component could be accommodated either as part of a new library building, or on the city hall site, or on the north end of the existing USPS site. The estimated cost to build the retail component is between \$1.1 and \$1.5 million. Staff would recommend the city retain ownership of the building housing the retail component and provide a long-term lease at a low cost. This way, if the USPS ever leaves Winter Park for any reason, that property would return to the City.

Therefore the total cost for the replacement facilities is estimated to be between \$6.6 and \$8 million. The existing post office property including the building appraised at \$1,780,000 As Is and \$2,370,000 if the whole site were rezoned to PQP, so there would be no need for an additional cash payment. A copy of the executive summary of the appraisal is attached.

When the Commission has discussed this property in the past, the Commission seemed to concur that it is important for the City to ultimately control this piece of property. The policy question is whether or not it is worth paying this much of a premium now in order to guarantee that the City obtains the property? If the consensus is yes, then staff will move forward with a formal offer on the carrier site property and in fine tuning the actual costs to bring back to the Commission for consideration.

Staff is seeking direction from the Commission on how it wishes to proceed.

alternatives | other considerations

1. Hold off for now with the hope that the USPS property will be obtainable for closer to market value in the future.
2. Hold off for now and continue to explore legislative help to acquire the property.

fiscal impact

If the Commission chooses to proceed for now and eventually approves the purchase, staff would recommend using the proceeds from selling the Progress Point property and possibly the Blake Yard property towards meeting the financial obligations of this deal.

REGULAR MEETING OF THE CITY COMMISSION

December 8, 2014

The meeting of the Winter Park City Commission was called to order by Mayor Kenneth Bradley at 3:33 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida. There was a moment of silence for Kenneth Murrah who passed away. The invocation was provided by Electric Director Jerry Warren, followed by the Pledge of Allegiance.

Members present:

Mayor Kenneth Bradley
Vice Mayor Steven Leary
Commissioner Sarah Sprinkel
Commissioner Tom McMacken
Commissioner Carolyn Cooper

Also present:

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

Approval of the agenda

City Manager Knight added to his report the discussion of the 2908 Temple Trail purchase. **Motion made by Mayor Bradley to approve the agenda with this one addition; seconded by Commissioner Cooper and approved by acclamation with a 5-0 vote.**

Mayor's Report

a. Golf Course Centennial Committee Recognition

Mayor Bradley explained that the Winter Park Golf Course Centennial Celebration was a huge success because of the planning and partnering of the committee, the Elizabeth Morse Genius Foundation, the Golf Channel and City staff. A special recognition was given to Wally Armstrong, Gary Diehl, Linda Kulmann, Richard Moorhead, Bill Neidlinger, Allen Trovillion, Harold Ward III, Matt Hegarty, Brenda Moody, Leif Bouffard, Justin Ingram, Lindsey Hayes, Clarissa Howard, Theresa Broman and Craig O'Neil.

b. Recognition – "Baxter Bags Project"

Vice Mayor Leary recognized Baxter Murrell for establishing the "Baxter Bags Eagle Scout Project" where he raised over \$18,000 in funds to buy and fill 400 backpacks for homeless residents of Central Florida. A loud applause was given to Baxter for his hard work and for being a great role model.

City Manager's Report

2908 Temple Trail Purchase

City Manager Knight advised that the bank has rejected our offer of \$95,000 for the property on Temple Trail and has counter offered at \$105,000 which is still \$5,000

less than what our appraisal said it was worth. He recommended moving forward with the purchase.

Motion made by Mayor Bradley to make an offer of \$105,000; seconded by Commissioner McMacken. No public comments were made. **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.**

a. Capacity Report

CRA Director Dori Stone summarized the capacity report. City Manager Knight and Ms. Stone answered questions posed by the Commission.

City Attorney's Report - No report.

Non-Action Item

a. Tree Planting Presentation

Urban Forestry Director Dru Dennison provided a PowerPoint presentation including right-of-way tree facts, tree planting goals, planting costs, potential tree planting locations, GIS interactive mapping, tree planting specifications and multiple infrastructure limitations. Questions were answered by Ms. Dennison and Assistant City Manager Michelle del Valle-Neuner.

Following a brief discussion, staff was directed to remove the numerous tree stakes throughout the City, to provide a summary report showing funding for the last five years and how many trees were planted/removed, and to post the tree planting map and the GIS interactive map on the City's website.

b. Professional Consultants Report

City Manager Knight and Assistant City Manager Michelle del Valle-Neuner summarized the consultant report and answered questions.

A brief discussion transpired regarding the cost of legal services for litigation matters and the need to establish a performance evaluation survey for services performed by the City Attorney, Labor Attorney and State Lobbyist.

Motion made by Commissioner Sprinkel that staff provide a detailed scope of services and expectations for the City Attorney, Labor Attorney and State Lobbyist; seconded by Mayor Bradley. No public comments were made. **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.**

Consent Agenda

- a. Approve the minutes of November 24, 2014.
- b. Approve the FY 2015 budget amendment for the Tree Inventory Forestry Grant.
- c. Approve the following purchase requisitions, blanket purchase orders (BPO), piggyback contracts and formal solicitation:
 1. Wheeled Coach Industries for a 2014 Ford F-450 Firemedic 1170F Custom Ambulance; NTE \$230,000.
 2. Orlando Freightliner Inc. for PR156643 for 2016 Freightliner M2106 Large Dump Truck; \$105,860.
 3. BPO to Davey Tree Expert Company for Tree Trimming and Removal Services – ITN-6-2013; \$800,000.
 4. BPO to City of Altamonte Springs for FY15 Wholesale Sewer Treatment; \$126,500.
 5. BPO to USA Services of Florida, Inc. for Mechanical Sweeping Services; \$205,247.64
 6. Piggyback Orange County Contract Number Y14-1070-LC with Hubbard Construction Company for Furnish Asphalt Products; \$250,000.
 7. Award to Wesco Distribution RFQ-7-2015 for purchase of Pad Mounted Switch Fault Interrupter; \$134,430.50.

Motion made by Commissioner McMacken to approve the Consent Agenda; seconded by Commissioner Leary. No public comments were made. **The motion carried unanimously with a 5-0 vote.**

Action Items Requiring Discussion

Note: Agenda order was rearranged

- b. Acquisition of the property located at 2600 Lee Road

City Manager Knight presented the item. He explained that the current business on the property is known as Christie's Cabaret, formerly known as Club Harem. The prior businesses located on that site have had a long history of criminal and code enforcement complaints against them. There is currently a dispute with the property owner and Christie's Cabaret as to the status of the non-conforming use and whether or not the right to continue that use has expired. The owners have appealed the Building Official's determination that the non-conforming use has expired.

The owner has offered to end that dispute by selling the property to the City for \$990,000. The appraisal conducted by the City appraised at \$830,000. As part of the purchase the city would also get a release signed by the owners of Christie's Cabaret and an agreement that they will vacate the property.

Upon acquiring the property, staff recommended demolishing the building and immediately listing the property for sale. While the City may not recoup the entire purchase price through the sale the City would be avoiding future litigation costs and staff time associated with the property. There is also a billboard lease tied to the property that runs through July 18, 2020. As part of that lease, the billboard company has a right of first refusal to acquire the property.

Attorney Brown and Attorney Debra Babb-Nutcher provided legal counsel. City Manager Knight answered questions and asked for direction.

Motion made by Commissioner Sprinkel to approve the purchase; seconded by Commissioner Leary.

Motion amended by Commissioner Cooper that we move forward to purchase it and immediately remove the existing structure (per City policy/code); seconded by Mayor Bradley.

Steven Roberts, unknown address, said the City should offer the seller no more than the market value price.

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

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

Public comments (General 5:00 p.m.)

Nancy Shutts, 2010 Brandywine Drive, recommended to add the Urban Forestry PowerPoint to the website and distributed in the City newsletter.

A recess was taken from 5:05 p.m. to 5:25 p.m.

Action Items Requiring Discussion (continued)

a. Library Facility Task Force recommendations

City Manager Knight provided a summary on the December 2 City Commission Library Task Force work session and asked for direction.

Commission discussion transpired as to whether or not we should move forward with pursuing a new library facility or renovate the existing library, the selection of preferred sites (current library location, city hall adjacent property, civic center or current post office location), financing plan (such as a voter referendum on bonds

or pay with cash on hand, grant money, capital campaign and/or sale of other assets); if the task force should continue or sunset; if we should hire an architect to conduct preliminary space utilization, program and design for the site(s) selected and formalize cost estimates; consideration of a parking needs assessment and what the next steps are moving forward.

Motion made by Mayor Bradley that the task force be re-established to continue to work for an additional six months; that the program/space planning for a potential new library be refined; that architectural/design programming fees be invested up \$50,000 to be able to bring the program space plan back; that the City's initial investment be established (limited) at \$15 million which ultimately may or may not determine project costs; that fundraising philanthropy be considered to determine total project costs; and that the following three sites be considered: the City Hall Annex site, the Civic Center site, as well as remodeling the current site, as well as an open opportunity for other options to be considered in the next 60 days from citizens who may have good ideas; seconded by Commissioner Leary.

Motion amended by Commissioner Cooper to agree as a Commission that before we make a decision to move the library from its current location we will go to the residents of Winter Park and get their concurrence; seconded by Commissioner McMacken for discussion.

Motion amended by Commissioner Cooper to remove the City Hall site. Motion failed for lack of a second.

The following spoke in favor of a new library:
Gary Barker, Library Facility Task Force Member
Nancy Shutts, 2010 Brandywine Drive
Sam Stark, Library Facility Task Force Chair

Sally Flynn, 1400 Highland Road, asked that the City send out individual surveys to the residents so they have an opportunity to select a potential site.

Amendment above revised by Commissioner Cooper that if a referendum for bonding is not required that the City would still go to the residents to have a vote on changing the location from the current location; seconded by Commissioner McMacken.

Upon a roll call vote on the amendment, Mayor Bradley and Commissioners Leary and Sprinkel voted no. Commissioners Cooper and McMacken voted yes. The motion failed with a 3-2 vote.

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

Public Hearings:

- a. ORDINANCE NO. 2986-14: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT REGULATIONS", ARTICLE III, "ZONING" SECTIONS 58-68; 58-69; 58-72; 58-75; 58-76; 58-79 AND 58-90 AS WELL AS WITHIN ARTICLE V, "ENVIRONMENTAL PROTECTION REGULATIONS", SECTION 58-214 SO AS TO REMOVE THE REQUIREMENT FOR SUPERMAJORITY VOTES FOR THE APPROVAL OF CERTAIN CONDITIONAL USES, PROVIDING FOR THE REQUIREMENT FOR TWO PUBLIC HEARINGS AND APPROVALS FOR CONDITIONAL USES FOR THREE STORY BUILDINGS WITHIN THE CENTRAL BUSINESS DISTRICT AND FOR CONSTRUCTION WITHIN THE STREAM FLOODPLAINS OF THE CITY, PROVIDING FOR CONFLICTS, SEVERABILITY AND EFFECTIVE DATE. Second Reading

Attorney Brown read the ordinance by title. **Motion made by Mayor Bradley to adopt the ordinance; seconded by Commissioner Sprinkel.** No public comments were made. **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.**

- b. Request by the City Commission to reconsider two sections of the Ravaudage Amended and Restated Development Order as approved by the City Commission on November 10, 2014 and adopt by Resolution additional amendments to the Amended and Restated Development Order.

Planning Director Dori Stone advised that a second resolution is not needed tonight and that the original resolution adopted on November 10 will stand as is since the amended and restated development order has not been fully executed.

Commissioner Cooper requested that the previously adopted resolution be brought back to the Commission for reconsideration since additional changes are being made to the development order (which is an exhibit to the resolution). Attorney Brown stated that it was not necessary to bring the resolution back.

Ms. Stone elaborated on the two major changes to the Development Order being requested this evening and answered questions.

(Background information from packet): On November 10, 2014, the City Commission reviewed a number of amendments to the Ravaudage Planned Development Development Order. On November 24, 2014, the City Commission asked for reconsideration of Sections 10 and 11 of the previously approved Development Order. The requested changes and DRC's recommendation are highlighted below. The amended and revised Development Order is attached with the two sections under review highlighted in red. The height map is also attached showing the area that the developer would like to modify to allow six stories maximum instead of four.

Condition #10 (c): - This is a change to the PD commercial code. This amendment would allow the street front setbacks to be reduced from 15' to 0' and is limited to buildings up to four stories only. The development order is modified to read: Building setbacks for all interior/exterior streets shall be a maximum of 15' in lieu of 30' with a minimum of 0'. All other rights-of-way shall have a minimum sidewalk width of 10'. No building shall encroach into the right-of-way. This condition is only applicable to buildings with a maximum height of four stories.

DRC Recommendation: Approval subject to allowing this setback only on projects within the Ravaudage Master Plan that are planned up to four-story buildings.

Mayor Bradley inquired as to why this particular condition #10(c) was being included in tonight's discussion since it was previously approved at the last Commission meeting. It was noted that Commissioner Cooper requested that this item be brought back up.

Motion to amend by Commissioner Cooper that our change to the Orange County standards for the front setbacks on one to four stories be reversed and that we go back to the Orange County 15' front setbacks on one to four story buildings in Ravaudage. Motion failed for lack of a second.

Condition #10 (e and f): This amendment as requested would allow an increase in the building height of the area designated with a four story maximum building height to be increased to a six story maximum building height, provided the location is set back 200' from Lee Road. A revised Urban Form: Proposed Building Height Zones exhibit is attached for clarification. This exhibit is an amendment to Sheet C-5 Urban Form Templates in the Development Order.

The applicant states that the purpose of this request is to provide maximum flexibility to parcel developers with respect to product placement, visibility and massing. This request does not increase project density or intensity nor does it increase building heights throughout the project. The proposal calls for a reduction on buildings heights in the area bounded by Morgan Lane, Lewis Drive, Loren Avenue and south of Elvin Way. It would allow for an increase of up to two additional stories on a case-by case basis for projects located within a certain Ravaudage area. Additionally, said specific height increase request shall be reviewed by staff and approved by City Commission. No six story buildings shall be located within 200' of the Lee Road right-of-way unless otherwise authorized by City Commission.

DRC Recommendation: Approval with conditions requiring a setback of 200 feet from Lee Road and Orlando Avenue with a maximum height of 87'.

Motion made by Mayor Bradley (to amend the resolution as clarified below) to approve the acceptance of the conditions known as #10 (e and f) in the Ravaudage Amended and Restated Development Order, allowing up to six

stories permitted within the 200' boundary of Lee Road and 17/92 (AKA Orlando Avenue) and that if six stories are given in a spot that was for four stories then that be taken off of another part of the development which requires Commission approval; and to add a new condition that the developer will submit an adjustment to his height map to show where he would be readjusting the height based on these requests; seconded by Commissioner Sprinkel. (Per verbatim - Mayor Bradley stated the following: I am moving that as an amendment to the resolution which has been approved and as a person who was on the other side of it I can make that motion for approval because we are reconsidering it.) Upon request, Ms. Stone provided clarity regarding the above motion.

Commissioner Cooper shared her opposition with allowing six story buildings with 0' or 15' setbacks from the edge of the road.

Dr. Rob Hess, Winter Park Veterinary Hospital, 1601 Lee Road, shared concerns with the proposed setbacks and the future realignment of Bennett Road.

Ms. Stone clarified that since this is a six story project, the setbacks will be 15' as required by this development order.

Mayor Bradley stated that he was moving the amendment to the resolution based on his ability to reconsider the amendment.

Upon a roll call vote on the above amendments to the DRC agreement, Mayor Bradley and Commissioners Leary and Sprinkel voted yes. Commissioners Cooper and McMacken voted no. The motion carried with a 3-2 vote.

- c. Request of Benjamin Partners, Ltd. and American Land Ventures, Inc.: Approval of setback variances for the fifth and sixth floors of the proposed six story, 296 unit apartment project to be located 2' 2" into the required street setback on Bennett Avenue and 10' 2" into the required street setback on Lewis Drive.

Planning Director Dori Stone explained that this item was tabled at the November 10 Commission meeting. The developer is asking for two amendments to the Development Order for the setbacks for the American Lands project, located along Loren Avenue to the south, Lewis Drive to the east and Bennett Avenue to the west. The Development Order requires 15' for side setbacks.

The first setback amendment request is to allow a 12'10" setback for the corner of Bennett and Morgan Lane. This is 2'2" less than the required 15' setback required in the Development Order.

The second setback amendment request is to allow 4'10" setback along Lewis Drive and Morgan Lane. This is a reduction of 10'2" to the required 15' required in the Development Order. While this is a much smaller setback, the amendment is offset by the fact that Lewis Drive has a width of 70' and sidewalks that are planned for 14'.

Ms. Stone noted that the unit count and all other setbacks meet the requirements found in the Development Order. DRC reviewed this plan and recommends approval, subject to the City Commission's approval of the amendments to the Development Order.

Ms. Stone answered questions and clarified that DRC had the ability to approve the project with the exception of the two variances. She asked to approve a six story, 296 unit building with these two setback requirements.

Commissioner Cooper shared her opposition regarding the setback variance request and the wording of the advertised public notice. She said the wording should have been more specific so that the public would have a clear understanding that the request was for an increase from four to six stories with two setback variances.

Motion made by Mayor Bradley to approve the request as presented and approved by the DRC (approval of a six story 296 unit apartment complex); with a 12'10" setback (from the right of way line) of Bennett and Morgan Lane (for the west corner of this property); and a 4'10" setback along Lewis Drive and Morgan Lane (on the east side of the property); seconded by Commissioner Sprinkel.

Commissioner McMacken spoke about the request for six stories based upon Commission approval. He preferred to have something more proportional and in an effort to support his position he illustrated an alternate site plan showing four stories on Bennett Avenue and Morgan Lane and six stories in the interior of the site. He said he is willing to waive the setbacks for four stories but not six stories.

Heidi Savage, 933 Lewis Drive, explained that as an adjacent property owner she objects to the proposed setbacks and with altering the original development plans.

Ms. Stone provided clarity regarding the neighboring property boundaries and the proposed setbacks.

Commissioner Cooper disagreed with allowing six story buildings to be constructed so close to Bennett Avenue and that we should require the applicant to adhere to the variance approvals set by Orange County when the de-annexation transpired.

Upon a roll call vote, Mayor Bradley and Commissioners Leary and Sprinkel voted yes. Commissioners Cooper and McMacken voted no. The motion carried with a 3-2 vote.

City Commission Reports:

a. Commissioner Leary - Commissioner Leary thanked staff for this weekend's wonderful holiday events.

b. Commissioner Sprinkel

Commissioner Sprinkel explained that she attends the library board meetings at the Mayor's request and if there is anything particular that needs to be shared with board members to please send her the information via email.

Mayor Bradley requested that a copy of the official motion from tonight's meeting regarding the Library Facility Task Force recommendations be shared with the board members. He directed staff to post the Library Task Force Report and a copy of tonight's meeting minutes on the website for public viewing.

Upon request, Police Chief Railey explained the various communication outlets that are used to alert the public regarding criminal incidents in the area. An interactive crime map can be accessed via the Police Department's website and residents can sign up to receive incident alerts which occurred near their home. Free home security surveys are offered to the public which are conducted by police officers who are trained in crime prevention through environmental design.

c. Commissioner Cooper - Commissioner Cooper wished everyone a happy holiday season.

d. Commissioner McMacken - Commissioner McMacken thanked staff for their outstanding efforts during the holiday season.

e. Mayor Bradley

Mayor Bradley mentioned the recent passing of Kenneth Murrah and asked for support to direct City Manager Knight to begin to look at the potential naming opportunities that may be available. A majority supported this request. Mayor Bradley wished everyone a happy holiday season.

The meeting adjourned at 7:37 p.m.

Mayor Kenneth W. Bradley

ATTEST:

City Clerk Cynthia S. Bonham, MMC



city commission agenda item

Item type	Consent Agenda	meeting date	January 12, 2015		
prepared by	Troy Attaway/Lena Petersen	approved by	<input checked="" type="checkbox"/>	City Manager	
department	Public Works		<input checked="" type="checkbox"/>	City Attorney	
division	Project Management		<input type="checkbox"/>	N/A	
board approval	Mead Botanical Garden, Inc.	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> N/A	final vote
strategic objective	<input checked="" type="checkbox"/> Exceptional Quality of Life	<input type="checkbox"/> Fiscal Stewardship			
	<input type="checkbox"/> Intelligent Growth & Development	<input type="checkbox"/> Public Health & Safety			
	<input checked="" type="checkbox"/> Investment in Public Assets & Infrastructure				

subject

Approval to execute two agency grant agreements to fund improvements to the Mead Grove Wetlands: 1) Florida Department of Environmental Protection (FDEP), and 2) Florida Fish & Wildlife Conservation Commission (FFWCC).

motion | recommendation

Staff recommends approval to enter into agreement with the Florida Department of Environmental Protection for the amount of \$400,000 subject to City Attorney review and approval of final agreement draft. (City Attorney has reviewed all but the final draft forthcoming from FDEP.)

Staff recommends approval to enter into agreement with the Florida Fish & Wildlife Conservation Commission for the amount of \$50,000. (City Attorney has reviewed the final draft.)

background

Mead Botanical Gardens, Inc. (MBG), is a non-profit organization dedicated to the restoration and revitalization of Mead Botanical Garden. In 2012, the City entered into a multi-year lease agreement giving MBG standing to operate in Mead Garden.

Earlier this year, MBG attained 100% project funding from FDEP and FFWCC, and obtained construction permits from St. John River Water Management District, United States Army Corp of Engineers, and Orange County to remove nuisance/exotic plants from 0.49 acres of the wetlands, replant vegetation with native herbaceous species, repair the existing boardwalk, and place identification and educational signs. Project total is estimated at \$450,000.

Contractor for work will be selected via public bid in compliance with FDEP, FFWCC, and City policy requirements.

alternatives | other considerations

None

fiscal impact

Mead Grove Wetland Restoration Project 100% funded by awarded grant dollars.

DEP AGREEMENT NO. S0747

**STATE OF FLORIDA
GRANT AGREEMENT**

PURSUANT TO LINE ITEM 1668A OF THE 2014-2015 GENERAL APPROPRIATIONS ACT

THIS AGREEMENT is entered into between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 (hereinafter referred to as the "Department") and the CITY OF WINTER PARK, whose address is 401 Park Avenue, South, Winter Park, Florida 32786 (hereinafter referred to as "Grantee"), local government, to provide financial assistance for the Mead Garden Wetland Enhancement Project.

In consideration of the mutual benefits to be derived herefrom, the Department and the Grantee do hereby agree as follows:

1. The Grantee does hereby agree to perform in accordance with the terms and conditions set forth in this Agreement, **Attachment A, Grant Work Plan**, and all attachments and exhibits named herein which are attached hereto and incorporated by reference. For purposes of this Agreement, the terms "Grantee", and "Recipient" are used interchangeably.
2. This Agreement shall begin upon execution by both parties and remain in effect for a period of ~~six (6)~~ Eighteen (18) months, inclusive. This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
3.
 - A. As consideration for the satisfactory completion of services rendered by the Grantee under the terms of this Agreement, the Department shall pay the Grantee on a cost reimbursement basis up to a maximum of \$400,000. The parties hereto understand and agree that this Agreement does not require a match on the part of the Grantee.
 - B. The Grantee shall be reimbursed on a cost reimbursement basis for all eligible project costs upon the completion, submittal and approval of deliverables identified in **Attachment A**, in accordance with the schedule therein. Reimbursement shall be requested utilizing **Attachment B, Payment Request Summary Form**. To be eligible for reimbursement, costs must be in compliance with laws, rules and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures. All bills for amounts due under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. A final payment request should be submitted to the Department no later than sixty (60) days following the completion date of the Agreement, to assure the availability of funds for payment.
 - C. The State Chief Financial Officer requires detailed supporting documentation of all costs under a cost reimbursement agreement. In accordance with the **Attachment C, Contract Payment Requirements**, the Grantee shall comply with the minimum requirements set forth therein. The Payment Request Summary Form shall be accompanied by supporting documentation and other requirements as follows for each deliverable:
 - i. Contractual (Subcontractors) - Reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from the Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours/time spent on the project. All multipliers used (i.e. fringe benefits, overhead, and/or general and administrative rates) shall be supported by audit. If the Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, the Grantee shall be required to reimburse such funds to the Department within thirty (30) days of written notification. Interest on the excessive charges shall be calculated based on

the prevailing rate used by the State Board of Administration. For fixed price (vendor) subcontracts, the following provisions shall apply:

- a. The Grantee may award, on a competitive basis, fixed price subcontracts to consultants/contractors in performing the work described in Attachment A. Invoices submitted to the Department for fixed price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (Invitation to Bid or Request for Proposals) resulting in the fixed price subcontract.
 - b. The Grantee may request approval from the Department to award a fixed price subcontract resulting from procurement methods other than those identified in the paragraph above. In this instance, the Grantee shall request the advance written approval from the Department's Grant Manager of the fixed price negotiated by the Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of the Department Grant Manager's approval of the fixed price amount, the Grantee may proceed in finalizing the fixed price subcontract.
 - c. All subcontracts are subject to the provisions of paragraph 12 and any other appropriate provisions of this Agreement which affect subcontracting activities.
- D. In addition to the invoicing requirements contained in paragraphs 3.B. and C. above, the Department will periodically request proof of a transaction (invoice, payroll register, etc.) to evaluate the appropriateness of costs to the Agreement pursuant to State and Federal guidelines (including cost allocation guidelines), as appropriate. This information, when requested, must be provided within thirty (30) calendar days of such request. The Grantee may also be required to submit a cost allocation plan to the Department in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). State guidelines for allowable costs can be found in the Department of Financial Services' Reference Guide for State Expenditures at <http://www.fldfs.com/aadir/reference%5Fguide>.
- E.
- i. The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, the Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - ii. If the Department finds that these funds have been commingled, the Department shall have the right to demand a refund, either in whole or in part, of the funds provided to the Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from the Department shall refund, and shall forthwith pay to the Department, the amount of money demanded by the Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from the Department by the Grantee to the date repayment is made by the Grantee to the Department.
 - iii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by the Department, from another source(s), the Grantee shall reimburse the Department for all recovered funds originally provided under this Agreement. Interest on

any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the payment(s) are recovered by the Grantee to the date repayment is made to the Department by the Grantee.

4. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. The parties hereto understand that this Agreement is not a commitment of future appropriations.
5. The Grantee shall utilize **Attachment D, Progress Report Form**, to describe the work performed during the reporting period, problems encountered, problem resolution, schedule updates and proposed work for the next reporting period. Quarterly reports shall be submitted to the Department's Grant Manager no later than twenty (20) days following the completion of the quarterly reporting period. It is hereby understood and agreed by the parties that the term "quarterly" shall reflect the calendar quarters ending March 31, June 30, September 30 and December 31. The Department's Grant Manager shall have thirty (30) calendar days to review the required reports and deliverables submitted by the Grantee. Final payment, of up to ten (10) percent of the total Agreement amount identified in paragraph 3.A., may be withheld until all work is completed, all deliverables have been submitted, match requirements have been met and the Final Project Report has been received and approved.
6. Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.
7.
 - A. The Department may terminate this Agreement at any time in the event of the failure of the Grantee to fulfill any of its obligations under this Agreement. Prior to termination, the Department shall provide thirty (30) calendar days written notice of its intent to terminate and shall provide the Grantee an opportunity to consult with the Department regarding the reason(s) for termination. The Department will be responsible to the Grantee for reimbursables incurred prior to receipt of the 30 day notice if this Agreement is terminated without cause.
 - B. The Department may terminate this Agreement for convenience by providing the Grantee with thirty (30) calendar days written notice.
8. No payment will be made for deliverables deemed unsatisfactory by the Department. In the event that a deliverable is deemed unsatisfactory by the Department, the Grantee shall re-perform the services needed for submittal of a satisfactory deliverable, at no additional cost to the Department, within ten (10) days of being notified of the unsatisfactory deliverable. If a satisfactory deliverable is not submitted within the specified timeframe, the Department may, in its sole discretion, either: 1) terminate this Agreement for failure to perform, or 2) the Department Grant Manager may, by letter specifying the failure of performance under this Agreement, request that a proposed Corrective Action Plan (CAP) be submitted by the Grantee to the Department. All CAPs must be able to be implemented and performed in no more than sixty (60) days.
 - A. A CAP shall be submitted within ten (10) calendar days of the date of the letter request from the Department. The CAP shall be sent to the Department Grant Manager for review and approval. Within ten (10) calendar days of receipt of a CAP, the Department shall notify the Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, the Grantee shall have ten (10) calendar days from receipt of the Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain the Department approval of a CAP as specified above shall result in the Department's termination of this Agreement for cause as authorized in this Agreement.
 - B. Upon the Department's notice of acceptance of a proposed CAP, the Grantee shall have ten (10) calendar days to commence implementation of the accepted plan. Acceptance of the proposed CAP by the Department does not relieve the Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, the

Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by the Department or steps taken by the Grantee shall preclude the Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to the Department as requested by the Department Grant Manager.

- C. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by the Department may result in termination of the Agreement

The remedies set forth above are not exclusive and the Department reserves the right to exercise other remedies in addition to or in lieu of those set forth above, as permitted by the Agreement.

- 9. This Agreement may be unilaterally canceled by the Department for refusal by the Grantee to allow public access to all documents, papers, letters, or other material made or received by the Grantee in conjunction with this Agreement, unless the records are exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1)(a), Florida Statutes.
- 10. The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following Agreement completion. In the event any work is subcontracted, the Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes.
- 11.
 - A. In addition to the requirements of the preceding paragraph, the Grantee shall comply with the applicable provisions contained in **Attachment E, Special Audit Requirements**, attached hereto and made a part hereof. **Exhibit 1 to Attachment E** summarizes the funding sources supporting the Agreement for purposes of assisting the Grantee in complying with the requirements of **Attachment E**. A revised copy of **Exhibit 1** must be provided to the Grantee for each amendment which authorizes a funding increase or decrease. If the Grantee fails to receive a revised copy of **Exhibit 1**, the Grantee shall notify the Department's Grants Development and Review Manager at 850/245-2361 to request a copy of the updated information.
 - B. The Grantee is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. The Grantee shall consider the type of financial assistance (federal and/or state) identified in **Attachment E, Exhibit 1** when making its determination. For federal financial assistance, the Grantee shall utilize the guidance provided under OMB Circular A-133, Subpart B, Section __.210 for determining whether the relationship represents that of a subrecipient or vendor. For state financial assistance, the Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs. Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website:

<https://apps.fldfs.com/fsaa>

The Grantee should confer with its chief financial officer, audit director or contact the Department for assistance with questions pertaining to the applicability of these requirements.

- 12.
 - A. The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager. The Grantee shall submit a copy of the executed subcontract to the Department within ten (10) days after execution. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement. The Grantee agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be

responsible for the payment of all monies due under any subcontract. It is understood and agreed by the Grantee that the Department shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

- B. The Department of Environmental Protection supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. A list of minority owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
13. In accordance with Section 216.347, Florida Statutes, the Grantee is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.
14. The Grantee shall comply with all applicable federal, state and local rules and regulations in providing services to the Department under this Agreement. The Grantee acknowledges that this requirement includes, but is not limited to, compliance with all applicable federal, state and local health and safety rules and regulations. The Grantee further agrees to include this provision in all subcontracts issued as a result of this Agreement.
15. Any notices between the parties shall be considered delivered when posted by Certified Mail, return receipt requested, or overnight courier service, or delivered in person to the Grant Managers at the addresses below.
16. The Department's Grant Managers (which may also be referred to as the Department's Project Manager) for this Agreement are identified below.

<u>Technical</u>	
Misty Alderman	
Florida Department of Environmental Protection	
Nonpoint Source Management Section	
2600 Blair Stone Road, MS# 3570	
Tallahassee, Florida 32399	
Telephone No.:	(850) 245-8542
Fax No.:	(850) 245-8434
E-mail Address:	Misty.Alderman@dep.state.fl.us

<u>Administrative</u>	
Connie Becker	
Florida Department of Environmental Protection	
Water Quality Restoration Program	
2600 Blair Stone Road, MS# 3510	
Tallahassee, Florida 32399	
Telephone No.:	(850) 245-5505
Fax No.:	(850) 245-8434
E-mail Address:	Connie.L.Becker@dep.state.fl.us

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17. The Grantee's Grant Manager for this Agreement is identified below.

Lena Petersen	
City of Winter Park	
401 Park Avenue South	
Winter Park, Florida 32786	
Telephone No.:	(407) 599-3225
Fax No.:	(407) 599-3417
E-mail Address:	lpetersen@cityofwinterpark.org

18. To the extent required by law, the Grantee will be self-insured against, or will secure and maintain during the life of this Agreement, Workers' Compensation Insurance for all of its employees connected with the work of this project and, in case any work is subcontracted, the Grantee shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the its employees unless such employees are covered by the protection afforded by the Grantee. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation statutes, the Grantee shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of his employees not otherwise protected.
19. The Grantee shall secure and maintain Commercial General Liability insurance including bodily injury and property damage. The minimum limits of liability shall be \$200,000 each individual's claim and \$300,000 occurrence. This insurance will provide coverage for all claims that may arise from the services and/or operations completed under this Agreement, whether such services and/or operations are by the Grantee or anyone directly or indirectly employed by him.
- A. The Grantee shall secure and maintain Commercial Automobile Liability insurance for all claims which may arise from the services and/or operations under this Agreement, whether such services and/or operations are by the Grantee or by anyone directly, or indirectly employed by him. The minimum limits of liability shall be as follows:
- \$300,000 Automobile Liability Combined Single Limit for Company Owned Vehicles, if applicable
- \$300,000 Hired and Non-owned Liability Coverage
- B. All insurance policies shall be with insurers licensed or eligible to do business in the State of Florida. The Grantee's current certificate of insurance shall contain a provision that the insurance will not be canceled for any reason except after thirty (30) days written notice (with the exception of non-payment of premium which requires a 10 day notice) to the Department's Procurement Administrator.
20. The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.
21. Reimbursement for equipment purchases costing \$1,000 or more is not authorized under the terms and conditions of this Agreement.
22. The Department may at any time, by written order designated to be a change order, make any change in the Grant Manager information or task timelines within the current authorized Agreement period. All change orders are subject to the mutual agreement of both parties as evidenced in writing. Any change, which

causes an increase or decrease in the Grantee's cost or time, shall require formal amendment to this Agreement.

23.
 - A. No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
 - B. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide 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 award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.
24. Land acquisition is not authorized under the terms of this Agreement.
25. This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action hereon or in connection herewith shall be brought in Leon County, Florida.
26. This Agreement represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement, unless otherwise provided herein.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, the day and year last written below.

CITY OF WINTER PARK

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Title: *

By: _____
Secretary or designee

Date: _____

Date: _____

Misty Alderman, DEP Grant Manager

Connie Becker, DEP Grant Manager

DEP Contracts Administrator

Approved as to form and legality:

DEP Attorney

FEID No.: 59-6000454

*For Agreements with governmental boards/commissions: If someone other than the Chairman signs this Agreement, a resolution, statement or other document authorizing that person to sign the Agreement on behalf of the Grantee must accompany the Agreement.

List of attachments/exhibits included as part of this Agreement:

Specify Type	Letter/ Number	Description (include number of pages)
<u>Attachment</u>	<u>A</u>	<u>Grant Work Plan (2 Pages)</u>
<u>Attachment</u>	<u>B</u>	<u>Payment Request Summary Form (2 Pages)</u>
<u>Attachment</u>	<u>C</u>	<u>Contract Payment Requirements (1 Page)</u>
<u>Attachment</u>	<u>D</u>	<u>Progress Report Form (1 Page)</u>
<u>Attachment</u>	<u>E</u>	<u>Special Audit Requirements (5 Pages)</u>

**ATTACHMENT A
GRANT WORKPLAN**

Project Title: Mead Garden/Grove Wetland Restoration Project

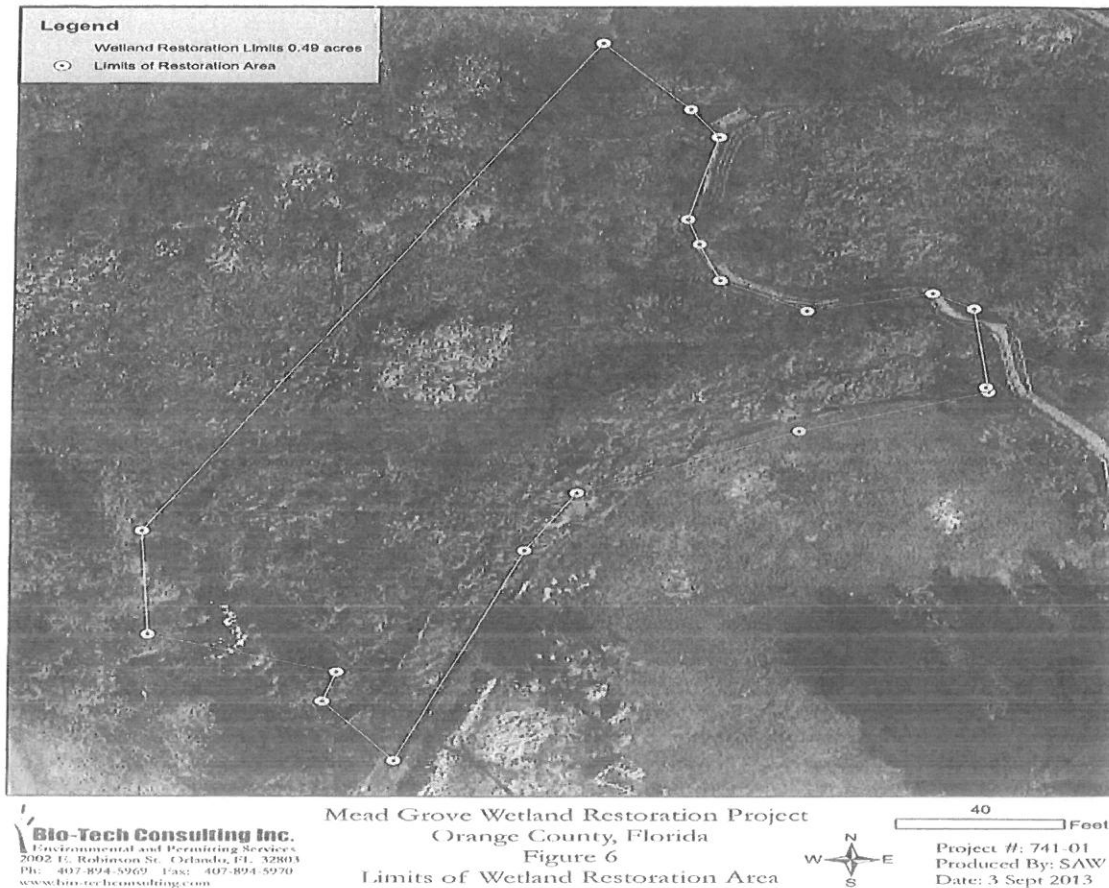
Project Summary: Mead Garden (Lake Lillian) is a 54-acre urban park owned by the City of Winter Park, originally established in 1940 as a botanical garden. Mead Garden includes a rare creek and lake wetlands that provide for natural water quality treatment and habitat restoration for Metropolitan Orlando's untreated basin stormwater. The overall wetland system located within Mead Garden is approximately 8.3 acres.

This environmental restoration project involves the removal of nuisance/exotic plants from 0.49 acres of wetlands, including, but not limited to: Boston fern, Carolina willow, cattail, Chinaberry, elderberry, guinea grass, primrose willow, rattlebox, skunk vine, and wild taro.

Educational and interpretive signs that describe the restoration project and the wetlands will be created and installed. The signs will describe the purpose and benefits of the project, the process involved, timeline, responsible entities, and funding sources. In addition, information about the wetlands ecosystem, aquatic habitat and stormwater management will be included.

Project Location: 1300 S. Denning Drive, Winter Park, Florida; County of Orange; Parcel ID: 07-22-30-6060-020-000. The southernmost headwaters of Howell Creek flow through Mead Garden, entering the Winter Park chain of lakes, then through to the St. Johns River Basin. Watershed: Howell Branch Creek/Lk. Jessup/Middle St. Johns, Hydrologic Unit Code: 308010, WBID: 29971 (closest found). Latitude: 28.5849362 Longitude: 81.359639

Aerial site map below.



Task 1

Title: Construction for Restoration and Enhancement of the Mead Garden/Grove Wetland Area, including Educational & Interpretive Sign Placement

Description: Construction for the enhancement of the wetland area by means of: 1) removal of nuisance/exotic plant material from 0.49 acres of wetlands; 2) replanting of vegetation with native herbaceous species including pickerelweed, saw grass, golden canna, lizard's tail, cypress, and red maple; 3) repair of the existing boardwalk to replace approximately 70 feet of five-foot wide board planks, and 4) placement of approximately 100 educational signs made of an appropriate outdoor material to withstand weather that will identify flora and fauna inhabiting the area will be installed in strategic locations near the restoration site, at the central informational bulletin board, the Discovery Barn, and the Blue House Environmental classroom. A quarterly progress report will be required for submittal to the Department's Grant Manager to update them on status of each task and the overall project, as a way to describe any issues or delays encountered or if everything is on target.

Deliverables: Project construction plans, to be submitted and approved by Department Grant Manager before commencement of work; bid documents; permits; dated color photographs before, during and after of vegetation removal, replanting, boardwalk construction, and sign installation progress; images of signs submitted to the Department Grant Manager to be submitted and approved before purchase and installation of signs; map depicting sign placement locations; , as-builts; signed statement by professional engineer certifying the work was completed according to approved plans.

Performance Measures: The Department Grant Manager will review the deliverables for this task to verify the work was performed in accordance with the final plans and the terms and conditions of this agreement.

Timeline: 12 Months upon agreement execution

Budget Narrative: Contractual: Construction: \$325,000; Signage: \$40,000; and consulting and project management assistance services during construction by Mead Botanical Garden, Inc.: \$35,000.

Budget by Category	DEP Funding
Contractual – Construction, signage, consulting services	\$ 400,000
TOTAL FOR TASK	\$ 400,000.00

**STATE OF FLORIDA
FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION**

CONTRACT No. 14211

The FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, whose address is 620 South Meridian Street, Tallahassee, Florida 32399-1600, hereafter "Commission," and City of Winter Park, F596000454, whose address is 401 Park Avenue South, Winter Park, FL 32789, hereinafter "Contractor", collectively, "Parties".

INTRODUCTORY CLAUSES

The Commission and Contractor intend to partner together to restore Mead Grove Wetlands;

The Commission has awarded this Contract pursuant to the requirements of Section 287.057, Florida Statutes; and

Such benefits are for the ultimate good of the State of Florida, its resources, wildlife, and public welfare.

TERMS OF THE CONTRACT

The Commission and the Contractor, for the considerations stated in this Contract, agree as follows:

1. **PROJECT DESCRIPTION.** The Contractor shall provide the services and products, and perform the specific responsibilities and obligations, as set forth in the Scope of Work, attached hereto as Attachment A and made a part hereof (hereafter, Scope of Work). The Scope of Work, Attachment A specifically identifies project tasks and accompanying deliverables. These deliverables must be submitted and approved by the Commission prior to any payment. The Commission will not accept any deliverable that does not comply with the specified required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable. If this Contract was competitively procured, the Contractor's response to the Commission's solicitation is hereby incorporated by reference.
2. **PERFORMANCE.**
 - A. **Contractor Performance.** The Contractor shall perform the activities described in the Scope of Work, Attachment A in a proper and satisfactory manner. Unless otherwise provided for in the Scope of Work, Attachment A, any and all equipment, products or materials necessary or appropriate to perform under this Contract shall be supplied by the Contractor. Contractor shall obtain all necessary local, state, and federal authorizations necessary to complete this project, and the Contractor shall be licensed as necessary to perform under this Contract as may be required by law, rule, or regulation; the Contractor shall provide evidence of such compliance to the Commission upon request. The Contractor shall procure all supplies and pay all charges, fees, taxes and incidentals that may be required for the completion of this Contract. By acceptance of this Contract, the Contractor warrants that it has the capability in all respects totally perform the requirements and the integrity and reliability that will assure good-faith performance as a responsible Contractor. Contractor shall immediately notify the Commission's Contract

Manager in writing if its ability to perform under the Contract is compromised in any manner during the term of the Contract. The Commission shall take appropriate action, including potential termination of this Contract pursuant to paragraph eleven (11) Remedies, below, in the event the Contractor's ability to perform under this Contract becomes compromised.

- B. Contractor Responsibilities.** The Contractor agrees that all Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Commission. The Commission may conduct, and Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by Contractor for this scope of work (on this project). The Commission in coordination with the Contractor may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Commission's security or other requirements. Such refusal shall not relieve Contractor of its obligation to perform all work in compliance with the Contract. The Commission may reject and bar from any facility for cause any of Contractor's employees, subcontractors, or agents.
- C. Commission Rights to Assign or Transfer.** Contractor agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to Contractor.

3. CONTRACT PERIOD.

- A. Contract Period and Limited Obligation Period.** This Contract shall begin upon execution by both Parties or November 15, 2014 (whichever is later) and end June 30, 2015, inclusive. The Commission shall not be obligated to pay for costs related to this Contract prior to its beginning date or after its ending date.
- B. Renewal – Competitive Procurement.** If this Contract was competitively procured, the renewal price(s) must be set forth in the Contractor's response to the Commission's bid document. The renewal price(s) for this Contract are included in the Scope of Work, Attachment A. If applicable, renewal of this Contract shall be subject to the availability of funds, satisfactory performance evaluations by the Commission, and at the discretion of the Commission; it must also be in writing and subject to the same terms and conditions of this Contract. Renewal amendments must be executed prior to the end date of the Contract. Any costs associated with a renewal may not be passed onto the Commission.
- C. Renewal – Exceptional Purchase.** If this Contract was procured by an exceptional purchase pursuant to Subsections 287.057(3)(a) or (3)(c), Florida Statutes (F.S.), it may not be renewed. Subsection 287.057(13), F.S., provides that contracts for commodities or contractual services may be renewed for up to three (3) years, or for a total term not to exceed the original Contract period, whichever is longer. If applicable, renewal of this Contract shall be subject to the availability of funds, satisfactory performance evaluations

by the Commission, and at the discretion of the Commission; it must also be in writing and subject to the same terms and conditions of this Contract. Renewal amendments must be executed prior to the end date of the Contract. Any costs associated with a renewal may not be passed onto the Commission.

- D. Renewal Period.** This Contract may not be renewed. If this Contract was competitively procured, the renewal price(s) must be set forth in the Contractor's response to the Commission's bid document. The renewal price(s) for this Contract are included in the Scope of Work, Attachment A.
- E. Extension.** If this is a Contract for contractual services, any extension of this contract as provided for in the Scope of Work, Attachment A shall be in writing for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in the initial Contract. There shall be only one extension of this Contract unless the failure to meet the criteria set forth in the Contract for completion of the Contract is due to events beyond the control of the Contractor.

4. COMPENSATION AND PAYMENTS.

- A. Compensation.** As consideration for the services rendered by the Contractor under the terms of this Contract, the Commission shall pay the Contractor on a cost reimbursement basis in an amount not to exceed \$50,000.
- B. Payments.** The Commission shall pay the Contractor for satisfactory performance of the tasks identified in the Scope of Work, Attachment A, as evidenced by the completed deliverables, upon submission of invoices, accompanied by supporting documentation sufficient to justify invoiced expenses or fees, and after acceptance of services and deliverables in writing by the Commission's Contract Manager, identified in paragraph twelve (12), below. Unless otherwise specified in the Scope of Work, Attachment A, invoices shall be due monthly, commencing from the start date of this Contract. Invoices must be legible and must clearly reflect the goods or services that were provided in accordance with the terms of the Contract for the invoice period. Unless otherwise specified in the Scope of Work, Attachment A, a final invoice shall be submitted to the Commission no later than forty-five (45) days following the expiration date of this Contract to assure the availability of funds for payment. Costs under this Contract must be obligated and all work completed by the Contractor by the end of the Contract period identified in paragraph three (3).
- C. Invoices.** Each invoice shall include the Commission Contract Number and the Contractor's Federal Employer Identification (FEID) Number. Invoices, with supporting documentation, may be submitted electronically to the attention of the Commission's Contract Manager identified in Paragraph twelve (12) below. If submitting hard copies, an original and two (2) copies of the invoice, plus all supporting documentation, shall be submitted. All bills for amounts due under this Contract shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Contractor acknowledges that the Commission's Contract Manager shall reject invoices lacking documentation necessary to justify invoiced expenses.
- D. Travel Expenses.** If authorized in the Scope of Work, Attachment A, travel expenses shall be reimbursed in accordance with Section 112.061, F.S.

- E. State Obligation to Pay.** The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature. The Parties hereto understand that this Contract and any renewal thereof is not a commitment to future appropriations, but is subject to appropriation and authority to spend provided by the Legislature. The Commission shall be the final authority as to the availability of funds for this Contract, and as to what constitutes an "annual appropriation" of funds to complete this Contract. If such funds are not appropriated or available for the Contract purpose, such event will not constitute a default on behalf of the Commission or the State. The Commission's Contract Manager shall notify Contractor in writing at the earliest possible time if funds are not appropriated or available.
- F. Non-Competitive Procurement and Rate of Payment.** Section 216.3475, F.S., requires that under non-competitive procurements, a Contractor may not receive a rate of payment in excess of the competitive prevailing rate for those services unless expressly authorized in the General Appropriations Act. If applicable, the Contractor warrants, by execution of this Contract, that the amount of non-competitive compensation provided in this Contract is in compliance with Section 216.3475, F.S.
- G. Professional Services – Truth-In-Negotiation Certificate.** If this Contract is for professional services and contains a lump-sum or a cost-plus-a-fixed-fee form of compensation which exceeds the threshold of Category Four (\$195,000) as provided in Section 287.017, F.S., then:
- a. The Contractor must execute a Truth-in-Negotiations Certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting, pursuant to Section 287.055(5), F.S.
 - b. The original contract price and any additions will be adjusted to exclude any significant sums by which the Commission determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates. All such contract adjustments must be made within one (1) year following the end of this Contract.
- H. Time Limits for Payment of Invoices.** Payments shall be made in accordance with Sections 215.422 and 287.0585, F.S., governing time limits for payment of invoices. Section 215.422, F.S. provides that agencies have five (5) working days to inspect and approve goods and services, unless bid specifications or the Scope of Work, Attachment A, specifies otherwise. If payment is not available within forty (40) days, measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, a separate interest penalty set by the Department of Financial Services pursuant to Section 55.03(1), F.S., will be due and payable in addition to the invoice amount. Invoices returned to a vendor due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the agency.
- I. Electronic Funds Transfer.** The Contractor agrees to enroll in Electronic Funds Transfer (EFT), offered by the State's Chief Financial Officer, within thirty (30) days of the date the last Party has signed this Contract. Copies of the Authorization form and a sample blank enrollment letter can be found on the vendor instruction page at:

http://www.fldfs.com/aadir/direct_deposit_web/Vendors.htm

Questions should be directed to the State of Florida's EFT Section at (850) 413-5517. Once enrolled, invoice payments will be made by EFT.

- J. Vendor Ombudsman.** A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a State agency, may be contacted at (850) 413-5516 or by calling the Chief Financial Officer's Hotline, (800) 342-2762.
- 5. CERTIFICATIONS AND ASSURANCES.** Upon execution of this Contract by the Contractor, the Contractor shall complete, sign and return to the Commission's Contract Manager a completed copy of the form entitled "Certifications and Assurances," attached hereto and incorporated as Attachment B. This includes: Debarment and Suspension Certification; Certification Against Lobbying; Certification Regarding Public Entity Crimes; and Certification Regarding the Scrutinized Companies List (applicable to contracts for goods or services in excess of \$1 million); Attachment B, incorporated and made part of this Contract.
- 6. MYFLORIDAMARKETPLACE VENDOR REGISTRATION AND TRANSACTION FEE.**
 - A. MyFloridaMarketPlace.** In accordance with Rule 60A-1.030 of the Florida Administrative Code (F.A.C.), each vendor doing business with the State for the sale of commodities or contractual services as defined in Section 287.012, F.S., shall register in the MyFloridaMarketPlace system, unless exempted under Rule 60A-1.030(3), F.A.C. Information about the registration process is available, and registration may be completed, at the MyFloridaMarketPlace website (link under Business on the State portal at www.myflorida.com). Interested persons lacking Internet access may request assistance from the MyFloridaMarketPlace Customer Service at (866-352-3776) or from State Purchasing, 4050 Esplanade Way, Suite 300, Tallahassee, Florida 32399.
 - B. Transaction Fee.** Pursuant to Section 287.057(22), F.S., all payments, unless exempt under Rule 60A-1.030(3), F.A.C., shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State. For payments within the State accounting system (Florida Accounting Information Resource, FLAIR, or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.
- 7. RETURN OR RECOUPMENT OF FUNDS.**
 - A. Overpayments to Contractor.** The Contractor shall return to the Commission any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Contract that were disbursed to the Contractor by the Commission. In the event that Contractor or its independent auditor discovers that overpayment has been made, Contractor shall repay said overpayment within forty (40) calendar days without prior notification from the Commission. In the event that the Commission first discovers an overpayment has been made, the Commission will notify the Contractor in writing. Should repayment not be made in a timely manner, the Commission shall be entitled to

charge interest at the lawful rate of interest established pursuant to Section 55.03(1), F.S., on the outstanding balance beginning forty (40) calendar days after the date of notification or discovery. Refunds should be sent to the Commission's Contract Manager, and made payable to the "The Florida Fish and Wildlife Conservation Commission."

- B. Additional Costs or Monetary Loss Resulting from Contractor Non-Compliance.** If the Contractor's non-compliance with any provision of the Contract results in additional cost or monetary loss to the Commission or the State of Florida to the extent allowed by Florida law, the Commission can recoup that cost or loss from monies owed to the Contractor under this Contract or any other contract between the Contractor and the Commission. In the event that the discovery of this cost or loss arises when no monies are available under this Contract or any other contract between the Contractor and the Commission, Contractor will repay such cost or loss in full to the Commission within thirty (30) days of the date of notice of the amount owed, unless the Commission agrees, in writing, to an alternative timeframe. If the Contractor is unable to repay any cost or loss to the Commission, the Commission shall notify the State of Florida, Department of Financial Services, for resolution pursuant to Section 17.0415, F.S.

- 8. COMMISSION EXEMPT FROM TAXES, PROPERTY EXEMPT FROM LIEN.** The Contractor recognizes that the State of Florida, by virtue of its sovereignty, is not required to pay any taxes on the services or goods purchased under the terms of this Contract.

If the Contract involves the improvement of real property titled to the State of Florida, then the following paragraph applies. The Contractor acknowledges that property being improved is titled to the State of Florida and is not subject to lien of any kind for any reason. The Contractor shall include notice of such exemptions in any subcontracts and purchase orders issued hereunder.

- 9. MONITORING.** The Commission's Contract Manager shall actively monitor the Contractor's performance and compliance with the terms of this Contract. The Commission reserves the right for any Commission staff to make scheduled or unscheduled, announced or unannounced monitoring visits. Specific monitoring terms, conditions, and schedules may be included in the Scope of Work, Attachment A.

10. TERMINATION.

- A. Commission Termination.** The Commission may unilaterally terminate this Contract for convenience by providing the Contractor with thirty (30) calendar days of written notice of its intent to terminate. The Contractor shall not be entitled to recover any cancellation charges or lost profits. The Contractor may request termination of the Contract for convenience.
- B. Termination – Fraud or Willful Misconduct.** This Contract shall terminate immediately in the event of fraud or willful misconduct on the part of the Contractor. In the event of such termination, the Commission shall provide the Contractor with written notice of termination.
- C. Termination - Funds Unavailability.** In the event funds to finance this Contract become unavailable or if federal or state funds upon which this Contract is dependent are withdrawn or redirected, the Commission may terminate this Contract upon no less than

twenty-four (24) hours notice in writing to the Contractor. Said notice shall be delivered by certified mail, return receipt requested or in person with proof of delivery. The Commission shall be the final authority as to the availability of funds and will not reallocate funds appropriated for this Contract to another program thus causing "lack of funds." In the event of termination of this Contract under this provision, the Contractor will be compensated for any work satisfactorily completed and any non-cancellable obligations properly incurred prior to notification of termination.

- D. Termination – Other.** The Commission may terminate this Contract if the Contractor fails to: 1.) comply with all terms and conditions of this Contract; 2.) produce each deliverable within the time specified by the Contract or extension; 3.) maintain adequate progress, thus endangering the performance of the Contract; or, 4.) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences for default. The rights and remedies of the Commission in this clause are in addition to any other rights and remedies provided by law or under the Contract. Contractor shall not be entitled to recover any cancellation charges or lost profits.
- E. Contractor Discontinuation of Activities upon Termination Notice.** Upon receipt of notice of termination, the Contractor shall, unless the notice directs otherwise, immediately discontinue all activities authorized hereunder. Upon termination of this Contract, the Contractor shall promptly render to the Commission all property belonging to the Commission. For the purposes of this section, property belonging to the Commission shall include, but shall not be limited to, all books and records kept on behalf of the Commission.

11. REMEDIES.

- A. Financial Consequences.** In accordance with Section 287.058(1)(h), F.S., the Scope of Work, Attachment A contains clearly defined deliverables. If the Contractor fails to produce each deliverable within the time frame specified by the Scope of Work, Attachment A the budget amount allocated for that deliverable will be deducted from the Contractor's payment. The Commission shall apply any additional financial consequences identified in the Scope of Work, Attachment A.
- B. Cumulative Remedies.** The rights and remedies of the Commission in this paragraph are in addition to any other rights and remedies provided by law or under the Contract.

- 12. NOTICES AND CORRESPONDENCE.** Any and all notices shall be delivered to the individuals identified below. In the event that any Party designates a different Contract Manager after the execution of this Contract, the Party will provide written notice of the name, address, zip code, telephone and fax numbers, and email address of the newest Contract Manager or individual authorized to receive notice on behalf of that Party to all other Parties as soon as possible, but not later than five (5) business days after the new Contract Manager has been named. A designation of a new Contract Manager shall not require a formal amendment to the Contract.

FOR THE COMMISSION:

Contract Manager
Ed Hayes

FOR THE CONTRACTOR:

Contract Manager
Lena Peterson

Contract Manager
Eustis Fisheries Research Lab
601 W. Woodward Ave.
Eustis, FL 32726
352-800-5023
352-357-2941
ed.hayes@myfwc.com

Grants Manager
[Click here to enter Facility](#)
401 Park Ave South
Winter Park, FL 32789
407-599-3225
407-599-3417
lpetersen@cityofwinterpark.org

13. AMENDMENT.

- A. Waiver or Modification.** No waiver or modification of this Contract or of any covenant, condition, or limitation herein contained shall be valid unless in writing and lawfully executed by both Parties.
- B. Change Orders.** The Commission may, at any time, by written order, make a change to this Contract. Such changes are subject to the mutual agreement of both Parties as evidenced in writing. Any change which causes an increase or decrease in the Contractor's cost or time shall require an Amendment. Minor changes, such as those updating a party's contact information, may be accomplished by a Modification.
- C. Renegotiation upon Change in Law or Regulations.** The Parties agree to renegotiate this Contract if federal and/or state revisions of any applicable laws or regulations make changes in the Contract necessary.

14. INTELLECTUAL PROPERTY RIGHTS.

- A. Contractor's Pre-existing Intellectual Property (Proprietary) Rights.** Unless specifically addressed otherwise in the Scope of Work, Attachment A intellectual property rights to the Contractor's pre-existing property will remain with the Contractor.
- B. Proceeds Related to Intellectual Property Rights.** Proceeds derived from the sale, licensing, marketing or other authorization related to any intellectual property right created or otherwise developed by the Contractor under this Contract for the Commission shall be handled in the manner specified by applicable Florida State Statute and/or Federal program requirements.
- C. Commission Intellectual Property Rights.** Where activities supported by this Contract produce original writing, sound recordings, pictorial reproductions, drawings or other graphic representation and works of any similar nature, the Commission and the State of Florida have the unlimited, royalty-free, nonexclusive, irrevocable right to use, duplicate and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others acting on behalf of the Commission to do so. If this Contract is supported by federal funds, the federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.

15. RELATIONSHIP OF THE PARTIES.

- A. **Independent Contractor.** The Contractor shall perform as an independent contractor and not as an agent, representative, or employee of the Commission. The Contractor covenants that it presently has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of services required. Each party hereto covenants that there is no conflict of interest or any other prohibited relationship between the Contractor and the Commission.
- B. **Contractor Training Qualifications.** The Contractor agrees that all Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification.
- C. **Commission Security.** All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Commission. The Commission may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The Commission may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Commission's other requirements. Such refusal shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The Commission in coordination with the Contractor may reject and bar from any facility for cause any of Contractor's employees, subcontractors, or agents.
- D. **Commission Rights to Assign or Transfer.** The Contractor agrees that the State of Florida shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Contract to another governmental agency in the State of Florida, upon giving prior written notice to the Contractor.
- E. **Commission Rights to Undertake or Award Supplemental Contracts.** The Contractor agrees that the Commission may undertake or award supplemental contracts for work related to the Contract. The Contractor and its subcontractors shall cooperate with such other contractors and the Commission in all such cases.

16. SUBCONTRACTS.

- A. **Authority. Contractor is permitted to subcontract work under this Agreement, therefore, the following terms and conditions apply.** The Contractor shall ensure, and provide assurances to the Commission upon request, that any subcontractor selected for work under this Contract has the necessary qualifications and abilities to perform in accordance with the terms and conditions of this Contract. The Contractor must provide the Commission with the names of any subcontractor considered for work under this Contract; the Commission in coordination with the Contractor reserves the right to reject any subcontractor. The Contractor agrees to be responsible for all work performed and all expenses incurred with the project. Any subcontract arrangements must be evidenced by a written document available to the Commission upon request. The Contractor further agrees that the Commission shall not be liable to the extent allowed by law, to any subcontractor for any expenses or liabilities incurred under the subcontract and the

Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

- B. Contactor Payment to Subcontractor.** If subcontracting is permitted pursuant to Paragraph A, above, the Contractor agrees to make payments to the subcontractor upon completion of work and submitted invoice in accordance with the contract between the Contractor and subcontractor. Failure to make payment pursuant to any subcontract will result in a penalty charged against the Contractor and paid to the subcontractor in the amount of one-half of one (1) percent of the amount due per day from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed and shall not exceed fifteen (15) percent of the outstanding balance due.”
- C. Commission Right to Reject Subcontractor Employees.** The Commission in coordination with the Contractor shall retain the right to reject any of the Contractor’s or subcontractor’s employees whose qualifications or performance, in the Commission’s judgment, are insufficient.
- D. Subcontractor as Independent Contractor.** If subcontracting is permitted pursuant to Paragraph A above, the Contractor agrees to take such actions as may be necessary to ensure that each subcontractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the State of Florida.

17. MANDATORY DISCLOSURE.

- A. Disclosure of Interested State Employees.** This Contract is subject to Chapter 112, F.S. Contractors shall provide the name of any officer, director, employee, or other agent who is affiliated with this project and an employee of the State of Florida.
- B. Prompt Disclosure of Litigation, Investigations, Arbitration, or Administrative Proceedings.** Throughout the term of the Contract, the Contractor has a continuing duty to promptly disclose to the Commission’s Contract Manager, upon occurrence, all civil or criminal litigation, investigations, arbitration, or administrative proceedings (Proceedings) relating to or affecting the Contractor’s ability to perform under this contract. If the existence of such Proceeding causes the Commission concern that the Contractor’s ability or willingness to perform the Contract is jeopardized, the Contractor may be required to provide the Commission with reasonable assurances to demonstrate that: a.) The Contractor will be able to perform the Contract in accordance with its terms and conditions; and, b.) The Contractor and/or its employees or agents have not and will not engage in conduct in performing services for the Commission which is similar in nature to the conduct alleged in such Proceeding.

18. INSURANCE.

The Contractor warrants and represents that it is insured, or self-insured for liability insurance, in accordance with applicable state law and that such insurance or self-insurance offers protection applicable to the Contractor’s officers, employees, servants and agents while acting within the scope of their employment with the Contractor.

19. PUBLIC ENTITY CRIMES.

- A. Convicted Vendor List.** Pursuant to Subsection 287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime 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 Section 287.017, F.S., for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

The State of Florida, Department of Management Services, Division of State Purchasing provides listings for convicted, suspended, discriminatory and federal excluded parties, as well as the vendor complaint list:

http://www.dms.myflorida.com/business_operations/state_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists

- B. Notice of Conviction of Public Entity Crime.** Any person must notify the Department of Management Services and the Commission within thirty (30) days after conviction of a public entity crime applicable to that person or an affiliate of that person as defined in Section 287.133, F.S.
- C. Certifications and Assurances.** Upon execution of this Contract by the Contractor, the Contractor shall complete, sign and return to the Commission's Contract Manager a completed copy of the form entitled "Certifications and Assurances," attached hereto and incorporated as Attachment B. This includes the Certification Regarding Public Entity Crimes.

20. VENDORS ON SCRUTINIZED COMPANIES LIST

- A. Scrutinized Companies.** Pursuant to Section 287.135, Florida Statutes, if this Contract is for goods or services in the amount of \$1 million or more, in executing this Contract, Contractor certifies, that it is not listed on: the Scrutinized Companies with Activities in Sudan List; or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, F.S. and is not engaged in business operations in Cuba or Syria.
- B. Certifications and Assurances – Scrutinized Companies List.** If this Contract is for goods or services in the amount of \$1 million or more, upon execution of this Contract by the Contractor, the Contractor shall complete, sign and return to the Commission's Contract Manager a completed copy of Attachment B, "Certifications and Assurances." This includes the Certification Regarding the Scrutinized Companies List.
- C. False Scrutinized Lists Certification – Termination.** Pursuant to Subsection 287.135(3)(b), F.S., the Commission may immediately terminate this Contract for cause if Contractor is found to have submitted a false certification or if, during the term of the Contract, Contractor is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engages in business operations in Cuba or Syria.

- D. Cessation of Federal Authority.** In the event that federal law ceases to authorize the states to adopt and enforce the contracting prohibition identified in this paragraph, this provision shall be null and void to the extent no longer authorized.
- 21. SPONSORSHIP.** As required by Section 286.25, F.S., if the Contractor is a nongovernmental organization which sponsors a program financed wholly or in part by state funds, including any funds obtained through this Contract, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (the Contractor's name) and the State of Florida, Fish and Wildlife Conservation Commission." If the sponsorship reference is in written material, the words "State of Florida, Fish and Wildlife Conservation Commission" shall appear in the same size letters or type as the name of the Contractor's organization. Additional sponsorship requirements may be specified in Attachment A, Scope of Work.
- 22. PUBLIC RECORDS.**
- A.** This Contract may be unilaterally canceled by the Commission for refusal by the Contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Contract, unless exemption for such records is allowable under Florida law.
- B.** Pursuant to Section 119.0701, F.S., the Contractor shall comply with the following:
- a.** Keep and maintain public records that ordinarily and necessarily would be required by the Commission in order to perform the service.
 - b.** Provide the public with access to public records on the same terms and conditions that the Commission would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law.
 - c.** Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 - d.** Meet all requirements for retaining public records and transfer, at no cost, to the Commission all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the Commission.
- 23. SECURITY AND CONFIDENTIALITY.** The Contractor shall not divulge to third Parties any clearly marked confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work. To ensure confidentiality, the Contractor shall take appropriate steps regarding its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.
- 24. RECORD KEEPING REQUIREMENTS.**
- A. Contractor Responsibilities.** The Contractor shall maintain accurate books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect

costs of any nature expended in the performance of this Contract, in accordance with generally accepted accounting principles.

- B. State Access to Contractor Books, Documents, Papers, and Records.** The Contractor shall allow the Commission, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability or authorized representatives of the state or federal government to have access to any of Contractor's books, documents, papers, and records, including electronic storage media, as they may relate to this Contract, for the purposes of conducting audits or examinations or making excerpts or transcriptions.
- C. Contractor Records Retention.** Unless otherwise specified in Attachment A, Scope of work, these records shall be maintained for five (5) years following the close of this Contract. The Contractor shall cooperate with the Commission to facilitate the duplication and transfer of such records upon the Commission's request.
- D. Contractor Responsibility to Include Records Requirements – Subcontractors.** In the event any work is subcontracted under this Contract, The Contractor shall include the aforementioned audit and record keeping requirements in all subcontract agreements.
- E. Compliance with Federal Funding Accountability and Transparency.** Any federal funds awarded under this Contract must comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006. The intent of the FFATA is to empower every American with the ability to hold the government accountable for each spending decision. The result is to reduce wasteful spending in the government. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website: www.USASpending.gov. Grant recipients awarded a new Federal grant greater than or equal to \$25,000 awarded on or after October 1, 2010 are subject to the FFATA. Contractor agrees to provide the information necessary, over the life of this Contract, for the Commission to comply with this requirement.

25. NON-EXPENDABLE PROPERTY.

- A. Non-Expendable Property Defined.** For the requirements of this section of the Contract, "non-expendable property" is the same as "property" as defined in Section 273.02, F.S. (equipment, fixtures, and other tangible personal property of a non-consumable and nonexpendable nature, with a value or cost of \$1,000 or more, and a normal expected life of one year or more; hardback-covered bound books that are circulated to students or the general public, with a value or cost of \$25 or more; and uncirculated hardback-covered bound books, with a value or cost of \$250 or more).
- B. Title to Non-expendable Property.** Title ownership to all non-expendable property acquired with funds from this Contract shall be vested in the Commission and said property shall be transferred to the Commission upon completion or termination of the Contract unless otherwise authorized in writing by the Commission or unless otherwise specifically provided for in the Scope of Work, Attachment A.

26. FEDERAL FUNDS. No Federal Funds are applied to this Contract, therefore, the following terms and conditions do not apply.

- A. Prior Approval to Expend Federal Funds to Federal Agency or Employee.** It is understood and agreed that the Contractor is not authorized to expend any federal funds under this Contract to a federal agency or employee without the prior written approval of the awarding federal agency.
- B. Compliance with Federal Laws, Rules and Regulations.** As applicable, the Contractor shall comply with all federal laws, rules, and regulations, including but not limited to:
- Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
 - The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).
 - The Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5).
 - Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
 - All applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
 - Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- C. Compliance with Office of Management and Budget Circulars.** As applicable, Contractor shall comply with the following Office of Management and Budget Circulars:
- A-21 (2 CFR 220), Cost principles for Educational Institutions
 - A-87 (2 CFR 225), Cost Principles for State, Local, and Indian Tribal Governments
 - A-122 (2 CFR 230), Cost Principles for Non-Profit Organizations
 - A-133, Audit of States, Local Governments, and Non-Profit Organizations
 - A-102, Grants and Cooperative Agreements with State and Local Governments
 - A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Learning, Hospitals, and Other Non-Profit Organizations

27. DEBARMENT AND SUSPENSION.

- A. Contractor Federal Certification.** In accordance with Federal Executive Order 12549, Debarment and Suspension, the Contractor shall agree and certify that neither it, nor its principals, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and, that the Contractor shall not knowingly enter into any lower tier contract, or other covered transaction, with a person who is similarly debarred or suspended from participating in this covered transaction.

- B. **Contractor Commission Certification.** Upon execution of this Contract by the Contractor, the Contractor shall complete, sign and return to the Commission's Contract Manager a completed copy of Attachment B, "Certifications and Assurances." This includes the Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

28. PROHIBITION AGAINST LOBBYING

- A. **Contractor Certification – Payments to Influence.** The Contractor certifies that no federally appropriated funds have been paid or will be paid, on or after December 22, 1989, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding, renewal, amending or modifying of any Federal contract, grant, or cooperative contract. The Contractor shall submit Standard Form-LLL, "Disclosure Form to Report Lobbying". The Contractor shall require the language of this certification to be included in all subcontracts, and all subcontractors shall certify and disclose accordingly.
- B. **Contractor – Refrain from Subcontracting with Certain Organizations.** Pursuant to the Lobbying Disclosure Act of 1995, the Contractor agrees to refrain from entering into any subcontracts under this Contract with any organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of the subcontract.
- C. **Prohibition against Using Contract Funds for the Purpose of Lobbying.** In accordance with Section 216.347, F.S., the Contractor is hereby prohibited from using funds provided by this Contract for the purpose of lobbying the Legislature, the judicial branch or a state agency. Upon request of the Commission's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility.
- D. **Contractor Completion of Certifications and Assurances.** Upon execution of this Contract by the Contractor, the Contractor shall complete, sign and return to the Commission's Contract Manager a completed copy of Attachment B, "Certifications and Assurances." This includes the Certification Regarding Lobbying.

29. CONTRACT-RELATED PROCUREMENT.

- A. **PRIDE.** In accordance with Section 946.515(6), F.S., if a product or service required for the performance of this Contract is certified by or is available from Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) and has been approved in accordance with Subsection 946.515(2), F.S., the following statement applies:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this contract shall be purchased from [PRIDE] in the same manner and under the same procedures set forth in Subsections 946.515(2) and (4), F.S.; and for purposes of this contract the person, firm or other business entity carrying out the provisions of this contract shall be

deemed to be substituted for this agency insofar as dealings with such corporation are concerned.

The above clause is not applicable to subcontractors unless otherwise required by law. Additional information about PRIDE and the products it offers is available at <http://www.pride-enterprises.org>.

- B. Respect of Florida.** In accordance with Subsection 413.036(3), F.S., if a product or service required for the performance of this Contract is on the procurement list established pursuant to Subsection 413.035(2), F.S., the following statement applies:

It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, F.S., in the same manner and under the same procedures set forth in Subsections 413.036(1) and (2), F.S.; and for purposes of this contract, the person, firm or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the state agency insofar as dealings with such qualified nonprofit agency are concerned.

Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

- C. Procurement of Recycled Products or Materials.** The Contractor agrees to procure any recycled products or materials which are the subject of or are required to carry out this Contract in accordance with Section 403.7065, F.S.

30. PURCHASE OR IMPROVEMENT OF REAL PROPERTY.

This Contract is not for the purchase or improvement of real property, therefore the following terms and conditions do not apply.

The Contractor shall comply with Section 287.05805, F.S. This section requires the Contractor to grant a security interest in the property to the State of Florida, the type and details of which are provided for in the Scope of Work, Attachment A.

31. PROFESSIONAL SERVICES.

- A. Architectural, Engineering, Landscape Architectural, or Survey and Mapping.** If this Contract is for the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services, and is therefore subject to Section 287.055, F.S., the following provision applies:

The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this contract and that he or she has not paid or agreed to pay any person, company,

corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this contract.

- B. Termination for Breach.** For the breach or violation of this provision, the Commission shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the Contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.
- 32. INDEMNIFICATION.** If Contractor is a state agency or subdivision, as defined in Subsection 768.28(2), F.S., pursuant to Subsection 768.28(19), F.S., neither Party indemnifies nor insures the other Party for the other Party's negligence. If Contractor is not a state agency or subdivision as defined above, the Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and the Commission, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by the Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or the Commission.
- 33. NON-DISCRIMINATION.**
- A. Non-Discrimination in Performance.** No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to discrimination in performance of this Contract.
- B. Discriminatory Vendor List.** In accordance with Section 287.134, F.S., an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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. The Contractor has a continuing duty to disclose to the Commission whether they appear on the discriminatory vendor list.
- 34. SEVERABILITY, CHOICE OF LAW, AND CHOICE OF VENUE.** This Contract has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Contract shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Contract. Any action in connection herewith, in law or equity, shall be brought in Leon County, Florida, to the exclusion of all other lawful venues.

35. **NO THIRD PARTY RIGHTS.** The Parties hereto do not intend nor shall this Contract be construed to grant any rights, privileges or interest to any person not a party to this Contract.
36. **JURY TRIAL WAIVER.** As part of the consideration for this Contract, the Parties hereby waive trial by jury in any action or proceeding brought by any party against any other party pertaining to any matter whatsoever arising out of or in any way connected with this Contract, or with the products or services provided under this Contract, including but not limited to any claim by the Contractor of *quantum meruit*.
37. **PROHIBITION OF UNAUTHORIZED ALIENS.** In accordance with Federal Executive Order 96-236, the Commission shall consider the employment by the Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Contract if the Contractor knowingly employs unauthorized aliens.
38. **EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY).**
 - A. **Requirement to Use E-Verify.** Executive Order 11-116, signed May 27, 2011, by the Governor of Florida, requires Commission contracts in excess of nominal value to expressly require the Contractor to: 1.) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Contractor during the Contract term; and, 2.) include in all subcontracts under this Contract, the requirement that subcontractors performing work or providing services pursuant to this Contract utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the subcontract.
 - B. **E-Verify Online.** E-Verify is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the eligibility of all new employees hired to work in the United States after the effective date of the required Memorandum of Understanding (MOU); the responsibilities and elections of federal contractors, however, may vary, as stated in Article II.D.1.c. of the MOU. There is no charge to employers to use E-Verify. The Department of Homeland Security's E-Verify system can be found online at http://www.dhs.gov/files/programs/gc_1185221678150.shtm
 - C. **Enrollment in E-Verify.** If the Contractor does not have an E-Verify MOU in effect, the Contractor must enroll in the E-Verify system prior to hiring any new employee after the effective date of this Contract.
 - D. **E-Verify Recordkeeping.** The Contractor further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the Commission or other authorized state entity consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the Contractor's and subcontractors' enrollment in the E-Verify Program (which can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).

E. Employment Eligibility Verification. Compliance with the terms of the Employment Eligibility Verification provision is made an express condition of this Contract and the Commission may treat a failure to comply as a material breach of the Contract.

39. FORCE MAJEURE AND NOTICE OF DELAY FROM FORCE MAJEURE. Neither Party shall be liable to the other for any delay or failure to perform under this Contract if such delay or failure is neither the fault nor the negligence of the Party or its employees or agents and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers if no alternate source of supply is available. However, in the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Contract. If the delay is excusable under this paragraph, the delay will not result in any additional charge or cost under the Contract to either Party. In the case of any delay the Contractor believes is excusable under this paragraph, Contractor shall notify the Commission's Contract Manager in writing of the delay or potential delay and describe the cause of the delay either: (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Contractor could reasonably foresee that a delay could occur as a result; or (2) within five (5) calendar days after the date Contractor first had reason to believe that a delay could result, if the delay is not reasonably foreseeable. **THE FOREGOING SHALL CONSTITUTE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. The Commission, in its sole discretion, will determine if the delay is excusable under this paragraph and will notify the Contractor of its decision in writing. No claim for damages, other than for an extension of time, shall be asserted against the Commission. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Commission for direct, indirect, consequential, impact, or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, the Contractor shall perform at no increased cost, unless the Commission determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the Commission or the State, in which case, the Commission terminate the Contract in whole or in part.

40. ENTIRE CONTRACT. This Contract with all incorporated attachments and exhibits represents the entire Contract of the Parties. Any alterations, variations, changes, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, and duly signed by each of the Parties hereto, unless otherwise provided herein. In the event of conflict, the following order of precedence shall prevail; this contract and its attachments, the terms of the solicitation and the contractor's response to the solicitation.

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IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed through their duly authorized signatories on the day and year last written below.

CITY OF WINTER PARK

**FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION**

Signature

Name: _____

Title: _____

Date: _____


Signature

Name: _____

Title: _____

Date: _____

Approved as to form and legality by FWC Attorney:



Signature

Name: Anthony Pinzino

Date: 12/11/14

Attachments and Exhibits in this Contract include the following:

Attachment	A	Scope of Work
Attachment	B	Certifications and Assurances
Attachment	C	Mead Grove Wetlands Construction Plans
Attachment	D	Cost Reimbursement Contract Payment Requirements
Addendum	1	Addendum 1 to FWC 14211

STATE OF FLORIDA
FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

ADDENDUM NO. 1 TO CONTRACT 14211

Notwithstanding Agreement No. 14211 between the Florida Fish and Wildlife Conservation Commission and the City of Winter Park, the following terms are hereby modified, deleted, or added, with the terms in this addendum taking precedence over any conflicting terms in Agreement 14211:

Article 10-A. Commission Termination, is hereby replaced in its entirety by the following:
“**Termination for Convenience.** Either Party may unilaterally terminate this agreement for convenience by providing the other party with thirty (30) calendar days of written notice of its intent to terminate. The Contractor shall not be entitled to recover any cancelation charges or lost profits. If either party terminates for convenience, the Contractor shall be entitled to be paid the value of its work, calculated and billed pursuant to this Contract, through the effective date of the termination.”



city commission agenda item

item type	Consent Agenda	meeting date	January 12, 2015
prepared by department division	Purchasing Division	approved by	<input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> N/A		final vote

Purchases over \$75,000

	vendor	item background	fiscal impact	motion recommendation
	Lou Bachrodt Freightliner	PR156681 for 2015 Freightliner 18 Yard Dump Truck	Total expenditure approved in FY15 budget. Amount: \$100,606	Commission approve PR156681 to Lou Bachrodt Freightliner for 2015 Freightliner 18 Yard Dump Truck.
This purchase will be made utilizing Florida Sheriffs Association Contract Number 14-12-0904.				



city commission agenda item

item type	Consent Agenda	meeting date	January 12, 2015
prepared by department division	Electric Department	approved by	<input checked="" type="checkbox"/> City Manager <input type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no <input type="checkbox"/> N/A final vote		
strategic objective	<input type="checkbox"/> Exceptional Quality of Life <input checked="" type="checkbox"/> Fiscal Stewardship <input type="checkbox"/> Intelligent Growth & Development <input type="checkbox"/> Public Health & Safety <input type="checkbox"/> Investment in Public Assets & Infrastructure		

motion | recommendation

Approve the revision to the City of Winter Park to the Electric Billing Adjustments Tariff Sheet 3.100 (attached) as relates to the calculation of the Fuel Adjustment Factor

background

The City of Winter Park Electric Department passes through the actual cost of the fuel portion of the City's wholesale electric power cost. There is no markup to the fuel cost. Through the fuel adjustment the customer bears full responsibility for the fuel cost portion which is billed separately as a fuel adjustment. The balance of the wholesale power cost is included in electric base rates. The existing fuel adjustment tariff allows over-collections to be retained by the city and used to stabilize fluctuations in the fuel adjustment, but requires that if the balance of overcollections exceeds 5% of the fiscal year's annual fuel budget (rounded up to the next \$100,000) it must be returned to the customers. In addition to the maximum amount set forth in the tariff, for planning purposes, management has set a target minimum balance at a figure of \$500,000. It was felt that the range of \$500,000 to \$1,000,000 was an appropriate amount for fuel adjustment stabilization. In 2012 when the 5% limit was determined, that amounted to \$1,000,000.

During the last six months, the balance available for fuel adjustment stabilization swung significantly from a low of \$222,612 in July to the current balance of \$1,151,768. At the end of June the balance was \$222,612 (below management's \$500k target) which was the result of three straight months of fuel cost under-recovery in the amount of \$588,000. As a result a trueup was added to the fuel adjustment resulting in the current stabilization amount of \$1,151,768. This swing of nearly \$1 million over 5 month period demonstrates the volatility that can occur within the fuel adjustment (See attached chart of monthly fuel adjustment charges).

As a result, Management determined that the range of \$500k to \$900k available for stabilization is too narrow and should be increased.

Management recommends that the maximum amount be increased to 10% of the annual fuel budget which in the current fiscal year would amount to \$1.7 million. That would provide a range of about \$1.2 million between management's minimum target of \$500k and the \$1.7 million. Also, the \$1.7 million limit seems reasonable given that the average monthly fuel cost during the last 12 months was \$1.4 million and the maximum monthly fuel cost was \$1.9 million.

In addition to changing the limit of the balance available to stabilize fluctuations in the fuel adjustment, Staff recommends that the tariff be modified to state that the fuel adjustment shall be reviewed for adequacy at least quarterly instead of "revised" at least quarterly. Staff reviews the adequacy of the fuel adjustment factor on a monthly basis and adjustments to the fuel adjustment will continue to be made on a timely basis to insure complete fuel cost recovery. Requiring that the fuel adjustment be "revised" is unnecessary and inappropriate.

alternatives | other considerations

- 1) Live with the existing quarterly fuel adjustment and associated limit of 5% which sets the Fiscal 2015 limit at \$900k.
- 2) Set the limit at some other figure.

fiscal impact

Changing the balance of the amount available to stabilize fluctuations of the fuel adjustment only affects the timing of fuel adjustment charges to the customers and is intended to stabilize fluctuations in the fuel adjustment. Since the fuel adjustment passes through actual fuel cost to the City's electric customers, changes to the balance available to stabilize fuel adjustment fluctuations and/or changes to timing of fuel adjustment changes to the customer do not affect the amount that will be charged to customers over time.

Attachments



**RATE SCHEDULE BA-1
BILLING ADJUSTMENTS**

Applicable:

To the Rate per Month provision in each of the City's rate schedule which reference the billing adjustments set forth below.

Fuel Cost Recovery Factor:

Rate Schedule	Fuel Cost Recovery Factor (cents per kW-hr)
RS-1 (1 st 1,000 kWh)	3.149
(All additional kWh)	4.149
GS-1	3.539
GS-2	3.539
GSD-1	3.539
GSDT-1 (Off-peak)	3.127
(On-peak)	4.705
LS-1	3.539

Fuel Adjustment Factor.

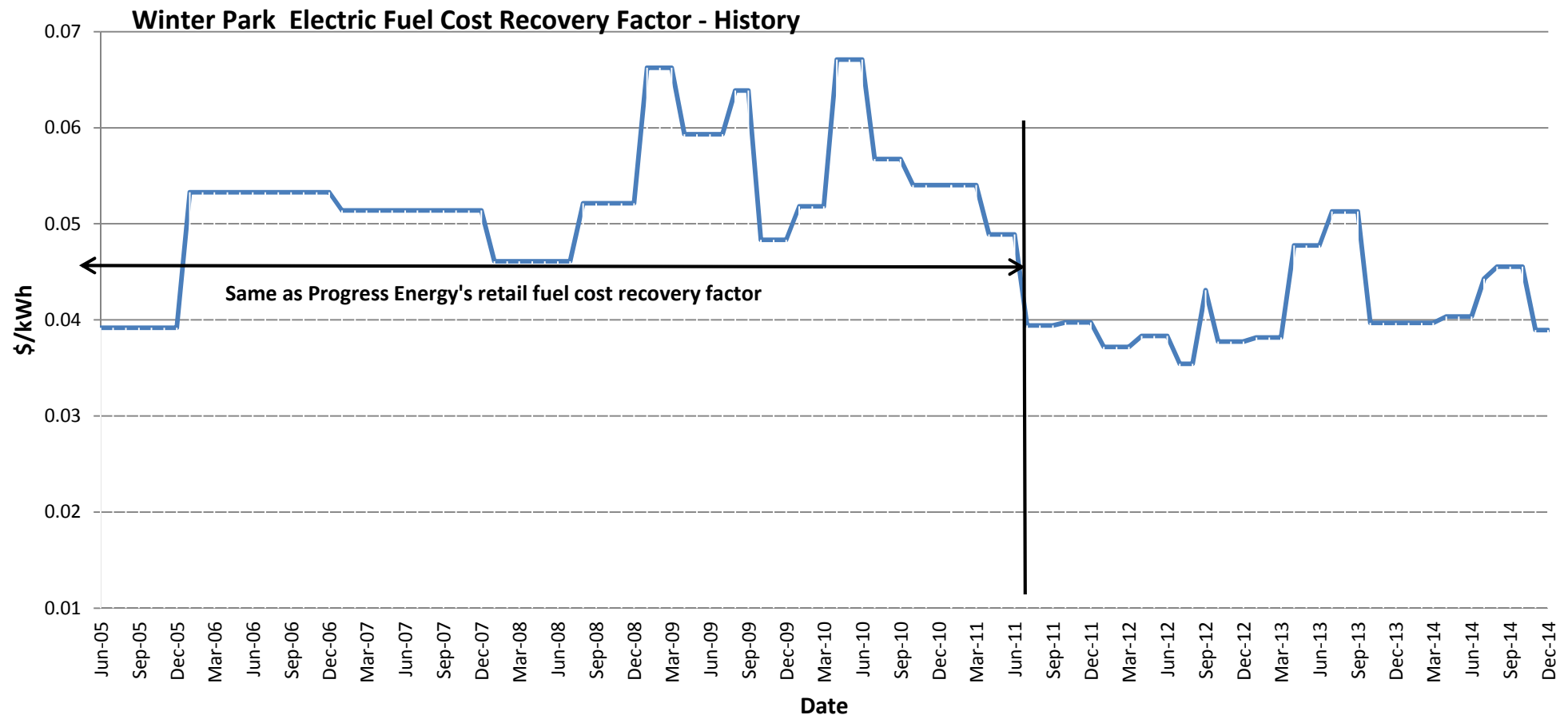
The Fuel Adjustment Factor will be determined periodically by the City. This factor is designed to recover the cost of fuel that is included in the cost of bulk power supply incurred by the City to provide electric service to its customers. ~~Revisions to the Review of Fuel Adjustment Adequacy~~ will occur at least quarterly ~~but may be adjusted more frequently in the event of significant changes in the fuel cost of purchased power.~~ If the fuel Adjustment Factor under-recovers fuel cost, the City will increase the Fuel Adjustment to collect the under recovery. If the Fuel Adjustment Factor over-recovers fuel cost, the City will decrease the fuel adjustment to credit back to customers the over-recovery. In order to stabilize fluctuations in the fuel adjustment factor, the City Manager may determine to phase in such increases or decreases over time. In no case, however, will cumulative under or over collections be allowed to exceed 510% of the fiscal year's annual fuel budget rounded up to the next \$100,000 without appropriate adjustments to the fuel adjustment. ~~The limit, however, for fiscal year 2012 is defined to be \$1,000,000.~~

Gross Receipts Tax Factor.

In accordance with Section 203.01 of the Florida Statutes, a factor of 2.5641% is applicable to electric sales charges for collection of the state gross receipts tax.

Franchise Fee Equivalent.

A Franchise Fee Equivalent is applied to the charges for electric service (exclusive of any municipal, county, or state sales tax) provided to customers within the jurisdictional limits of the City. The franchise fee equivalent is added to the charges for electric service prior to the application of any appropriate taxes. The City has established the franchise fee equivalent at six percent.





city commission public hearing

item type	Public Hearing	meeting date	January 12, 2015
prepared by department division	Jeff Briggs Planning Department	approved by	<input checked="" type="checkbox"/> City Manager <input checked="" type="checkbox"/> City Attorney <input type="checkbox"/> N/A
board approval	Planning and Zoning Board	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> N/A	7-0 final vote

Subject: Ordinance to Allow Car Rental Agencies as a Conditional or Permitted Use in the C-1 Zoning District.

This agenda item request from the Avis Budget Group seeks to amend the Zoning Code to allow car rental agencies as a permitted or conditional use within the Commercial (C-1) zoning district. At present, car rental agencies are a permitted use in the Commercial (C-3) zoning district but not permitted in Commercial (C-1) zoning district.

Planning and Zoning Board Recommendation:

The original application was to allow car rental agencies as a permitted use in C-1 zoning, as they are in C-3 zoning. The Planning Board was in favor of the request but they desired to exercise caution and only proceed with allowing car rental agencies in C-1 zoning on a case by case basis via conditional use. As a result they made a motion to approve and amend the proposed Ordinance in that fashion and then a subsequent motion to approve the specific conditional use request for Avis Budget Group at the K-mart shopping center.

Motion made by Mr. J. Johnston, seconded by Mr. Gottfried that car rental agencies, limited to no more than 15 cars on-site at any time, in the C-1 district, be allowed as a conditional use. Motion carried unanimously.

Motion made by Mr. J. Johnston, seconded by Mr. Gottfried to approve the conditional use request for Avis-Budget Car Rental Group in C-1 zoning at the K-Mart center with the condition that the applicant is limited to no more than 15 cars at this location. Motion carried unanimously.

Summary:

Avis Budget was at the Mt. Vernon but has to move due to the redevelopment. They have found a location within the K-Mart shopping center but while the Mt. Vernon is zoned C-3 which allows car rental agencies, the K-mart center is zoned C-1 which does not.

The City has basically three commercial zoning districts. C-1 is primarily a shopping center zoning district and was named such until 2009. C-2 is the central business district zoning for the Park Avenue and Hannibal Square area. C-3 is the general commercial zoning for all of the other locations.

Presumably since car sales/dealerships and car repair businesses were only permitted in the general commercial C-3 zoned locations and not allowed in C-1 shopping center locations, the authors of the Code in 1971 only put car rental agencies as a permitted use in C-3 and not C-1. There is an Enterprise car rental businesses at 511 W. Fairbanks Avenue between the Cask and Larder and PR's restaurants, on property zoned C-3.

The "in-city" car rental agencies in this City don't tend to be overflowing with cars and the cars are rented and off-site during the days and only on-site overnight and first thing in the morning. There were/are about a dozen cars parked overnight at Avis/Budget and Enterprise. The car washing is done off-site. The staff does not anticipate problems if this change is made especially because the numbers of cars is limited to no more than 15 cars. The Planning Board however, desired to exercise caution and only proceed on a case by case basis via conditional use.

Both Ordinances are attached (as a permitted use and as a conditional use) in order to allow the City Commission to proceed either way.

There are six C-1 shopping center areas that this would affect. They are the K-Mart shopping center, Winter Park Village, Hollienna (Publix) shopping center, Aloma Corners (Lakemont/Aloma), Aloma Shopping Center (Publix/Drafthouse Cinema) and the commercial area at the NE corner of Howell Branch Road and Temple Trail. Notices have been sent to all these affected property owners.

REQUEST OF THE AVIS BUDGET GROUP INC. FOR: AN ORDINANCE TO AMEND IN THE ZONING CODE, SECTION 58-74 COMMERCIAL (C-1) DISTRICT SO AS TO PROVIDE FOR CAR RENTAL AGENCIES AS A PERMITTED USE WITHIN THAT C-1 COMMERCIAL ZONING DISTRICT.

Planning Manager Jeffrey Briggs presented the staff report and explained that this is a request of the Avis-Budget car rental group for the City to consider allowing car rental agencies as a permitted use within the Commercial (C-1) zoning district. Presently, car rental agencies are permitted in the Commercial (C-3) zoning district but not a permitted use in C-1. The applicant, Avis-Budget, was located at the Mt. Vernon but had to move upon the sale of that property. They have found a location within the K-Mart shopping center but while the Mt. Vernon is zoned C-3, the K-mart center is zoned C-1. Mr. Briggs noted that the "in-city" car rental agencies that have operated in the City do not tend to have more than 12-15 cars. There are about a dozen cars parked overnight at Avis/Budget and Enterprise. The car washing and servicing of the vehicles is done off-site. The staff does not anticipate problems if this change is made unless the numbers of cars became detrimental. Staff recommended approval with the condition of limiting the use to no more than 15 cars. Mr. Briggs responded to Board member questions and concerns.

Paul Chipok, Gray Robinson Law Firm, 301 East Pine Street, Orlando, represented the applicant. He stated that they are in agreement with the staff report. He said that all C-3 properties in the area were surveyed, and none of them met their criteria. A 1,400 square foot storefront was found in the K-Mart shopping center that meets their needs. All business is transacted inside, and no more than 15 cars would be available on site at any time and that service or repair is done at their airport facility. He said that he feels that the nature of the business is compatible with other C-1 businesses in the shopping center. Mr. Chipok responded to Board member questions and concerns.

Peter Perachi, Avis-Budget car rental group, 1855 Griffin Road, Danube Beach, FL, responded to Board member questions and concerns. He said that the storefront space they have selected faces Lee Road and that the cars will be parked in the rear of the property along the Executive Drive frontage. He said that they typically park their cars where no one else parks, so they do not interfere with day-to-day operations of other businesses. He responded to Board member questions and concerns.

No one else wished to speak concerning the request. Public Hearing closed.

Mr. Slocum expressed that while he agreed with the request, there may be circumstances where the parking might interfere with other tenants usage. He urged caution and suggested the conditional use process to review these requests on a case by case basis. After discussion amongst the Board members, there was consensus to proceed in that manner. Mr. J. Johnston confirmed that the Board would then need two motions, one to approve an amended Ordinance and one to approve the specific request of the applicant.

Motion made by Mr. J. Johnston, seconded by Mr. Gottfried that car rental agencies, limited to no more than 15 cars on-site at any time, in the C-1 district, be allowed as a conditional use. Motion carried unanimously.

Motion made by Mr. J. Johnston, seconded by Mr. Gottfried to approve the conditional use request for Avis-Budget Car Rental Group in C-1 zoning at the K-Mart center with the condition that the applicant is limited to no more than 15 cars at this location. Motion carried unanimously.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT REGULATIONS", ARTICLE III, "ZONING" SECTION 58-74 COMMERCIAL (C-1) DISTRICT SO AS TO ADD CAR RENTAL AGENCIES TO THE LIST OF CONDITIONAL USES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND EFFECTIVE DATE.

WHEREAS, an applicant has requested that the City provide consistency for the treatment of car rental agencies as permitted uses in both the commercial C-1 and C-3 zoning districts; and

WHEREAS, this land development code amendment is consistent with the Comprehensive Plan, and meets the criteria established by Chapter 166, Florida Statutes and pursuant to and in compliance with law, notice has been given to the public by publication in a newspaper of general circulation to notify the public of this proposed Ordinance and of public hearings to be held; and

WHEREAS, the City Staff recommends this Ordinance, and the Planning and Zoning Board of the City of Winter Park has recommended approval of this Ordinance at their December 2, 2014 meeting; and

WHEREAS, the City Commission of the City of Winter Park held duly noticed public hearings on the proposed zoning change set forth hereunder and considered findings and advice of staff, citizens, and all interested parties submitting written and oral comments and supporting data and analysis, and after complete deliberation, hereby finds the amendment consistent with the City of Winter Park Comprehensive Plan and that sufficient, competent, and substantial evidence supports the land development code changes set forth hereunder; and

WHEREAS, the City Commission hereby finds that this Ordinance serves a legitimate government purpose and is in the best interests of the public health, safety, and welfare of the citizens of Winter Park, Florida.

WHEREAS, words with double underlined type shall constitute additions to the original text and strike through shall constitute deletions to the original text, and asterisks (* *) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

NOW THEREFORE BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS:

SECTION 1. That Chapter 58 "Land Development Code", Article III, "Zoning" Section 58-74 "Commercial (C-1) District", subsection (c) "Conditional uses"; is hereby amended and modified by adding a new paragraph (c) (6) to read as follows:

Sec. 58-74. Commercial (C-1) District.

* * *

(c) *Conditional uses.*

* * *

(6) Car rental agencies limited to a maximum of 15 cars on-site at any time, although the City may set a lower maximum number.

SECTION 2. Severability. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 3. Conflicts. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 4. Codification. This ordinance shall be incorporated into the Winter Park City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made.

SECTION 5. Effective Date. This Ordinance shall become immediately effective upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of _____, 2015.

Attest:

Mayor

City Clerk

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT REGULATIONS", ARTICLE III, "ZONING" SECTION 58-74 COMMERCIAL (C-1) DISTRICT SO AS TO ADD CAR RENTAL AGENCIES TO THE LIST OF PERMITTED USES, PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND EFFECTIVE DATE.

WHEREAS, an applicant has requested that the City provide consistency for the treatment of car rental agencies as permitted uses in both the commercial C-1 and C-3 zoning districts; and

WHEREAS, this land development code amendment is consistent with the Comprehensive Plan, and meets the criteria established by Chapter 166, Florida Statutes and pursuant to and in compliance with law, notice has been given to the public by publication in a newspaper of general circulation to notify the public of this proposed Ordinance and of public hearings to be held; and

WHEREAS, the City Staff recommends this Ordinance, and the Planning and Zoning Board of the City of Winter Park has recommended approval of this Ordinance at their December 2, 2014 meeting; and

WHEREAS, the City Commission of the City of Winter Park held duly noticed public hearings on the proposed zoning change set forth hereunder and considered findings and advice of staff, citizens, and all interested parties submitting written and oral comments and supporting data and analysis, and after complete deliberation, hereby finds the amendment consistent with the City of Winter Park Comprehensive Plan and that sufficient, competent, and substantial evidence supports the land development code changes set forth hereunder; and

WHEREAS, the City Commission hereby finds that this Ordinance serves a legitimate government purpose and is in the best interests of the public health, safety, and welfare of the citizens of Winter Park, Florida.

WHEREAS, words with double underlined type shall constitute additions to the original text and strike through shall constitute deletions to the original text, and asterisks (* * *) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

NOW THEREFORE BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS:

SECTION 1. That Chapter 58 "Land Development Code", Article III, "Zoning" Section 58-74 "Commercial (C-1) District", subsection (b) "Permitted uses"; paragraph (2) is hereby amended and modified as follows:

Sec. 58-74. Commercial (C-1) District.

* * *

(b) *Permitted uses.*

* * *

(2) Establishments involved in the rendering of a personal or business service including banks, or similar financial institutions, barber shop, beauty and nail salon, spa, cosmetic treatments, car rental agencies limited to no more than 15 cars on-site at any time, coin-operated laundries, dry cleaning establishments, post offices, restaurants or lounges, theaters (except drive-ins), and travel agencies but specifically excluding tattoo, body art, or fortune telling businesses.

* * *

SECTION 2. Severability. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 3. Conflicts. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 4. Codification. This ordinance shall be incorporated into the Winter Park City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made.

SECTION 5. Effective Date. This Ordinance shall become immediately effective upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this _____ day of _____, 2015.

Attest:

Mayor

City Clerk

RECEIVED

OCT 24 2014

CITY OF WINTER PARK
PLANNING DEPARTMENT

407-244-5683

PAUL.CHIPOK@GRAY-ROBINSON.COM

October 24, 2014

VIA HAND DELIVERY

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

Re: Request for Zoning Code Amendment; Add "Car Rental Agencies" as a
Permitted Use in the C-1 District

Dear Mr. Briggs:

Per your request, on behalf of my client, Avis Budget Group, Inc., we are making this request to amend the Winter Park Code of Ordinances, Section 58-74(b)(2) to include "car rental agencies" as a permitted use in the C-1, commercial district.

Background

The Avis Budget Group, Inc. (Avis) currently leases space for a car rental agency operation at 110 South Orlando Avenue, Winter Park, Florida. This is the site of the Mount Vernon Best Western Hotel. Avis has been informed that the property is to be redeveloped and that they will need to move from their present location. The property at 110 South Orlando Avenue is zoned C-3, which includes car rental agencies as a permitted use.

In order to continue to serve the populous in the general vicinity of its current location, Avis conducted an exhaustive search of the available C-3 properties which would be suitable and meet the needs for the car rental agency operation. No viable C-3 locations were found.

Avis then expanded its search to include all commercial properties in the general vicinity of its current location. Suitable property meeting the needs for a car rental agency operation was found at 501 North Orange Avenue, Winter Park, Florida. This is the site of the K-Mart Plaza Shopping Center.

However, K-Mart Plaza Shopping Center is currently zoned C-1 and contains over one million square feet of commercial space. Avis will be leasing about 1,400 square feet of space. Car rental agencies are not listed as a permitted use in the C-1 district.

Jeff Briggs
October 24, 2014
Page 2

Justification

Over the past thirty to forty years the nature of the car rental agency operations have changed. While there are still some operations that have large offices with large inventory, such operations are unique to high volume locations such as airports. The majority of car rental agency operations are more in the nature and scale of personal and business service operations found in the C-1 district such as banks, barber shops, beauty and nail salons, spas, cosmetic treatments, coin-operated laundries, dry-cleaning establishments, post offices, restaurants or lounges, theaters and travel agencies. The modern car rental agency provides a necessary service and is intended to serve the needs of the community, on a scale appropriate to the community in which it is located and seamlessly blend into the fabric of that community.

Request

Amend Winter Park Code of Ordinances Section 58-74, Commercial (C-1) District, Subsection (b)(2), Permitted Uses, to include use of "car rental agencies." A proposed strike through for deletions and underline for additions draft version of Section 58-74(b)(2) is attached.

Enclosed is a check in the amount of \$1,000 for the application fee. We request that you give this matter your consideration and place the item on the December 2, 2014 Planning and Zoning Commission Agenda for review and final consideration by the City Commission at its January 12, 2015 meeting.

Thank you for your attention to this matter. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Paul H. Chipok

PHC/clr
Enclosure

cc: Peter Piracci, Avis Budget Group, Inc.

Peter Piracci
954-924-1304
Peter.piracci@avisbudget.com

12/10/2014

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

Re: Information in support of Avis Budget Group Inc. Application for Car Rental
Office Conditional Use in C-1 District

Dear Mr. Briggs:

Per your request, the address of the location we are proposing to relocate to is:

501 N Orlando Avenue
Suite 239
Winter Park, FL 32789

The 1400s/f space is facing Lee Road. We have allocated 15 parking spaces to be used as over flow. These spaces are located in the rear of the building adjacent to Executive Drive. I have also attached site plans that depict the office space and dedicated parking stalls.

Sincerely,



Peter Piracci

cc: Paul H Chipok, Gray Robinson

15 PARKING SPACES

EXECUTIVE

LEE
FRODO BAGGINS
ROALD
6531

WEBSTER PUBLIC RIGHT OF WAY AVENUE

WEDDIE AVENUE
CONANT, Illinois 62401

NORTH ORLANDO AVENUE (U.S. 17-92)

AVIS BUDGET GROUP, INC.

[illegible]

SURVEYORS' CERTIFICATE

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LEGAL DESCRIPTION

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DATE 03/10/06

NSA

ALTA / ACSM LAND TITLE SURVEY

DATE	REVISION

SHEET 1 OF 1

