



city commission agenda

Regular Meeting

June 13, 2016

3:30 p.m.

Commission Chambers

commissioners				mayor	commissioners			
seat 1	Gregory Seidel	seat 2	Sarah Sprinkel	Steve Leary	seat 3	Carolyn Cooper	seat 4	Pete Weldon

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 website at 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 Reverend Alison Harrity, St. Richard's Episcopal Church Pledge of Allegiance	
3	Approval of Agenda	
4	Mayor's Report	*Projected Time *Subject to change
	a. Presentation – Best of Show artwork – 2016 Sidewalk Art Festival b. Presentation – I-4 Ultimate c. Proclamation – Patrick Chapin Day d. Establishment of Auditor Selection Board e. Board Appointment – Keep Winter Park Beautiful and Sustainable (Ellen Wolfson as alternate)	15 minutes
5	City Manager's Report	*Projected Time *Subject to change 5 minutes

6	City Attorney's Report	*Projected Time *Subject to change
7	Non-Action Items	*Projected Time *Subject to change
	a. Presentation – Body worn camera technology	15 minutes
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	*Projected Time *Subject to change
	a. Approve the minutes of May 23, 2016. b. Approve the following purchases, contracts and formal solicitations: <ol style="list-style-type: none"> 1. Piggyback contract with FieldTurf USA, Inc. for Showalter Field synthetic turf installation; \$783,905.94; and authorize the Mayor to execute the contract. 2. Blanket Purchase Order to Layne Inliner LLC for sewer line rehab cleaning/manhole; \$250,000. 3. Change Orders to Blanket Purchase Orders 156938,156939, & 156940 for bulk power with Gainesville Regional Utility, Orlando Utilities Commission, and Florida Power & Light. 4. Change Orders to Blanket Purchase Orders 156942 & 156943 for transmission services, reallocation of transmission service charges with Florida Power & Light and Duke Energy Florida). 5. Change Orders to Blanket Purchase Orders 156944, 156945, & 156946 for operations – Removal of remaining funding for ENCO and adjustments to contracted labor with ENCO and Heart Utilities. 6. Amendment No. 4 to BASE Consultants, P.A., RFQ-2-2012, Continuing Contracts for Professional, Architectural & Engineering Services (Discipline: Structural Engineering); and authorize the Mayor to execute renewal. 7. Amendment No. 4 to Florida Bridge & Transportation Inc., RFQ-2-2012, Continuing Contracts for Professional, Architectural & Engineering Services (Discipline: Structural Engineering); and authorize the Mayor to execute renewal. 8. Amendment No. 3 to The Davey Tree Expert Company, ITN-6-2013, Utility Vegetation Management; and authorize the Mayor to execute renewal. 9. Amendment No. 1 to Massey Services, Inc., RFP-16-2013, Pest Control Services; and authorize the Mayor to execute renewal. 10. Amendment No. 4 to Universal Engineering Sciences, RFQ-2-2012, Continuing Contracts for Professional, Architectural & Engineering Services (Discipline: Environmental Services); and authorize the Mayor to execute renewal. 	5 minutes

11. Interlocal agreement with Seminole County for solid waste management; and authorize the Mayor to execute contract.
12. Award to CBRE, Inc., RFP-10-2016, Commercial Broker Service; and authorize the Mayor to execute contract.
13. Award to Kimley Horn, RFQ-11-2016, Traffic Consultant for City Comprehensive Plan; and authorize staff to enter into negotiations.
- c. Approve the Interlocal Aid Agreement for fire protection and rescue services between the City and the City of Orlando; and approve the Memorandum of Understanding (MOU) between the City of Winter Park Fire Rescue and the Orlando Fire Department for Special Operations response and training.

10 Action Items Requiring Discussion

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

11 Public Hearings

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

- a. Ordinance – Modifications to the Police Pension ordinance (2) 5 minutes
- b. Ordinance – Vacating and abandoning utility easements for Lots 7 and 8 of Sevilla Subdivision (2) 5 minutes
- c. Ordinance – Repealing and replacing Chapter 58, Article V, Division 3 Flood Plain Regulations (2) 5 minutes
- d. Ordinance – Revisions to Section 58, Article VIII Historic Preservation (2) 30 minutes
- e. Ordinance – Abandoning a portion of Via Palermo right-of-way while retaining a utility easement over the entire area and also retaining a 5 foot wide ingress/egress easement aligning with existing easement to the north (1) 10 minutes
- f. Ordinance – Solid Waste Franchise with Waste Pro of Florida, Inc. (1) 10 minutes
- g. Request of Phil Kean Designs, Inc. **TABLED UNTIL JUNE 27**
 - Amend the conditional use approval granted on October 12, 2015 to redevelop the property at 652 West Morse Boulevard in order to develop 10 residential units in lieu of the approved 11 residential units and to modify the approved architectural elements.

h. Request of Mr. Robert Moore: **WITHDRAWN BY THE APPLICANT**

- Ordinance – Amending the 'Comprehensive Plan' Future Land Use Map to change from Central Business District Future Land Use Designation at 354 Hannibal Square, East to Medium-Density Residential and from Single Family Residential to Medium Density Residential on the properties at 463 and 455 West Lyman Avenue (1)
- Ordinance – Amending the Official Zoning Map to change from Commercial (C-2) District zoning to Medium Density Multiple Family Residential (R-3) District zoning on the property at 354 Hannibal Square, East and from Single Family Residential (R-1A) District zoning to Medium Density Multiple Family Residential (R-3) District zoning on the properties at 463 and 455 West Lyman Avenue (1)
- Conditional use approval to redevelop the properties at 326 and 354 Hannibal Square, East and at 465, 463 and 455 West Lyman Avenue with a 12 unit, three story residential project, providing for certain exceptions and for a development agreement, if required.

12 City Commission Reports

- a. Commissioner Seidel
- b. Commissioner Sprinkel
- c. Commissioner Cooper
- d. Commissioner Weldon
- e. Mayor Leary

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

10 minutes total

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."



city commission agenda item

Item type	Mayor's Report	meeting date	June 13, 2016		
prepared by	Wes Hamil, Finance Director	approved by	<input checked="" type="checkbox"/>	City Manager	
department	Finance		<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 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				

subject

Establishment of an Auditor Selection Board to solicit and evaluate proposals from independent CPA firms to perform financial statement audits for fiscal years 2016 – 2018.

motion | recommendation

Approve the recommended committee members or other persons if desired and select a member of the Commission to serve on the Auditor Selection Board.

Background

The City's Charter requires the Commission to establish an Auditor Selection Board consisting of five (5) members. One (1) member of this board shall be a city commissioner appointed by the commission. The remaining four (4) members shall be residents of the city who have the qualifications of electors therein and are not city employees. This board shall be charged with the responsibility to solicit proposals and to screen and evaluate the proposals received. The Auditor Selection Board shall submit its recommendations to the City Commission which shall then select an auditor and award a contract for a term not to exceed three (3) years.

The following residents are qualified to serve on the Auditor Selection Board and have agreed to do so if approved by the City Commission:

David Currie, Emeritus Professor of Finance and Economics at Rollins College
Steve Miller, owner – Miller's Hardware
David Moore, financial advisor
David Satcher, practicing CPA

alternatives | other considerations

An audit of the City's financial statements is required by Florida Statute 218.39.

fiscal impact

An estimate of the annual audit fee based on historical audit fees has been included in the budget for FY 2017.

Cindy Bonham

From: Cindy Bonham
Sent: Friday, April 15, 2016 8:24 AM
To: Cindy Bonham
Subject: New application from Ellen Wolfson KWPB, P&R, UAB

From: Citizen Board Application Notification [<mailto:notification@cityofwinterpark.org>]
Sent: Thursday, April 14, 2016 5:39 PM
To: Cindy Bonham
Subject: [Board Application] New application from Ellen Wolfson

Contact information

Name

Ellen Russell Wolfson

Phone

(407) 629-0344

Email

ewolfson@cfl.rr.com

Home address

1266 Via Salerno
Winter Park, Florida 32789
United States
[Map It](#)

Business address

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

Your requested board(s)

Board 1

Keep Winter Park Beautiful & Sustainable Advisory Board

Skills

work well with others, enjoy nature and the outdoors, have lived in Winter Park for over 30 years

Board 2

Parks & Recreation Advisory Board

Skills

I have used and enjoyed city parks for over 30 years and I want to see our parks and outdoor spaces maintained.

Board 3

Utilities Advisory Board

Skills

I organized my neighbors to vote for underground in our grid 6 years ago.

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 no formal involvement other than being a good citizen who picks up trash that I find on my walks.

Rollins Alumni Board currently

Rollins Fraternity Sorority Strategic Planning Committee

List any work/career experience

High School teacher 1985-1989

Realtor in City of Winter Park 1988-1997 I still have a license

Manage family commercial real estate in Orlando

Partner in family farming business

Managed my husbands Chiropractic office

List your educational experience

Rollins College BA 1984

Rollins College MAT 1993

Sender's IP address: 72.238.84.171

Date received: 04/14/2016

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



city commission city manager's report

item type City Manager's Report

meeting date June 13, 2016

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
Railroad crossing update	Four of Winter Park's street crossings are included in FDOT's CIP for installing concrete panels.	FDOT is expected to begin the work in July 2016. All crossing improvements are to be completed by August 2017.
Visioning Steering Committee	Inviting community to participate at www.visionwinterpark.org .	The Steering Committee has reworked the themes and vision statements and met again on May 17 and 18.
New Hope Baptist Church Project	The Pastor had agreed to obtain assistance of a designer to improve the architectural appearance of the buildings to include the area at the base of the structures.	We are now waiting to hear from a new church representative on what course of action they want to pursue because of the passing of the Pastor.
Ward Park restrooms	Design is complete on two new restrooms by the new soccer fields and adjacent to the existing restrooms at the Little League fields.	Construction will begin on June 6, 2016.
Denning Drive	Denning Drive public meetings	Follow-up meeting scheduled for June 7 at the Rachel D. Murrah Civic Center 5:30-7:30 p.m.
Comprehensive Plan Update	Staff is updating the data, inventory and analysis for each element. The city has issued an RFQ for transportation consulting services for the transportation element.	The update is due to the Department of Economic Opportunity by February 1, 2017. See attached memorandum.
Seminole County Drainage Ditch	Perform flood study for the contributing Seminole County and Winter Park drainage basins.	Execute joint participation agreement by July 2016.

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.

MEMORANDUM

DATE: June 1, 2016

TO: Randy Knight, City Manager

FROM: Dori Stone, AICP, Planning & Community Development Director

RE: 2016 Comprehensive Plan Update Process

At the May 23, 2016 meeting, the Mayor with approval by the City Commission appointed a Comprehensive Plan Task Force whose purpose is to provide an objective review of the draft Comprehensive Plan elements including all board and public comments prior to Planning & Zoning, acting as the Local Planning Agency review.

We submitted our letter, as approved by the City Commission to the Florida Department of Economic Opportunity outlining the need to update the Comprehensive Plan on February 1, 2016. Given the statutory deadlines for updates, the city must adopt or adopt with changes a comprehensive plan by February 1, 2017 to continue to process any plan amendments as part of the development process. To meet this deadline, staff has begun a process to evaluate each element including updating all data and analysis and make any recommended changes to the goals, objectives and policies to the element. Each element will then go to a city board with an interest in that element in a public meeting for review and comments. The board comments and recommendations will then go to the new Comprehensive Plan Task Force for evaluation and another review. All recommendations will then move forward to the P&Z as the LPA. The P&Z will review all elements and forward them to the City Commission for transmittal.

Staff will be forwarding numerous elements to city boards for citizen review, comments and recommendations. Currently, our board process includes:

Element	Board Review
Future Land Use	EDAB Sustainability CRA AB Transportation
Transportation	Transportation EDAB Sustainability
Public Utilities	UAB Lakes and Waterways
Recreation and Open Space	Parks Sustainability
Conservation	Lakes and Waterways Sustainability
Housing	EDAB

	Winter Park Housing Authority Sustainability
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Staff will also only be presenting the Intergovernmental Coordination and Capital Improvements Plan elements to the P&Z and City Commission. Staff does not intend to update or include the School Concurrency element since that is no longer statutorily required.

Given our current board makeup, the inclusion of the Comprehensive Plan Task Force and the P&Z process, the community will have numerous opportunities to review the elements, ask questions and comment prior to city commission review. All elements will be updated on our city webpage for accessibility.



city commission agenda item

Item type	Non-Action Item	meeting date	June 13, 2016					
prepared by	Chief Brett C. Railey	approved by	<input checked="" type="checkbox"/>	City Manager				
department	Police		<input type="checkbox"/>	City Attorney				
division	Administration		<input type="checkbox"/>	N/A				
board approval		<input type="checkbox"/>	yes	<input type="checkbox"/>	no	<input 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 checked="" type="checkbox"/>	Public Health & Safety			
	<input type="checkbox"/>	Investment in Public Assets & Infrastructure						

subject

An update on the applicability of **Body Worn Camera Technology** for the Winter Park Police Dept.

recommendation

Continued research is necessary as it pertains to the perceived need for Body Worn Cameras and the fiscal impact associated with implementation

background

As body worn camera technology became the focus of public discourse, many agencies rushed to implement the new technology without consideration given to the need for such technology and an associated cost benefit analysis. At that time, the Winter Park Police Department assigned a Lieutenant to conduct research and participate in focus groups designed to develop standards for camera implementation. Chief Railey was assigned to a multidisciplinary panel headed by the Florida Department of Law Enforcement to make recommendations for best practices in the use of body worn camera technology. As a result, legislation regarding records retention, the release of footage in response to public records requests and most recently protection for officers from illegal oral intercept has been enacted to better protect the implementing entities from liability for use of the technology. This presentation is designed to inform the Commission of progress and future challenges to the implementation of a body worn camera program should a decision be made to move in that direction.

REGULAR MEETING OF THE CITY COMMISSION
May 23, 2016

The meeting of the Winter Park City Commission was called to order by Mayor Steve Leary, at 3:30 p.m. in the Commission Chambers, 401 Park Avenue South, Winter Park, Florida. The invocation was provided by Pastor Todd Haymans, Aloma Baptist Church, followed by the Pledge of Allegiance.

Members present:

Mayor Steve Leary
Commissioner Greg Seidel
Commissioner Sarah Sprinkel
Commissioner Pete Weldon

Also present:

City Manager Randy Knight
City Attorney Kurt Ardaman
Debbie Wilkerson (for City Clerk Bonham)

Members absent:

Commissioner Carolyn Cooper

Approval of the agenda

City Manager Knight announced Item 11-b being tabled per the request of the applicant. Mayor Leary announced the addition under the City Attorney's Report that was amended to the agenda prior to the meeting.

Motion made by Commissioner Sprinkel to approve the agenda; seconded by Commissioner Weldon and carried unanimously with a 5-0 vote.

Mayor's Report

a. Recognition of Art in Chambers Artist Spencer Warlick

Mayor Leary introduced Artist Warlick in recognition of his display in the Chambers. Mr. Warlick thanked the Commission for allowing him to display his art.

City Manager's Report

City Manager Knight spoke about the offers received for the Blake Yard property. He asked if the Commission wanted to move forward with a Notice of Disposal process to receive formal offers. Discussion ensued that there is no rush to dispose of this property, and the current zoning of this property and surrounding properties. Mayor Leary suggested waiting until the City has a broker of record on board and then obtain suggestions about how the property should be zoned in order to receive the best value. After that it will be brought back to the Commission to decide whether to put it up for a Notice of Disposal. There was a consensus to delay this until we have a broker on board.

City Attorney's Report

Attorney Ardaman announced the closing of the bowling alley property purchase. He spoke about the drone issue as raised at the last meeting by Commissioner

Seidel and federal government rights. He stated the City can draft an ordinance to send to the FAA for their review and comment. He asked if the Commission would like to move forward with drafting an ordinance outlying rules and regulations to be submitted. Invasion of privacy was discussed. There was a consensus to look at our existing codes to see what is in the code before moving forward with an ordinance.

Authorization to initiate the Library/Events Center bond validation process

Attorney Ardaman spoke about the events center/library/parking facility meeting with the City's bond counsel to discuss how best to proceed with this matter and that it was determined to be appropriate to move forward with a bond validation lawsuit. He stated a bond validation would put to rest all outstanding issues including the issue of the petitioners committee's potential ordinance to prohibit the facility being located in the MLK Jr. Park. He stated in order to resolve this, they believe it is appropriate for the Commission to authorize bond counsel to bring a bond validation proceeding which would deal with that issue as well.

Clarification was made regarding the City's current position and the issue going to court whereby the petitioner's committee petition would be reviewed and decided upon at that point by the courts. Mayor Leary commented that the action being considered today will expedite the process and should help control the expense to the taxpayers and will give those going against the will of the voters a voice in court.

Motion made by Commissioner Sprinkel to approve moving forward; seconded by Commissioner Weldon. No public comments were made. **Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel and Weldon voted yes. The motion carried unanimously with a 4-0 vote.**

Non-Action Item

No items.

Consent Agenda

- a. Approve the minutes of May 9, 2016.
- b. Approve the following purchase, contracts, and formal solicitation:
 1. PR159925 to Environmental Products of Florida for the purchase of a 2016 Vactor with Kenworth Chassis (sewer cleaning truck); \$357,303.00 (from Equipment Replacement Fund).
 2. Amendment No. 4 to Bellomo-Herbert & Company, Inc. - RFQ-2-2012 Continuing Contracts for Professional, Architectural & Engineering Services (Parks & Recreation Services); and authorize the Mayor to execute renewal.
 3. Amendment No. 4 to Le-Huu Partners - RFQ-2-2012 Continuing Contracts for Professional, Architectural & Engineering Services (Parks & Recreation Services); and authorize the Mayor to execute renewal.

4. Amendment No. 4 to Environmental Research & Design, Inc. - RFQ-2-2012 Continuing Contracts for Professional, Architectural & Engineering Services (Lake Management); and authorize the Mayor to execute renewal.
5. Authorize staff to enter into negotiations with the top ranked firm, HuntonBrady/Adjaye Associates, RFQ-9-2016 - Library Design Consultant Services. **Pulled from Consent Agenda for discussion.**

Motion made by Commissioner Sprinkel to approve Consent Agenda items 'a' and 'b.1-4'; seconded by Commissioner Weldon. No public comments were made. **The motion carried unanimously with a 4-0 vote.**

Consent Agenda item 'b.5' - Authorize staff to enter into negotiations with the top ranked firm, HuntonBrady/Adjaye Associates, RFQ-9-2016 - Library Design Consultant Services

Commissioner Seidel pulled this item for discussion and asked about the budget regarding this project. He spoke about the \$23 million construction budget and that he did not want residents to think the City is spending \$30 million only on the construction. Mayor Leary clarified the \$30 million is an up to that amount. Commissioner Weldon spoke about being comfortable with the library budget being comfortably within the realm of what we should be able to execute and hoped that it will be less than the \$30 million. Discussion ensued as to what the \$30 million includes and that the Commission all hopes the cost will come in way less.

Commissioner Weldon spoke about the high quality firms and that it was a difficult decision to make. He stated he is not voting for the number one pick of the task force not because he is against that selection but because he is for the second selection of the task force.

After further discussion regarding the process moving forward, **a motion was made by Commissioner Seidel to approve Consent Agenda item 'b.5'; seconded by Commissioner Sprinkel and carried with a 3-1 vote with Mayor Leary and Commissioners Seidel and Sprinkel voting yes.** No public comments were made. **Commissioner Weldon voted no.**

Action Items Requiring Discussion

No items.

Public Hearings:

- a. Request of the Winter Park Health Foundation: Approval of the final conditional use for a new 'Project Wellness' Facility at 2005 Mizell Avenue, including a development agreement to provide for the entitlements, exceptions and for the consolidation of properties into 2005 Mizell Avenue and including provisions for the vacating and abandoning of City Streets and the dedication to the City of substituting right-of-ways.

Planning Manager Jeff Briggs addressed this item and that this final step is ready for approval so construction can begin.

Rebecca Wilson, Lowndes Drosdick Kantor and Reed Law Firm, representing the Winter Park Health Foundation, provided a PowerPoint presentation showing the site plan improvement to the roadway network in the area, a series of gardens created throughout the site and the large amount of design that went into the parking garage. She spoke about the offsite improvements being made by the Health Foundation and the new road they are suggesting to be named Crosby Way. She showed an architectural rendering of the building from various sides and the upgraded crosswalks. She stated the amendment requires the project to be built as presented, the Health Foundation is paying \$7,500 for a turn lane at Lakemont/Mizell, they are donating \$25,000 for improvements in Ward Park, are improving and maintaining the triangle park, have an enhanced signage package, they will pay \$30,000 for new switch gear, there is a new exfiltration system for the new roads, and are working with staff on wastewater improvements in this area.

Ms. Wilson asked for approval of the final conditional use permit and for the first amendment to the developer's agreement (the original developer's agreement stated the City would contemplate vacating the streets).

Commissioner Weldon asked if there is any way for the Health Foundation to consider putting in the final construction documents moving the sidewalks away from the curb to try and maximize the safety and encouragement of paths for pedestrians. Ms. Wilson stated she cannot say tonight that is something they can definitely do. Commissioner Weldon stated he only wanted to mention it as a priority of his. Mayor Leary asked that they also consider this.

Commissioner Sprinkel asked about heating the pool. City Manager Knight responded that the YMCA has not come up with their matching funds for that project and that it appears they might not. The agreement has expired and the City is talking renegotiations but there is some indication that they may not renew the agreement but that this is not final yet.

Commissioner Sprinkel also asked about walkability and bicycle routes and if there is a plan to allow bicycles to get to the Health Foundation building. Ms. Wilson addressed the connections that come from Ward Park and that this is something the City can consider if the City decides to use the \$25,000 the Foundation is donating to the City for Ward Park improvements. Mayor Leary asked if the Health Foundation would consider additional support for the Cady Way geothermal and commented that maybe we could come up with a three party agreement with the YMCA, Health Foundation and City. Ms. Wilson spoke about the new building they are providing to the YMCA and will talk to them about it. No public comments were made. Attorney Ardaman addressed typographical errors needing to be corrected in the First Amendment.

Motion made by Commissioner Sprinkel to approve the final conditional use request for the 'Project Wellness' facility; seconded by Commissioner Weldon. Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, and Weldon voted yes. The motion carried unanimously with a 4-0 vote.

- b. Request of Phil Kean Designs, Inc.: Amend the conditional use approval granted on October 12, 2015 to redevelop the property at 652 West Morse Boulevard in order to develop 10 residential units in lieu of the approved 11 residential units and to modify the approved architectural elements.

This item was tabled.

- c. ORDINANCE NO. 3036-16: AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 50, ENTITLED "FIRE PREVENTION AND PROTECTION," OF THE CITY OF WINTER PARK CODE OF ORDINANCES; PROVIDING FOR THE GENERAL REGULATION OF FIRE PREVENTION AND SAFETY; UPDATING REFERENCES TO, ADOPTING AND IMPLEMENTING THE FLORIDA FIRE PREVENTION CODE; UPDATING AND ADOPTING LOCAL AMENDMENTS TO THE FLORIDA FIRE PREVENTION CODE; PROVIDING FOR THE RENUMBERING AND RELETTERING OF CODE PROVISIONS; PROVIDING FOR SEVERABILITY, CODIFICATION, CONFLICTS AND AN EFFECTIVE DATE. Second Reading

Attorney Ardaman read the ordinance by title.

Motion made by Commissioner Sprinkel to adopt the ordinance; seconded by Commissioner Weldon. No public comments were made. Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, and Weldon voted yes. The motion carried unanimously with a 4-0 vote.

- d. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA VACATING AND ABANDONING UTILITY EASEMENTS FOR LOTS 7 AND 8 OF SEVILLA SUBDIVISION First Reading

Attorney Ardaman read the ordinance by title.

Motion made by Commissioner Sprinkel to accept the ordinance on first reading; seconded by Commissioner Weldon. No public comments were made. Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel, and Weldon voted yes. The motion carried unanimously with a 4-0 vote.

- e. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE VIII, "HISTORIC PRESERVATION"; AMENDING SECTION 58-433 TO CLARIFY THE INTENT AND PURPOSE OF THE WINTER PARK HISTORIC PRESERVATION CODE; AMENDING SECTION 58-457 CONCERNING THE REQUIREMENTS AND VOTING THRESHOLDS FOR THE DESIGNATION OF A HISTORIC DISTRICT AND CONCERNING THE IDENTIFICATION OF DESIGNATED PROPERTIES AND PROPERTIES WITHIN HISTORIC DISTRICTS; PROVIDING FOR

SEVERABILITY, CODIFICATION, CONFLICTS AND AN EFFECTIVE DATE First Reading

Attorney Ardaman read the ordinance by title. Planning Director Dori Stone spoke about the April 2016 meeting whereby staff was requested to go back and review two changes to the ordinance that was adopted in December 2015. Ms. Stone summarized the proposed changes.

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

Bill Sullivan, 1362 Richmond Road, spoke in favor of the changes to the ordinance.

The following spoke against the changes to the ordinance:

Rebecca Talbert, 3024 Northwood Boulevard, spoke in favor of adding the H and HD designations but against raising the threshold back to 2/3%.

Tom Sims, 326 Vitoria Avenue, spoke in favor of adding the H and HD designation but was against changing the threshold back to 2/3%.

Jack Lane, 1200 Lakeview Drive
Linda Eriksson, 535 N. Interlachen Avenue
Mary Daniels, 650 Canton Avenue
Sally Flynn, 1400 Highland Road
Betsy Owens, 656 Park Avenue North, Casa Feliz
Martha Bryant Hall, 331 West Lyman Avenue
John Skolfield, 358 Vitoria Avenue
Jeffrey Blydenburgh, 204 Genius Drive
Martin Crean, 617 S. Phelps Avenue
Thaddeus Seymour, 1804 Summerfield Road

Genean McKinnon, Historic Preservation Board member, spoke about the City's historical assets and the 57% that the board agreed upon. She stated she hopes the Commission will come up with powerful incentives to get people to choose to come on board and help continue to grow and preserve what has been left to the City.

Commissioner Weldon addressed demonstrating his great respect for historic preservation and his concerns over this ordinance that he has documented. Commissioner Seidel spoke about being balanced with this issue and that he tries to make decisions that is best for the City. He spoke against making the proposed changes to the ordinance and that he could support the 67% if they came up with something else that would help save the character within the neighborhoods before changing the ordinance. Commissioner Sprinkel spoke in support of the changes to the ordinance and trying to make the best decisions she can for the City. Mayor Leary stated the entire Commission wants the same thing but that they have different approaches to it and that he is very supportive of historic preservation. He stated he is looking forward to additional opportunities coming out of the Historic Preservation Board that make a neighborhood come together and support this.

Upon a roll call vote, Mayor Leary and Commissioners Sprinkel and Weldon voted yes. Commissioner Seidel voted no. The motion carried with a 3-1 vote.

Public comments (items not on the agenda)

Linda Eriksson, 535 N. Interlachen Avenue, spoke about leaves being blown into the street by the workers and the fines that can be imposed by doing that. She spoke about the project where the Capen/Showalter House was located that has been in the works for over two years and causing noise and dirt. She asked if there is a limit as to the time a project can take to be built and the length of time for building permits. Ms. Eriksson also addressed the need for traffic control.

Mary Daniels, 650 Canton Avenue, spoke about the visioning sessions, participation in the work sessions for Denning Drive, and the amount of non-residents having input into the process.

Sally Flynn, 1400 Highland Road, asked about how the electric undergrounding works because of her impression that it will be paid for by the bonds but that it is costing her \$2,600. City Manager Knight clarified that is the service drop that leads into her property and that the distribution lines are what was voted on in the bond referendum. It was clarified that homeowners can leave their lines overhead. City Manager Knight explained they leave information on doors when the streets are being considered for undergrounding explaining the process.

- f. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 74, PERSONNEL, ARTICLE V, RETIREMENT AND PENSION PLANS, DIVISION 4, POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER PARK; AMENDING SECTION 74-201, DEFINITIONS; AMENDING SECTION 74-204, FINANCES AND FUND MANAGEMENT; AMENDING SECTION 74-209, VESTING; AMENDING SECTION 74-210, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 74-215, MAXIMUM PENSION; AMENDING SECTION 74-216, MINIMUM DISTRIBUTION OF BENEFITS; AMENDING SECTION 74-226, DEFERRED RETIREMENT OPTION PLAN; AMENDING SECTION 74-228, PRIOR POLICE SERVICE; ADDING SECTION 74-230, SUPPLEMENTAL BENEFIT COMPONENT FOR SPECIAL BENEFITS; CHAPTER 185 SHARE ACCOUNTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE First Reading

Attorney Ardaman read the ordinance by title. City Manager Knight explained the ordinance contains the legislative changes from a while back. He addressed the changes regarding the share plan and that there are other administrative changes from IRS rulings.

Motion made by Commissioner Sprinkel to accept the ordinance on first reading; seconded by Commissioner Weldon. No public comments were made. Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel and Weldon voted yes. The motion carried unanimously with a 4-0 vote.

- g. AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, REPEALING AND REPLACING CHAPTER 58, ARTICLE V, DIVISION 3 FLOODPLAIN REGULATIONS; ADOPTING FLOOD HAZARD MAPS, DESIGNATING A FLOODPLAIN ADMINISTRATOR, ADOPTING PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; ADOPTING LOCAL TECHNICAL AMENDMENTS TO THE FLORIDA BUILDING

CODE BY AMENDING CHAPTER 22, ARTICLE II, SECTION 22-28; PROVIDING FOR APPLICABILITY; PROVIDING FOR CODIFICATION, FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE First Reading

Attorney Ardaman read the ordinance by title. Building Director George Wiggins explained the update to the flood plain regulations and answered questions of the Commission.

Motion made by Commissioner Sprinkel to accept the ordinance on first reading; seconded by Commissioner Weldon. No public comments were made. **Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel and Weldon voted yes. The motion carried unanimously with a 4-0 vote.**

- h. Request of Mr. Robert Moore: Tabled per the request of the applicant.

City Commission Reports:

- a. Commissioner Seidel – No report.
- b. Commissioner Sprinkel

Commissioner Sprinkel spoke about the email received complaining about the traffic by the East End Market and asked if this is being looked into. City Manager Knight stated it is being reviewed. Commissioner Sprinkel addressed being out of town for the golf sprigging but it looked like a good event and that there are other opportunities to be there. She asked if the bowling alley property will be discussed. There was a consensus to add this to the next agenda.

- c. Commissioner Cooper - absent
- d. Commissioner Weldon

Commissioner Weldon asked to schedule a work session to discuss City owned properties and what to do with those properties. Staff was directed to provide them with the extent of documentation they have for the offers or suggested interests in the Progress Point property and the Blake Yard property as part of the discussion. There was a consensus to schedule the work session at 2:00 on June 13.

Commissioner Weldon asked that the following be included verbatim in the minutes:

"From a Sept. 7, 1999, Wall Street Journal op-ed by Supreme Court Justice Antonin Scalia, who died Feb. 13 at age 79, on the most significant development in the law over the past millennium:"

"My selection of democratic self-government as development of the millennium assumes—perhaps optimistically—a continuing appreciation of the need for these structural checks. It also assumes, as the precondition for that appreciation, what our Framers would have called a liberal disposition on the part of the people: a

reluctance to impose their views by law in the face of significant opposition, a reticence to require others to love all that they love and to hate all that they hate. A society that feels passionately about everything, or that lightly—without a sure and certain need—adopts laws obnoxious to many of its members, cannot sustain democratic self-government, and is fit only to be ruled by others.”

“The point was put well by the great Learned Hand, in his comments to a group of newly naturalized Americans: “The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias.” Regards, Pete Weldon

e. Mayor Leary

Mayor Leary asked if he can appoint three people at this time to the Comprehensive Plan Task Force but if the Commission has an issue with it he can put it on the next agenda. Attorney Ardaman stated there is no prohibition to do that. Mayor Leary appointed the following: Laura Turner, Mark Reicher and Nancy Miles. **Motion made by Commissioner Sprinkel to approve the appointments; seconded by Commissioner Weldon.** It was clarified that these individuals will work with staff and that they will comply with the Sunshine Law. Planning Director Dori Stone explained the process: She will put together a schedule and work the task force into the schedule to be provided; staff will make recommendations on elements/chapters that will go to various boards for review; those board comments will be provided to the task force to make sure they work well together and nothing has been overlooked; then those will go to the Planning and Zoning Board and then come before the Commission.

Commissioner Weldon asked if a statement of purpose for the task force could be put together that guides them so they know what they are supposed to do. Planning Director Stone stated she can draft one. No public comments were made. **Upon a roll call vote, Mayor Leary and Commissioners Seidel, Sprinkel and Weldon voted yes. The motion carried unanimously with a 4-0 vote.**

Mayor Leary spoke about John Michael Knight who is coming home this week. He thanked the community for rallying behind one of our own.

The meeting adjourned at 5:53 p.m.

Mayor Steve Leary

ATTEST:

City Clerk Cynthia S. Bonham, MMC



city commission agenda item

item type	Consent Agenda	meeting date	June 13, 2016
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
1.	FieldTurf USA, Inc.	Showalter Field Synthetic Turf Installation	Total Amount: \$783,905.94*	Commission approve piggyback contract with FieldTurf USA, Inc., authorize the Mayor to execute contract.
*The City's financial expenditure: \$83,905.94. Rollins will contribute \$500,000 and the High School Foundation will contribute \$200,000 for this purchase. This purchase will be made by utilizing piggyback contract with TCPN – Contract#R5176 – Sport Surfaces, Installation and Related Materials.				
2.	Layne Inliner LLC	Blanket Purchase Order for Sewer Line Rehab Cleaning/Manhole	Total expenditure included in approved FY16 budget. Amount: \$250,000	Commission approve Blanket Purchase Order to Layne Inliner LLC for Sewer Line Rehab Cleaning/Manhole.
This Blanket Purchase Order will expire September 30, 2016. This purchase will be made utilizing piggyback contract – City of Orlando IFB-15-0017.				
3.	Bulk Power (Gainesville Regional Utility, Orlando Utilities Commission, Florida Power & Light)	Change Order to BPO's for Bulk Power - Adjustment to account for estimated year end spending on Bulk Power contracts.	BPO# 156938 \$75,000 BPO# 156939 \$50,000 BPO# 156940 (\$125,000)	Commission approve Change Orders to Blanket Purchase Orders 156938, 156939, & 156940.
BPO# 156938 – Gainesville Regional Utility, BPO# 156939 – Orlando Utilities Commission, BPO# 156940 – Florida Power & Light				
4.	Transmission Services (Florida Power & Light, Duke Energy Florida)	Change Order to BPO's for Transmission Services – Reallocation of transmission service charges.	BPO# 156942 (\$75,000) BPO# 156943 \$80,000	Commission approve Change Orders to Blanket Purchase Orders 156942 & 156943.
BPO# 156942 – Florida Power & Light, BPO# 156943 – Duke Energy Florida				
5.	Operations (ENCO, Heart Utilities)	Change Order to BPO's for Operations - Removal of remaining funding for ENCO and adjustments to contracted labor.	BPO# 156944 (\$1,876,610) BPO# 156945 (\$100,000) BPO# 156946 \$715,000	Commission approve Change Orders to Blanket Purchase Orders 156944, 156945, & 156946.
BPO#'s 156944 – ENCO, BPO# 156945 – Heart Utilities, BPO# 156946 – HDD.				

Approval of contract shall constitute approval for all subsequent purchase orders made against contract

Contracts

	vendor	item background	fiscal impact	motion recommendation
6.	BASE Consultants, P.A.	Amendment No. 4 RFQ-2-2012 – Continuing Contracts for Professional, Architectural & Engineering Services (Discipline: Structural Engineering)	Total expenditure included in approved FY16 budget. Amount: As Needed Basis	Commission approve Amendment No. 4 to BASE Consultants, P.A., and authorize the Mayor to execute renewal.
The City utilized a formal solicitation process to award this contract. The City Commission approved the contract award to BASE Consultants, P.A. on June 25, 2012. The contract term was for a period of one year with a total of four one-year renewal options, not to exceed five years in total. The current contract term will expire on June 24, 2016.				
7.	Florida Bridge & Transportation, Inc.	Amendment No. 4 RFQ-2-2012 – Continuing Contracts for Professional, Architectural & Engineering Services (Discipline: Structural Engineering)	Total expenditure included in approved FY16 budget. Amount: As Needed Basis	Commission approve Amendment No. 4 to Florida Bridge & Transportation Inc., and authorize the Mayor to execute renewal.
The City utilized a formal solicitation process to award this contract. The City Commission approved the contract award to Florida Bridge & Transportation Inc. on June 25, 2012. The contract term was for a period of one year with a total of four one-year renewal options, not to exceed five years in total. The current contract term will expire on June 24, 2016.				
8.	The Davey Tree Expert Company	Amendment No. 4 ITN-6-2013 – Utility Vegetation Management	Total Expenditure included in approved FY16 budget.	Commission approve Amendment No. 3 to The Davey Tree Expert Company and authorize the Mayor to execute renewal.
The City utilized a formal solicitation process to award this contract. The City Commission approved the contract award to The Davey Tree Expert Company on May 13, 2013. The contract term was for a period of one year with a total of four one-year renewal options, not to exceed five years in total. The current contract term will expire on June 24, 2016.				
9.	Massey Services, Inc.	Amendment No. 1 RFP-16-2013 – Pest Control Services	Total Expenditure included in approved FY16 budget.	Commission approve Amendment No. 1 to Massey Services, Inc. and authorize the Mayor to execute renewal.
The City utilized a formal solicitation process to award this contract. The City Commission approved the contract award to Massey Services, Inc. on May 13, 2013. The contract term was for a period of three consecutive years with one – 24-month renewal option, not to exceed sixty months in total. The current contract term will expire on June 24, 2016.				
10.	Universal Engineering Sciences	Amendment No. 4 RFQ-2-2012 – Continuing Contracts for Professional, Architectural & Engineering Services (Discipline: Environmental Services)	Total expenditure included in approved FY16 budget. Amount: As Needed Basis	Commission approve Amendment No. 4 to Universal Engineering Sciences and authorize the Mayor to execute renewal.
The City utilized a formal solicitation process to award this contract. The City Commission approved the contract award to Universal Engineering Sciences on June 25, 2012. The contract term was for a period of one year with a total of four one-year renewal options, not to exceed five years in total. The current contract term will expire on June 24, 2016.				

	vendor	item background	fiscal impact	motion recommendation
11.	Seminole County	Solid Waste Management Interlocal Agreement	Savings will be approximately 8-10% per ton on solid waste disposal.	Commission approve Interlocal Agreement with Seminole County and authorize the Mayor to execute contract.
Solid waste collected by Waste Pro will be disposed of at this facility.				

Approval of contract shall constitute approval for all subsequent purchase orders made against contract

Formal Solicitations

	vendor	item background	fiscal impact	motion recommendation
12.	CBRE, Inc.	RFP-10-2016 – Commercial Broker Service	Real Estate Commissions would be a part of any sale or purchase of property and vary from 2-5%. Additional fees & services are negotiated as needed.	Commission approve award to CBRE, Inc. and authorize the Mayor to execute contract.
A formal solicitation was issued on April 20, 2016. Five responses were received, and the Selection Committee Shortlisted two companies. The committee's final ranking identified CBRE, Inc. as the recommended vendor to award.				
13.	Kimley Horn	RFQ-11-2016 – Traffic Consultant for City Comprehensive Plan	Total expenditure included in approved FY16 budget.	Commission approve award to Kimley Horn and authorize staff to enter into negotiations.
A formal solicitation was issued on April 19, 2016. The committee's final ranking identified Kimley Horn as the recommended vendor to award.				

Approval of contract shall constitute approval for all subsequent purchase orders made against contract



city commission agenda item

Item type	Consent Agenda	meeting date	June 13, 2016
prepared by	Deputy Chief Pat McCabe	approved by	<input checked="" type="checkbox"/> City Manager
department	Fire		<input type="checkbox"/> City Attorney
division	Administration		<input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> N/A
strategic objective	<input type="checkbox"/> Exceptional Quality of Life	<input type="checkbox"/> Fiscal Stewardship	
	<input type="checkbox"/> Intelligent Growth & Development	<input checked="" type="checkbox"/> Public Health & Safety	
	<input type="checkbox"/> Investment in Public Assets & Infrastructure		

Subject:

1. Interlocal Aid Agreement for Fire Protection and Rescue Services between the City of Winter Park and the City of Orlando
2. MOU between City of Winter Park Fire Rescue and City of Orlando Fire Department for Special Operations Response and training.

motion | recommendation

Approval

background:

These agreements have been in place for over 15 years and are in place to send the closest Winter Park units to emergencies in the North end of Baldwin Park and Orlando at our request will respond to Hazardous Materials, Technical Rescue and Dive Rescues.

alternatives | other considerations

None

fiscal impact

None

INTERLOCAL AID AGREEMENT

for Fire Protection and Rescue Services between the

City of Winter Park and the City of Orlando

THIS AGREEMENT, by and between the **CITY OF WINTER PARK**, a municipal Corporation organized and existing under the law of the State of Florida (hereinafter referred as Winter Park) and the **CITY OF ORLANDO**, a municipal corporation organized and existing under the law of the State of Florida (hereinafter referred to as Orlando).

WITNESSETH

WHEREAS, the cities have established and maintain Fire Departments with Firefighting equipment, emergency medical equipment and firefighting personnel; and

WHEREAS, the boundaries to the two named cities are adjacent; and

WHEREAS, the parties are desirous of providing an expeditious and efficient response in their respective jurisdictions in order to protect the public health, safety, and welfare; and

WHEREAS, such interlocal agreement is authorized by Florida Statute Chapter 163.01, The Florida Interlocal Cooperation Act of 1969; and

WHEREAS, the parties recognize the most effective response may be provided by the firefighting and rescue agency outside of, but contiguous to, the jurisdiction in which the emergency occurs; and

WHEREAS, the parties deem it desirable to make provisions for an initial response in case of emergency from the firefighting and rescue agency closest to such emergency.

NOW THEREFORE, it is agreed by and between the parties hereto that each will assist the other under the following stipulations, provisions and conditions:

1. **Definitions.** For the purposes of this agreement, the following definitions shall apply:

- (a) **Mutual Aid.** An immediate response of emergency personnel by the Responding Party at the request of and within the Receiving Party's jurisdiction on behalf of or with the Receiving Party.
 - (b) **Receiving Party.** The jurisdiction to which aid is rendered pursuant to this agreement.
 - (c) **Responding Party.** The Responding Party is the jurisdiction providing aid pursuant to this agreement.
 - (d) **Automatic Aid.** Assistance dispatched automatically by contractual agreement between two communities or fire districts. The specifics of such response will be agreed upon as provided in the Operational Plan in paragraph 5(c).
 - (e) **Joint Response.** Assistance established by predefined response area in which the responding party agrees to send available resources and/or aid to the receiving jurisdiction. This response shall be defined by CAD/GIS recommendations on behalf of both cities.
- 2. **Aid Assistance.** Aid assistance shall be based on a predefined area, as agreed upon by the Fire Chiefs pursuant to the Operational Plan in Paragraph 5(c), that results in the immediate response by the responding Party to the scene of an emergency in the Receiving Party's jurisdiction at the request of the Receiving Party. The process shall be initiated through the respective Fire Department Communications Center. The response to a request for assistance will be determined by the amount and the type of equipment staffed by the responding party. Joint Response and Automatic Aid: See Exhibit (A) attached hereto and incorporated by reference.
 - 3. **Liability and Indemnification.** Each party shall be responsible for the acts, omission, and conduct of its agents, employees, and appointees that occur while said persons are engaged in providing services pursuant to this agreement, subject to the provisions of Florida Statute 768.28, where applicable.
 - 4. **Reimbursement.** The responding party shall compensate its employees during the time such aid rendered and shall defray the actual travel and maintenance expenses of its employees while they are rendering such aid, including any amounts paid or due for compensation due to the personal injury or death while said employees are engaged in rendering such assistance. Nothing herein prevents either party from receiving reimbursements from any state or federal reimbursement programs. Each party furnishing equipment pursuant to this agreement must bear the

cost of loss or damage to that equipment and must pay any expense incurred in the operation and maintenance of that equipment.

5. **Miscellaneous**

(a) **Officer in Charge, Service Standard** – While providing aid in the area where the emergency exists, the Responding Party personnel shall be subject to the orders and directions of the officer in charge of the operations. If an officer of the Requesting Party is not available at the scene, the highest-ranking officer from the Responding Party will control the scene until its termination or an officer from the Requesting Party arrives and scene control is properly transferred. Both parties shall utilize National Fire Protection Standard 1500, as defined in Florida Statute 633.821, to ensure the Incident Command System, the Personnel Accountability System, and adherence to the Two In/Two Out standards. Requesting and responding personnel shall follow their respective agencies policies and procedures relating to fire response and conduct. Failure to comply with this service standard may be deemed a breach of this agreement and cause for termination.

(b) **Application of Agreement** – This agreement shall apply only to emergencies within the predefined areas of protection of the cities, made an addendum hereto (Exhibit “A”).

(c) **Operational Plan** – The Chiefs of the Fire Departments, or designees, will develop a written plan for procedures and operations necessary to implement this Agreement. The operational plan will become effective when approved in a written Memorandum of Agreement signed by both Fire Chiefs.

(d) **Conflict Resolution** – Any disputes arising from this Agreement shall be resolved by the Fire Chiefs, or their authorized representatives.

(e) **Radio** – The requesting agency shall be responsible for recording radio communications. Upon request by the other party, the requesting or responding agency shall complete a detailed report and forward a copy to the other agency.

6. **Termination**. Either party may terminate this Agreement upon providing 90 days written notice to the other party. The liability provisions of this agreement shall survive any such termination.

7. **Effective Date and Term**. The Agreement shall take effect as of the date of this last signature herein below. This agreement shall continue in full force and effect through December 31, 2020. The term of this agreement may be extended for a period of up to 120 days by written agreement executed prior to December 31, 2020

by the Mayors of Winter Park and Orlando. This agreement may not be renewed or amended except in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement in manner and form sufficient to bind them as of the day and year first above written.

CITY OF WINTER PARK, FLORIDA

ATTEST: _____

By: _____
Name: _____
Title: _____
Date: _____

CITY OF ORLANDO, FLORIDA

Attest:

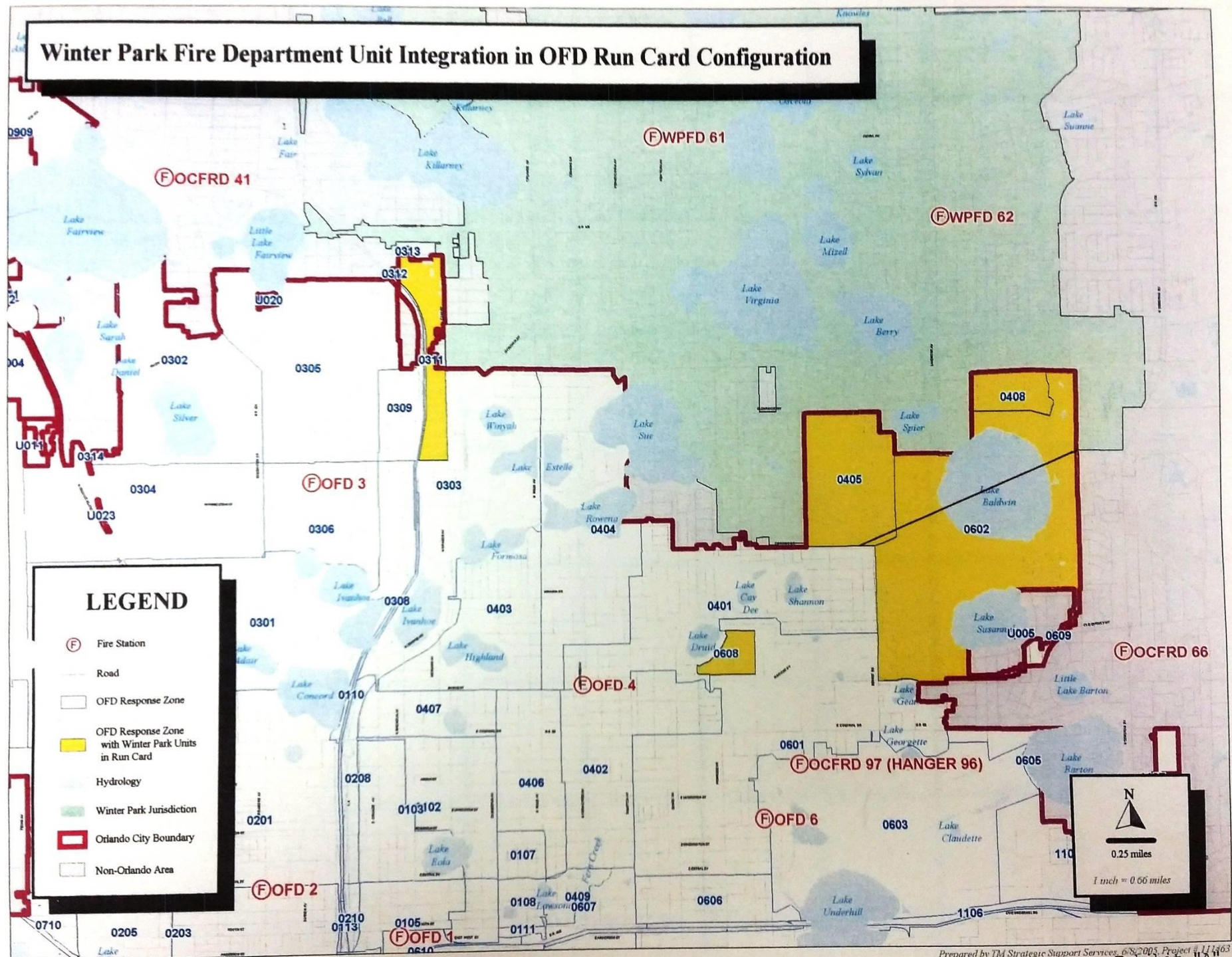
Amy T. Iennaco, City Clerk

By: _____
Mayor/Pro Tem
Date: _____

Approved As To Form And Legality
(for the use and reliance of the
City of Orlando, Florida only)

_____, _____

Assistant City Attorney



**MEMORANDUM OF UNDERSTANDING
BETWEEN:
The City of Winter Park Fire-Rescue Department
The City of Orlando Fire Department**

Special Operations Response and Training

This Memorandum of Understanding, (hereinafter referred to as “MOU” or “Agreement”) between the City of Winter Park Fire Rescue Department (“WPFRD”) and the City of Orlando Fire Department (“OFD”) hereinafter known collectively as the “Parties,” for the purpose of developing a special operations response and training system.

Purpose and Mission:

The purpose of this MOU is to formalize the concept of the Parties regarding the response for special operations emergencies by the OFD into the jurisdiction legally established as the municipal boundaries of the City of Winter Park, in which the WPFRD provides emergency services, as well as the concept of the OFD providing credible, validated special operations training to and with the personnel within the WPFRD organization to a level set forth and agreed upon by the Parties. The Parties recognize that under current Mutual Aid agreements between the WPFRD and the OFD, inclusion for the response to special operations incidents by the OFD into the WPFRD jurisdiction is understood. This MOU is established to better formulate the response of the OFD into the WPFRD jurisdiction as the “first call” agency when deemed necessary by the Incident Commander.

Definition

The applied definition for “Special Operations” contain within this MOU include the following services and training disciplines:

- Hazardous Materials
- Technical Rescue to include Confined Space, Trench, High Angle, Collapse and Dive Rescues.

Termination, Duration, and Revision

Either party may terminate this Agreement by written notice. This agreement shall be terminated thirty (30) days after receiving written notice of cancellation from the Orlando Fire Department or the Winter Park Fire Rescue Department.

This agreement shall become effective upon the date of the last party to execute this Agreement and shall continue until such time as terminated by either party or until such time as it is revised.

Providing that this MOU is not terminated as stated above, the Parties agree to address the various sections of the MOU and revise if needed. Revision of the MOU will require the same signatory actions as the original. Until such time as a revised MOU commences, the original or latest version shall remain in force.

Conflict Resolution

In the event that a conflict arises during the time this MOU is in force, the Parties understand that attempts to resolve said conflict shall start with the designated Operational Managers as described in each section. Upon determination that said conflict cannot or is not resolved, attempts to resolve said conflict shall then go to the Fire Chief or Chief Executive or each agency.

Liability

The Parties agree that no agency will be considered the agent of the other for civil liability purposes. Each party shall be responsible for the acts, omission, and conduct of its agents, employees, and appointees that occur while said persons are engaged in providing services pursuant to this agreement, subject to the provisions of Florida Statute 768.28, where applicable.

Special Operations Response

Management

The Fire Chiefs or otherwise designated Chief Executive representing each agency encompassed within the Parties will designate an Operational Manager to represent his/her agency for the purpose of implementing this section of the MOU. Said Operational Managers will be empowered to set specific guidelines or policies for response within the spirit of the MOU.

Response Request

In the event that the WPFRD responds to a special operations type event within its jurisdiction and it is determined by the Incident Commander that the type and/or magnitude of the event is beyond the means of the resources held by the WPFRD, the Incident Commander will request a response from the OFD for resources to assist in the containment and/or mitigation of the special operations event. Resources sent by the OFD will be at the discretion of the sending agency and shall be based on the type and magnitude of the event.

Availability

In the event the OFD is not available to respond to the request of the WPFRD, the WPFRD through its established guidelines will request a response from other agencies as stipulated with any and all inter-local agreements.

Operational Management

Unless “Command” is expressly transferred to an OFD representative, the WPRFD Incident Commander will maintain command and control of the special operations event to which OFD responds. Upon arrival at the event, OFD personnel will meet with the Incident Commander to better ascertain the particulars of the event and to better formulate the mitigation of the event. OFD Command Staff who respond with other resources sent by OFD will liaison with the Incident Commander.

Until such time as the National Incident Management System (NIMS) is adopted and implemented by the Parties, special operations incidents to which the parties respond within the jurisdiction of the WPRFD will operate under an understood Incident Management System (IMS) as established by guidelines or policies of the Parties.

Reimbursement

The Parties agree that costs incurred for personnel and equipment shall be borne by the respective agency. In the event that reimbursement is sought by the WPRFD for an event occurring within the jurisdiction of the WPRFD, the OFD will provide detailed cost statements for equipment and personnel supplied for event containment and mitigation. The WPRFD shall act as the billing agent for the Parties for events stated above. Reimbursement to the OFD will occur upon collection of the billing and based on the detailed billing statements produced.

Special Operations Training

Management

The Fire Chiefs or otherwise designated Chief Executive representing each agency Encompassed within the Parties will designate an Operational Manager to represent his/her agency for the purpose of implementing this section of the MOU. Said Operational Managers will be empowered to set specific guidelines or policies for special operations training within the spirit of the MOU. Additionally, the Operational Managers will be responsible to communicate, liaison and set the training goals, objectives and plans relative to the training received by the WPRFD. This shall be applicable also to training events that are not delivered specifically by either of the Parties, but rather, is considered a joint-training event.

Training Delivery

Training curriculum for all special operations levels shall meet an industry standard and shall be validated for accuracy. The Operational Managers representing the Parties will agree on the specific curriculum and required contact hours for the various levels of training.

If the OFD is the “Trainer” for specific curriculum, it has the option of contracting with other training facilities provided said training facilities are recognized by the State of Florida Department of Education.

Costs

The WPFRD will cover all costs for special operations training as stipulated by the OFD as trainer. The Operational Managers will discuss all costs to be incurred and the Operational Managers of the WPFRD will secure approval for expenditure of funds prior to training taking place.

For training events considered joint training when neither of the Parties is designated as trainer, costs relative to the joint training shall be borne independently by each single party based on its own expense. Shared costs shall be borne in an equal manner.

Effective Date and Term. The Agreement shall take effect as of the date of this last signature herein below. This agreement shall continue in full force and effect through December 31, 2020. The term of this agreement may be extended for a period of up to 120 days by written agreement executed prior to December 31, 2020 by the Mayors of Winter Park and Orlando. This agreement may not be renewed or amended except in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement in manner and form sufficient to bind them as of the day and year first above written.

CITY OF WINTER PARK, FLORIDA

ATTEST:_____

By:_____
Name:_____
Title:_____
Date:_____

CITY OF ORLANDO, FLORIDA

By:_____
Mayor/Pro Tem
Date:_____

Attest:

Amy T. Iennaco, City Clerk

Approved As To Form And Legality
(for the use and reliance of the
City of Orlando, Florida only)

_____, 2016

Assistant City Attorney



city commission public hearing

Item type	Public Hearing	meeting date	June 13, 2016
prepared by	Michelle Neuner	approved by	<input checked="" type="checkbox"/> City Manager
department	City Management		<input checked="" type="checkbox"/> City Attorney (Pension)
division			<input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> N/A
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 type="checkbox"/> Investment in Public Assets & Infrastructure		

subject

Modifications to Police Pension Ordinance SECOND READING OF ORDINANCE

motion | recommendation

Adopt recommended ordinance.

background

The attached ordinance was presented by Scott Christianson, Pension Attorney for the Police Officers Pension Plan and revised by Jim Linn, Pension Attorney for the City. With the exception of implementing a share plan as required by state law (Ch. 185.35), the identified changes are administrative.

The Share Plan requires that... "additional premium tax revenues received that are in excess of the amount received for the 2012 calendar year, 50 percent must be used to fund minimum benefits or other retirement benefits in excess of the minimum benefits as determined by the municipality, and 50 percent must be placed in a defined contribution plan component to fund special benefits (Ch. 185.35(b))." This ordinance establishes a process by which to administer and distribute funding associated with development of the plan.

alternatives | other considerations

None

fiscal impact

Funding for the share plan is not required until after October 1, 2018. Had this ordinance been in effect in FY 2015, there would have been \$1,290 to split 50/50 or \$645 to the share plan.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 74, PERSONNEL, ARTICLE V, RETIREMENT AND PENSION PLANS, DIVISION 4, POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER PARK; AMENDING SECTION 74-201, DEFINITIONS; AMENDING SECTION 74-204, FINANCES AND FUND MANAGEMENT; AMENDING SECTION 74-209, VESTING; AMENDING SECTION 74-210, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 74-215, MAXIMUM PENSION; AMENDING SECTION 74-216, MINIMUM DISTRIBUTION OF BENEFITS; AMENDING SECTION 74-226, DEFERRED RETIREMENT OPTION PLAN; AMENDING SECTION 74-228, PRIOR POLICE SERVICE; ADDING SECTION 74-230, SUPPLEMENTAL BENEFIT COMPONENT FOR SPECIAL BENEFITS; CHAPTER 185 SHARE ACCOUNTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY OF WINTER PARK, FLORIDA, AS FOLLOWS;

SECTION 1: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Police Officers, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-201, Definitions, to amend the definitions of “Accumulated Contributions”, “Actuarial Equivalent”, “Credited Service”, and “Spouse”, to read as follows:

* * * * *

Accumulated contributions means a Member's own contributions with interest at the rate of five percent (5%) per annum through ~~the effective date of this ordinance~~ March 1, 2013. Effective on and after ~~the effective date of this ordinance~~ March 1, 2013, accumulated contributions means a Member's own contributions to the System, without interest. For those Members who purchase Credited Service with interest or at no cost to the System, any payment representing the amount attributable to Member contributions based on the applicable Member contribution rate, and any payment representing interest and any required actuarially calculated payments for the purchase of such Credited Service, shall be included in Accumulated Contributions.

Actuarial Equivalent means a benefit or amount of equal value, based upon the RP-2000 Combined Table based upon a fixed blend of fifty percent (50%) male mortality rates—fifty percent (50%) female mortality rates, with full generational mortality improvements projected to each future payment date for healthy participants and the RP-2000 Disabled Mortality Table based upon a fixed blend of (fifty percent (50%) male mortality rates—fifty percent (50%) female mortality rates, with full generational mortality improvements projected to each future payment date for impaired participants, and an interest rate of seven and three quarters percent (7.75%) per annum. This definition may only be amended by the City pursuant to the recommendation of the Board using assumptions adopted by the Board with the advice of the plan's actuary, such that actuarial assumptions are not subject to City discretion.

* * * * *

Ordinance No. _____

Page 1

Credited Service means the total number of years and fractional parts of years of service as a Police Officer with Member contributions, when required, omitting intervening years or fractional parts of years when such Member was not employed by the City as a Police Officer. A Member may voluntarily leave his Accumulated Contributions in the Fund for a period of five (5) years after leaving the employ of the Police Department pending the possibility of being re-employed as a Police Officer without losing credit for the time that he was a Member of the System. If a vested Member leaves the employ of the Police Department, his Accumulated Contributions will be returned only upon his written request. If a Member who is not vested is not reemployed as a Police Officer with the Police Department within five (5) years, his Accumulated Contributions, if one-thousand dollars (\$1,000.00) or less, shall be returned. If a Member who is not vested is not reemployed within five (5) years, his Accumulated Contributions, if more than one-thousand dollars (\$1,000.00), will be returned only upon the written request of the Member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the Board. Upon return of a Member's Accumulated Contributions, all of his rights and benefits under the System are forfeited and terminated. Upon any reemployment, a Police Officer shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his Accumulated Contributions from the Fund, unless the Police Officer repays into the Fund the contributions he has withdrawn, with interest, as determined by the Board, within ninety (90) days after his reemployment.

The years or fractional parts of a year that a Member performs "Qualified Military Service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as a Police Officer with the City to perform training or service, shall be added to his years of Credited Service for all purposes, including vesting, provided that:

- A. The Member is entitled to reemployment under the provisions of USERRA.
- B. The Member returns to his employment as a Police Officer within one (1) year from the earlier of the date of his military discharge or his release from active service, unless otherwise required by USERRA.
- C. The maximum credit for military service pursuant to this paragraph shall be five (5) years.
- D. This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a Member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the Member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the Member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Leave conversions of unused accrued paid time off shall not be permitted to be applied toward the accrual of Credited Service either during each Plan Year of a Member's employment with the City or in the Plan Year in which the Member terminates employment.

* * * * *

Spouse means the ~~lawful wife or husband of a Member or Retiree~~ Member's or Retiree's spouse under applicable law at the time benefits become payable.

* * * * *

SECTION 2: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Police Officers, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-204, Finances and Fund Management, subsection 6.B.(3), to read as follows:

* * * * *

- (3) In addition, the Board may, upon recommendation by the Board's investment consultant, make investments in group trusts meeting the requirements of Internal Revenue Service Revenue Ruling 81-100, ~~and~~ Revenue Ruling 2011-1, IRS Notice 2012-6 and Revenue Ruling 2014-24 or successor rulings or guidance of similar import, and operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under section 401(a) of the Code, individual retirement accounts that are exempt under section 408(e) of the Code, eligible governmental plans that meet the requirements of section 457(b) of the Code, and governmental plans under 401(a)(24) of the Code. For this purpose, a trust includes a custodial account or a separate tax favored account maintained by an insurance company that is treated as a trust under section 401(f) or under section 457(g)(3) of the Code. While any portion of the assets of the fund are invested in such a group trust, such group trust is itself adopted as a part of the System or plan.

(a) Any collective or common group trust to which assets of the fund are transferred pursuant to subsection (3) shall be adopted by the board as part of the plan by executing appropriate participation, adoption agreements, and/or trust agreements with the group trust's trustee.

(b) The separate account maintained by the group trust for the plan pursuant to subsection (3) shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the plan.

(c) For purposes of valuation, the value of the separate account maintained by the group trust for the plan shall be the fair market value of the portion of the group trust held for the plan, determined in accordance with generally recognized valuation procedures.

* * * * *

SECTION 5: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Police Officers, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-209, Vesting, subsections 3, to read as follows:

* * * * *

3. Notwithstanding any other provision of this section 74-209, retirement benefits of Members with at least ten (10) years of Credited Service who terminate City employment on or after ~~the effective date of this ordinance~~ March 1, 2013 for any reason, voluntary or involuntary, prior to attaining eligibility for early or normal retirement, are not payable until the Member attains age fifty-five (55).

* * * * *

SECTION 6: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Police Officers, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-210, Optional Forms of Benefits, subsections 1.D., 2., and 5., to read as follows:

* * * * *

1. D. For any Member who does not participate in the DROP pursuant to Section 74-226, a lump sum payment payable to the Retiree equal to twenty percent (20%) of the actuarial equivalent present value of the Retiree's accrued benefit at the date of retirement with the remaining eighty percent (80%) payable to the Retiree in a form selected by the Retiree and provided for in A. or B. above or in the normal form (ten (10) year certain and life). A Retiree who is a participant in the Deferred Retirement Option Plan shall not be eligible to select this partial lump sum option.
2. The Member, upon electing any option of this Section, will designate the joint pensioner (subsection 1.B., above) or Beneficiary (or Beneficiaries) to receive the benefit, if any, payable under the System in the event of Member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one (1) or more primary Beneficiaries where applicable. A Member may change his Beneficiary at any time. If a Member has elected an option with a joint pensioner and the Member's retirement income benefits have commenced, the Member may thereafter change his designated Beneficiary at any time, but may only change his joint pensioner twice. Subject to the restriction in the previous sentence, a Member may substitute a new joint pensioner for a deceased joint pensioner. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

* * * * *

5. Retirement income payments shall be made under the option elected in accordance with the provisions of this Section and shall be subject to the following limitations:
 - A. If a Member dies prior to his normal retirement date or early retirement date, whichever first occurs, no retirement benefit will be payable under the option to any person, but the benefits, if any, will be determined under Section 7 74-207.
 - B. If the designated Beneficiary (or Beneficiaries) or joint pensioner dies before the Member's Retirement under the System, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the Member upon his Retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this Section or a new Beneficiary is designated by the Member prior to his Retirement.

- C. If both the Retiree and the Beneficiary (or Beneficiaries) designated by Member or Retiree die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection 1, the Board may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with Section ~~44~~ 74-211.
- D. If a Member continues beyond his normal retirement date pursuant to the provisions of Section ~~6~~ 74-206, subsection 1, and dies prior to his actual Retirement and while an option made pursuant to the provisions of this Section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a Beneficiary (or Beneficiaries) designated by the Member in the amount or amounts computed as if the Member had retired under the option on the date on which his death occurred.
- E. The Member's benefit under this Section must begin to be distributed to the Member no later than April 1 of the calendar year following the later of the calendar year in which the Member attains age seventy and one-half (70½) or the calendar year in which the Member terminates employment with the City.

* * * * *

SECTION 7: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Police Officers, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-215, Maximum Pension, subsections 8. and 12.B., and by adding subsection 13., to read as follows:

* * * * *

8. *Ten Thousand Dollar (\$10,000.00) Limit; Less Than Ten Years of Service.* Notwithstanding anything in this Section 74-215, the retirement benefit payable with respect to a Member shall be deemed not to exceed the limit set forth in this subsection 8. of Section 74-215 if the benefits payable, with respect to such Member under this System and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000.00) for the applicable limitation year ~~and~~ or for any prior limitation year, and the City has not at any time maintained a qualified defined contribution plan in which the Member participated; provided, however, that if the Member has completed less than ten (10) years of Credited Service with the City, the limit under this subsection 8. of Section 74-215 shall be a reduced limit equal to ten thousand dollars (\$10,000.00) multiplied by a fraction, the numerator of which is the number of the Member's years of Credited Service and the denominator of which is ten (10).

- 12. B. No Member of the System shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the Member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter ~~67~~1223, Title 10, U.S. Code.

* * * * *

13. *Effect of Direct Rollover on 415(b) Limit.* If the plan accepts a direct rollover of an employee's or former employee's benefit from a defined contribution plan qualified under Code Section 401(a) which is maintained by the employer, any annuity resulting from the rollover amount that is determined using a more favorable actuarial basis than required under Code Section 417(e) shall be included in the annual benefit for purposes of the limit under Code Section 415(b).

* * * * *

SECTION 8: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Police Officers, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-216, Minimum Distribution of Benefits, subsection 2.B.(4), to read as follows:

* * * * *

2. B. (4) If the Member's surviving spouse is the Member's sole designated beneficiary and the surviving spouse dies after the Member but before distributions to the surviving spouse begin, this subsection 2.B., other than subsection 2.B.(1), will apply as if the surviving spouse were the Member.

For purposes of this subsection 2.B. ~~and subsection 5.~~, distributions are considered to begin on the Member's required beginning date or, if subsection 2.B.(4) applies, the date of distributions are required to begin to the surviving spouse under subsection 2.B.(1). If annuity payments irrevocably commence to the Member before the Member's required beginning date (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection 2.B.(1)), the date distributions are considered to begin is the date distributions actually commence.

* * * * *

SECTION 9: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Police Officers, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-226, Deferred Retirement Option Plan, to read as follows:

Sec. 74-226. - Deferred retirement option plan.

1. *Definitions.* As used in this Section ~~26~~ 74-226, the following definitions apply:"
 - A. "DROP"—The City of Winter Park Police Officers' Deferred Retirement Option Plan.
 - B. "DROP Account"—The account established for each DROP participant under subsection 3.
 - C. "Total Return of the Assets" -- For purposes of calculating earnings on a Member's DROP Account pursuant to subsection 3.B.(2)(b)., for each fiscal year quarter, the percentage increase (or decrease) in the interest and dividends earned on investments, including realized and unrealized gains (or losses), of the total Plan assets.
2. *Participation.*
 - A. *Eligibility to Participate.* In lieu of terminating his employment as a Police Officer, any Member who is eligible for normal retirement under the System may elect to defer receipt of such service retirement pension and to participate in the DROP.
 - B. *Election to Participate.* A Member's election to participate in the DROP must be made in writing in a time and manner determined by the Board and shall be

effective on the first day of the first calendar month which is at least fifteen (15) business days after it is received by the Board.

C. *Period of Participation.* A Member who elects to participate in the DROP under subsection 2.B., shall participate in the DROP for a period not to exceed sixty (60) months beginning at the time his election to participate in the DROP first becomes effective. An election to participate in the DROP shall constitute an irrevocable election to resign from the service of the City not later than the date provided for in the previous sentence. A Member may participate only once.

D. *Termination of Participation.*

(1) A Member's participation in the DROP shall cease at the earlier of:

(a) The end of his permissible period of participation in the DROP as determined under subsection 2.C.; or

(b) Termination of his employment as a Police Officer.

(2) Upon the Member's termination of participation in the DROP pursuant to subsection (1)(a) above, all amounts provided for in subsection 3.B., including monthly benefits and investment earnings and losses or interest, shall cease to be transferred from the System to his DROP Account. Any amounts remaining in his DROP Account shall be paid to him in accordance with the provisions of subsection 4. when he terminates his employment as a Police Officer.

(3) A Member who terminates his participation in the DROP under this subsection 2.D. shall not be permitted to again become a participant in the DROP.

E. *Effect of DROP Participation on the System.*

(1) A Member's Credited Service and his accrued benefit under the System shall be determined on the date his election to participate in the DROP first becomes effective. The Member shall not accrue any additional Credited Service or any additional benefits under the System (except for any supplemental benefit payable to DROP participants or any additional benefits provided under any cost-of-living adjustment for Retirees in the System) while he is a participant in the DROP. After a Member commences participation, he shall not be permitted to again contribute to the System nor shall he be eligible for disability or pre-retirement death benefits, except as provided for in Section 74-229, Reemployment After Retirement.

(2) No amounts shall be paid to a Member from the System while the Member is a participant in the DROP. Unless otherwise specified in the System, if a Member's participation in the DROP is terminated other than by terminating his employment as a Police Officer, no amounts shall be paid to him from the System until he terminates his employment as a Police Officer. Unless otherwise specified in the System, amounts transferred from the System to the Member's DROP Account shall be paid directly to the Member only upon the termination of his employment as a Police Officer.

3. *Funding.*

A. *Establishment of DROP Account.* A DROP Account shall be established for each Member participating in the DROP. A Member's DROP Account shall consist of amounts transferred to the DROP under subsection 3.B., and earnings or interest on those amounts.

B. *Transfers from Retirement System.*

(1) As of the first day of each month of a Member's period of participation in the DROP, the monthly retirement benefit he would have received under the System had he terminated his employment as a Police Officer and elected to receive monthly benefit payments thereunder shall be transferred to his DROP Account, except as otherwise provided for in subsection 2.D.(2). A Member's period of participation in the DROP shall be determined in accordance with the provisions of subsections 2.C. and 2.D., but in no event shall it continue past the date he terminates his employment as a Police Officer.

(2) Except as otherwise provided in subsection 2.D.(2), a Member's DROP Account under this subsection 3.B. shall be debited or credited ~~after each fiscal year quarter~~ with either:

- (a) Interest at an effective rate of six and one-half percent (6½%) per annum compounded monthly determined on the last business day of the prior month's ending balance and credited to the Member's DROP Account as of such date (to be applicable to all current and future DROP participants); or
- (b) Earnings, to be credited or debited to the Member's DROP Account, determined as of the last business day of each fiscal year quarter and debited or credited as of such date, determined as follows:

The average daily balance in a Member's DROP Account shall be credited or debited at a rate equal to the net investment return realized by the System for that quarter. "Net investment return" for the purpose of this paragraph is the total return of the assets in which the Member's DROP Account is invested by the Board net of brokerage commissions, management fees and transaction costs.

For purposes of calculating earnings on a Member's DROP Account pursuant to this subsection 3.B.(2)(b), brokerage commissions, transaction costs, and management fees shall be determined for each quarter by the investment consultant pursuant to contracts with fund managers as reported in the custodial statement. The investment consultant shall report these quarterly contractual fees to the Board. The investment consultant shall also report the net investment return for each manager and the net investment return for the total Plan assets.

Upon electing participation in the DROP, the Member shall elect to receive either interest or earnings on his account to be determined as provided above. The Member may, in writing, elect to change his election only once during his DROP participation. An election to change must be made prior to the end of a quarter and shall be effective beginning the following quarter. This amendment to

subsection 3.B.(2) shall apply to both current and future DROP participants.

- (3) A Member's DROP Account shall only be credited or debited with earnings or interest and monthly benefits while the Member is a participant in the DROP. A Member's final DROP account value for distribution to the Member upon termination of participation in the DROP shall be the value of the account at the end of the quarter immediately preceding termination of participation for participants electing the net plan return and at the end of the month immediately preceding termination of participation for participants electing the flat interest rate return plus any monthly periodic additions made to the DROP account subsequent to the end of the previous quarter or month, as applicable, and prior to distribution. If a Member fails to terminate employment after participating in the DROP for the permissible period of DROP participation, then beginning with the Member's first month of employment following the last month of the permissible period of DROP participation, the Member's DROP Account will no longer be credited or debited with earnings or interest, nor will monthly benefits be transferred to the DROP account. All such non-transferred amounts shall be forfeited and continue to be forfeited while the Member is employed by the Police Department, and no cost-of-living adjustments shall be applied to the Member's credit during such period of continued employment. A Member employed by the Police Department after the permissible period of DROP participation will still not be eligible for pre-retirement death and disability benefits, and will accrue additional Credited Service or benefits only as provided for in Section 74-229.

4. *Distribution of Drop Accounts on Termination of Employment.*

- A. *Eligibility for Benefits.* A Member shall receive the balance in his DROP Account in accordance with the provisions of this subsection 4. upon his termination of employment as a Police Officer. Except as provided in subsection 4.D., no amounts shall be paid to a Member from the DROP prior to his termination of employment as a Police Officer.
- B. *Form of Distribution.*
- (1) Distribution of the Member's DROP Account shall be made in a cash lump sum, subject to the direct rollover provisions set forth in subsection 4.F. Elections under this paragraph shall be in writing and shall be made in such time or manner as the Board shall determine.
- (2) Notwithstanding the preceding, if a Member dies before his benefits are paid, his DROP Account shall be paid to his Beneficiary in such optional form as his Beneficiary may select. If no Beneficiary designation is made, the DROP Account shall be distributed to the Member's estate.
- C. *Date of Payment of Distribution.* Except as otherwise provided in this subsection 4., distribution of a Member's DROP Account shall be made as soon as administratively practicable following the Member's termination of employment. Distribution of the amount in a Member's DROP account will not be made unless

the Member completes a written request for distribution and a written election, on forms designated by the Board, to either receive a cash lump sum or a rollover of the lump sum amount.

- D. *Proof of Death and Right of Beneficiary or Other Person.* The Board may require and rely upon such proof of death and such evidence of the right of any Beneficiary or other person to receive the value of a deceased Member's DROP Account as the Board may deem proper and its determination of the right of that Beneficiary or other person to receive payment shall be conclusive.
- E. *Distribution Limitation.* Notwithstanding any other provision of this subsection 4., all distributions from the DROP shall conform to the "Minimum Distribution Of Benefits" provisions as provided for herein.
- F. *Direct Rollover of Certain Distributions.* Notwithstanding any provision of the DROP to the contrary, a distributee may elect to have any portion of an eligible rollover distribution paid in a direct rollover as otherwise provided under the System in Section 74-224.

5. *Administration of DROP.*

- A. *Board Administers the DROP.* The general administration of the DROP, the responsibility for carrying out the provisions of the DROP and the responsibility of overseeing the investment of the DROP's assets shall be placed in the Board. The Members of the Board may appoint from their number such subcommittees with such powers as they shall determine; may adopt such administrative procedures and regulations as they deem desirable for the conduct of their affairs; may authorize one (1) or more of their number or any agent to execute or deliver any instrument or make any payment on their behalf; may retain counsel, employ agents and provide for such clerical, accounting, actuarial and consulting services as they may require in carrying out the provisions of the DROP; and may allocate among themselves or delegate to other persons all or such portion of their duties under the DROP, other than those granted to them as trustee under any trust agreement adopted for use in implementing the DROP, as they, in their sole discretion, shall decide. A trustee shall not vote on any question relating exclusively to himself.
- B. *Individual Accounts, Records and Reports.* The Board shall maintain records showing the operation and condition of the DROP, including records showing the individual balances in each Member's DROP Account, and the Board shall keep in convenient form such data as may be necessary for the valuation of the assets and liabilities of the DROP. The Board shall prepare and distribute to Members participating in the DROP and other individuals or file with the appropriate governmental agencies, as the case may be, all necessary descriptions, reports, information returns, and data required to be distributed or filed for the DROP pursuant to the Code and any other applicable laws.
- C. *Establishment of Rules.* Subject to the limitations of the DROP, the Board from time to time shall establish rules for the administration of the DROP and the transaction of its business. The Board shall have discretionary authority to construe and interpret the DROP (including but not limited to determination of an individual's eligibility for DROP participation, the right and amount of any benefit payable under the DROP and the date on which any individual ceases to be a participant in the DROP). The determination of the Board as to the interpretation of the DROP or its determination of any disputed questions shall be conclusive and final to the extent permitted by applicable law.

D. *Limitation of Liability.*

- (1) The trustees shall not incur any liability individually or on behalf of any other individuals for any act or failure to act, made in good faith in relation to the DROP or the funds of the DROP.
- (2) Neither the Board nor any trustee of the Board shall be responsible for any reports furnished by any expert retained or employed by the Board, but they shall be entitled to rely thereon as well as on certificates furnished by an accountant or an actuary, and on all opinions of counsel. The Board shall be fully protected with respect to any action taken or suffered by it in good faith in reliance upon such expert, accountant, actuary or counsel, and all actions taken or suffered in such reliance shall be conclusive upon any person with any interest in the DROP.

E. *Expenses.* To compensate the System for the expenses of administering and operating the DROP, each Member's DROP Account shall be charged an annual administrative fee which shall be reviewed and subject to increase or decrease annually. The initial expense charge of three-quarters of one percent (0.75%) of the account balance, shall be deducted from the Member's DROP Account after each fiscal year quarter at the rate of 0.1875% of the account's average daily balance during that quarter.

6. *General Provisions.*

A. *The DROP is not a separate retirement plan.* Instead, it is a program under which a Member who is eligible for normal retirement under the System may elect to accrue future retirement benefits in the manner provided in this section 74-226 for the remainder of his employment, rather than in the normal manner provided under the plan. Under termination of employment, a Member is entitled to a lump sum distribution of his or her DROP Account balance or may elect a rollover. The DROP Account distribution is in addition to the Member's monthly benefit.

B. *Notional account.* The DROP Account established for such a Member is a notional account, used only for the purpose of calculation of the DROP distribution amount. It is not a separate account in the System. There is no change in the System's assets, and there is no distribution available to the Member until the Member's termination from the DROP. The Member has no control over the investment of the DROP Account.

C. *No employer discretion.* The DROP benefit is determined pursuant to a specific formula which does not involve employer discretion.

D. *IRC limit.* The DROP Account distribution, along with other benefits payable from the System, is subject to limitation under Internal Revenue Code Section 415(b).

A E. *Amendment of DROP.* The DROP may be amended by an ordinance of the City at any time and from time to time, and retroactively if deemed necessary or appropriate, to amend in whole or in part any or all of the provisions of the DROP. However, except as otherwise provided by law, no amendment shall make it possible for any part of the DROP's funds to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the DROP. No amendment shall be made which has the effect of decreasing the balance of the DROP Account of any Member.

- ~~B~~ F. *Facility of Payment.* If a Member or other person entitled to a benefit under the DROP is unable to care for his affairs because of illness or accident or is a minor, the Board shall direct that any benefit due him shall be made only to a duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the DROP for that benefit.
- ~~C~~ G. *Information.* Each Member, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the DROP, shall file with the Board the information that it shall require to establish his rights and benefits under the DROP.
- ~~D~~ H. *Prevention of Escheat.* If the Board cannot ascertain the whereabouts of any person to whom a payment is due under the DROP, the Board may, no earlier than three (3) years from the date such payment is due, mail a notice of such due and owing payment to the last known address of such person, as shown on the records of the Board or the City. If such person has not made written claim therefor within three (3) months of the date of the mailing, the Board may, if it so elects and upon receiving advice from counsel to the DROP, direct that such payment and all remaining payments otherwise due such person be canceled on the records of the DROP. Upon such cancellation, the DROP shall have no further liability therefor except that, in the event such person or his Beneficiary later notifies the Board of his whereabouts and requests the payment or payments due to him under the DROP, the amount so applied shall be paid to him in accordance with the provisions of the DROP.
- ~~E~~ I. *Written Elections, Notification.*
- (1) Any elections, notifications or designations made by a Member pursuant to the provisions of the DROP shall be made in writing and filed with the Board in a time and manner determined by the Board under rules uniformly applicable to all employees similarly situated. The Board reserves the right to change from time to time and manner for making notifications, elections or designations by Members under the DROP if it determines after due deliberation that such action is justified in that it improves the administration of the DROP. In the event of a conflict between the provisions for making an election, notification or designation set forth in the DROP and such new administrative procedures, those new administrative procedures shall prevail.
 - (2) Each Member or Retiree who has a DROP Account shall be responsible for furnishing the Board with his current address and any subsequent changes in his address. Any notice required to be given to a Member or Retiree hereunder shall be deemed given if directed to him at the last such address given to the Board and mailed by registered or certified United States mail. If any check mailed by registered or certified United States mail to such address is returned, mailing of checks will be suspended until such time as the Member or Retiree notifies the Board of his address.
- ~~F~~ J. *Benefits Not Guaranteed.* All benefits payable to a Member from the DROP shall be paid only from the assets of the Member's DROP Account and neither the City nor the Board shall have any duty or liability to furnish the DROP with any funds, securities or other assets except to the extent required by any applicable law.
- ~~G~~ K. *Construction.*

- (1) The DROP shall be construed, regulated and administered under the laws of Florida, except where other applicable law controls.
- (2) The titles and headings of the subsections in this Section 74-226 are for convenience only. In the case of ambiguity or inconsistency, the text rather than the titles or headings shall control.

H L. *Forfeiture of Retirement Benefits.* Nothing in this Section shall be construed to remove DROP participants from the application of any forfeiture provisions applicable to the System. DROP participants shall be subject to forfeiture of all retirement benefits, including DROP benefits.

I M. *Effect of DROP Participation on Employment.* Participation in the DROP is not a guarantee of employment and DROP participants shall be subject to the same employment standards and policies that are applicable to employees who are not DROP participants.

SECTION 10: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Police Officers, of the Code of Ordinances of the City of Winter Park, is hereby amended by amending Section 74-228, Prior Police Service, subsection 5., to read as follows:

* * * * *

5. In no event, however, may Credited Service be purchased pursuant to this Section for prior service with any other municipal, county or state law enforcement department, if such prior service forms or will form the basis of a retirement benefit or pension from a different employer's retirement system or plan as set forth in Section 74-215, subsection ~~44.B~~ 12.B.

* * * * *

SECTION 11: That Chapter 74, Personnel, Article V, Retirement and Pension Plans, Division 4, Police Officers, of the Code of Ordinances of the City of Winter Park, is hereby amended by adding Section 74-230, Supplemental Benefit Component for Special Benefits; Chapter 185 Share Accounts, to read as follows:

Sec. 74-230. Supplemental benefit component for special benefits; chapter 185 share accounts.

There is hereby established an additional plan component to provide special benefits in the form of a supplemental retirement, termination, death and disability benefits to be in addition to the benefits provided for in the previous Sections of this Plan, such benefit to be funded solely and entirely by Chapter 185 premium tax monies for each Plan Year which are allocated to this supplemental component as provided for in Section 185.35. Amounts allocated to this supplemental component ("Share Plan") shall be further allocated to the members as follows:

1. *Individual Member Share Accounts.* The Board shall create individual Member share accounts and maintain appropriate books and records showing the respective interest of each Member hereunder. Each Member shall have a Member share account for his share of the Chapter 185 tax revenues described above, forfeitures and income and expense adjustments relating thereto. The Board shall maintain a separate membership share account for each Member, however, the maintenance of separate accounts is for accounting purposes only and a segregation of the assets of the trust fund to each account shall not be required or permitted.

2. Share Account Funding.

- A. Individual Member share accounts shall be established as of September 30, 2015 for all Members who were actively employed as of October 1, 2014. Individual Member share accounts shall be credited with an allocation as provided for in the following subsection 3. of any premium tax monies which have been allocated to the Share Plan for that Plan Year, beginning with the Plan Year ending September 30, 2019.
- B. In addition, any forfeitures as provided in subsection 4, shall be allocated to the individual Member share accounts in accordance with the formula set forth in subsection 4.

3. Allocation of Monies to Share Accounts.

A. Allocation of Chapter 185 Contributions.

- (1) Effective as of September 30, 2019, the amount of any premium tax monies allocated to the Share Plan shall be allocated to individual Member share accounts as provided for in this subsection. Members retiring (or entering DROP) on or after October 1, 2018 and prior to September 30, 2019 shall receive an allocation. In addition, all premium tax monies allocated to the share plan in any subsequent Plan Year shall also be allocated as provided for in this subsection. Available premium tax monies shall be allocated to individual Member share accounts at the end of each plan year on September 30 (a "valuation date").
- (2) On each valuation date, each current actively employed Member of the plan not participating in the DROP, each DROP participant and each Retiree who retires or DROP participant who has terminated DROP participation in the Plan Year ending on the valuation date (including each disability Retiree), or Beneficiary of a deceased Member (not including terminated vested persons) who is otherwise eligible for an allocation as of the valuation date shall receive a share allocation as follows:
- (3) The total funds subject to allocation on each valuation date shall be allocated to each share account of those eligible for an allocation in an amount equal to a fraction of the total amount, the numerator of which shall be the individual's total years and fractional parts of years of Credited Service as of the valuation date, and the denominator of which shall be the sum of the total years and fractional parts of years of Credited Service as of the valuation date of all individuals to whom allocations are being made. Beneficiaries shall receive an allocation based on the years of Credited Service of the deceased Member.
- (4) Re-employed Retirees shall be deemed new employees and shall receive an allocation based solely on the Credited Service in the reemployment period.

- B. Allocation of Investment Gains and Losses. On each valuation date, each individual share account shall be adjusted to reflect the net earnings or losses resulting from investments during the year. The net earnings or losses allocated to the individual member share accounts shall be the same percentage which is earned or lost by the total plan investments, including realized and unrealized gains or losses, net of brokerage commissions, transaction costs and management fees.

Net earnings or losses are determined as of the last business day of the fiscal year, which is the valuation date, and are debited or credited as of such date.

For purposes of calculating net earnings or losses on a Member's share account pursuant to this subsection, brokerage commissions, transaction costs, and management fees for the immediately preceding fiscal year shall be determined for each year by the investment consultant pursuant to contracts with fund managers as reported in the custodial statement. The investment consultant shall report these annual contractual fees to the board. The investment consultant shall also report the net investment return for each manager and the net investment return for the total plan assets.

C. *Allocation of Costs, Fees and Expenses.* On each valuation date, each individual share account shall be adjusted to allocate its pro rata share of the costs, fees and expenses of administration of the share plan. These fees shall be allocated to each individual Member share account on a proportionate basis taking the costs, fees and expenses of administration of the Share Plan as a whole multiplied by a fraction, the numerator of which is the total assets in each individual Member share account (after adding the annual investment gain or loss) and the denominator of which is the total assets of the fund as a whole as of the same date.

D. *No Right to Allocation.* The fact of allocation or credit of an allocation to a Member's share account by the Board shall not vest in any Member, any right, title, or interest in the assets of the trust or in the Chapter 185 tax revenues except at the time or times, to the extent, and subject to the terms and conditions provided in this Section.

E. *Members shall be provided annual statements setting forth their share account balance as of the end of the Plan Year.*

4. *Forfeitures.* Any Member who has less than ten (10) years of service credit and who is not otherwise eligible for payment of benefits after termination of employment with the City as provided for in subsection 5. shall forfeit his individual Member share account or the non-vested portion thereof. Forfeited amounts shall be redistributed to the other individual Member accounts on each valuation date in an amount determined in accordance with subsection 3.A..

5. *Eligibility For Benefits.* Any Member (or his beneficiary) who terminates employment as a Police Officer with the City or who dies, upon application filed with the Board, shall be entitled to be paid the value of his individual Member share account, subject to the following criteria:

A. *Retirement Benefit.*

(1) A Member shall be entitled to one hundred percent (100%) of the value of his share account upon normal or early retirement pursuant to Section 74-206, or if the member enters the DROP, upon termination of employment.

(2) Such payment shall be made as provided in subsection 6.

B. *Termination Benefit.*

(1) In the event that a member's employment as a Police Officer is terminated by reason other than retirement, death or disability, he shall be entitled to receive the value of his share account only if he is vested in accordance with Section 74-209.

(2) Such payment shall be made as provided in subsection 6.

C. Disability Benefit.

(1) In the event that a Member is determined to be eligible for either an in-line of duty disability benefit pursuant to Section 74-208, subsection (a) or a not-in-line of duty disability benefit pursuant to Section 74-208, subsection (c), he shall be entitled to one hundred percent (100%) of the value of his share account.

(2) Such payment shall be made as provided in subsection 6.

D. Death Benefit.

(1) In the event that a Member dies while actively employed as a Police Officer, one hundred percent (100%) of the value of his share account shall be paid to his designated Beneficiary as provided in Section 74-207.

(2) Such payment shall be made as provided in subsection 6.

6. Payment of Benefits. If a Member terminates employment for any reason or dies and he or his Beneficiary is otherwise entitled to receive the balance in the Member's share account, the Member's share account shall be valued by the plan's actuary on the next valuation date as provided for in subsection 3. above, following termination of employment. Payment of the calculated share account balance shall be payable as soon as administratively practicable following the valuation date, but not later than one hundred fifty (150) days following the valuation date and shall be paid in one lump sum payment. No optional forms of payments shall be permitted.

7. Benefits Not Guaranteed. All benefits payable under this Section 74-230 shall be paid only from the assets accounted for in individual Member share accounts. Neither the City nor the Board shall have any duty or liability to furnish any additional funds, securities or other assets to fund share account benefits. Neither the Board nor any trustee shall be liable for the making, retention, or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the share account balances, except due to his or its own negligence, willful misconduct or lack of good faith. All investments shall be made by the Board subject to the restrictions otherwise applicable to fund investments.

8. Notional account. The share account established for such a Member is a notional account, used only for the purpose of calculation of the share distribution amount. It is not a separate account in the system. There is no change in the system's assets, and there is no distribution available to the Member until the Member's termination from employment. The Member has no control over the investment of the share account.

9. No employer discretion. The share account benefit is determined pursuant to a specific formula which does not involve employer discretion.

10. Maximum Additions. Notwithstanding any other provision of this Section, annual additions under this Section shall not exceed the limitations of Section 415(c) of the code pursuant to the provisions of Section 74-215, subsection (k).

11. IRC limit. The share account distribution, along with other benefits payable from the System, is subject to limitation under Internal Revenue Code Section 415(b).

SECTION 12: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Winter Park.

SECTION 13: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 14: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 15: That this Ordinance shall become effective upon its adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the ____ day of _____, 2016.

By: _____
Mayor Steve Leary

Attest: _____
Cynthia S. Bonham, City Clerk



city commission **public hearing**

item type	Public Hearing	meeting date	June 13, 2016
prepared by	Troy Attaway	approved by	<input checked="" type="checkbox"/> City Manager
department	Public Works		<input type="checkbox"/> City Attorney
division	Administration		<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 checked="" type="checkbox"/> Intelligent Growth & Development <input type="checkbox"/> Public Health & Safety		
	<input type="checkbox"/> Investment in Public Assets & Infrastructure		

subject

Vacate the originally platted utility easement between lots 7 and 8 within the Sevilla Subdivision. SECOND READING OF ORDINANCE

motion | recommendation

Staff recommendation is to approve vacating of the platted utility easement.

background

The contractor is requesting the easement be vacated to allow for the reconfiguration of the lot lines and to allow for a more practicable development of the lots. The contractor has provided a new easement for our purposes, which is shown on the attached documents. The City has received "no objection" statements from the appropriate utilities to vacate the easement.

alternatives | other considerations

Do not vacate easement

fiscal impact

None

After Recording Return To:
City of Winter Park, City Clerk's Office
401 Park Avenue South
Winter Park, Florida 32789

ORDINANCE NO. _____-16

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA VACATING AND ABANDONING UTILITY EASEMENTS FOR LOTS 7 AND 8 OF SEVILLA SUBDIVISION

WHEREAS, the City of Winter Park by custom will abandon utility easements no longer needed for municipal purposes; and

WHEREAS, the City has determined that the utility easements are no longer needed by the City of Winter Park.

NOW, THEREFORE, BE IT ENACTED by the People of the City of Winter Park, Florida as follows:

Section 1. The City Commission of the City of Winter Park, Florida, hereby vacates and abandons those certain utility easements which fall within a parcel of land described as follows:

THAT PART OF LOT 7, SEVILLA, AS PER PLAT HERE OF RECORDED IN PLAT BOOK 3, PAGES 24-25, PUBLIC RECORDS OF ORANGE COUNTY FLORIDA DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHERNMOST CORNER OF SAID LOT 7, RUN THENCE S56°44'20"W. A DISTANCE OF 139.94 FEET TO THE NORTHWEST CORNER THEREOF, THENCE FROM A TANGENT BEARING OF S26°36'44"E RUN SOUTHERLY 18.82 FEET ALONG THE ARC OF A CURVE CONCAVE TO THE WEST WITH A RADIUS OF 50 FEET, SAID ARC BEING THE WESTERLY LINE OF LOT 7. THENCE RUN N34°00'00"W A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING

AND LOT 8, SEVILLA, AS PER PLAT THERE OF RECORDED IN PLAT BOOK 3 PAGES 24-25, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA LESS THE FOLLOWING PORTION:

BEGIN AT THE SOUTHWEST CORNER OF LOT 8, SEVILLA, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 3, PAGES 24-25, PUBLIC RECORDS OF ORANGE COUNTY FLORIDA, RUN THENCE N06°11'57"W ALONG THE WEST LINE OF SAID LOT 8, A DISTANCE OF 49.39 FEET, THENCE RUN S17°23'3"E A DISTANCE OF 22.97 FEET: THENCE RUN S02°01'44"E A DISTANCE OF 27.00 FEET TO A POINT ON A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGEL OF 02°51'53". SAID POINT ALSO BEING ON THE RIGHT OF WAY LINE OF VALERA COURT, THENCE FROM A TANGENT BEARING OF S86°39'54"W RUN SOUTHWESTERLY ALONG THE

ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE A DISTANCE OF 2.5 FEET TO THE POINT OF BEGINNING.

Section 2. All ordinances or portions of ordinances in conflict herewith are hereby repealed.

Section 3. The parties intend that any error in legal description or in depiction of the portion of the easement vacated and abandoned may be corrected by subsequent curative document if the parties agree that there was an error in the survey or description.

Section 4. This ordinance shall take effect immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the _____ day of _____, 2016.

Mayor Steven Leary

ATTEST:

City Clerk Cynthia S. Bonham

BOOKER & ASSOCIATES, P.A.
ATTORNEYS AT LAW

KIM C. BOOKER

1019 TOWN CENTER DRIVE
ORANGE CITY, FLORIDA 32763
PHONE (386) 774-6552
FAX (386) 774-5997

May 5, 2016

City of Winter Park
Attention: Jeffrey Briggs
401 Park Avenue South
Winter Park, Florida 32789-4386

Re: Request to abandon utility easement at Lot 7/8 of Valera Court, Winter Park, Florida

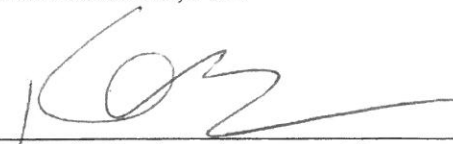
Dear Mr. Briggs:

I have the pleasure of representing Billy Bishop and Brannon Construction, Inc. who are hereby requesting the City to take such action as necessary to vacate the above referenced utility easement as reflected on the attached Exhibit A. The purpose of this petition is to relocate the utility easement to allow for the reconfiguration of the lot lines and to allow for a more practicable development of the lots. The relocation of the easement does not prejudice the City in any way and the new location will provide the same access for utilities. I have previously provided you with the utility letters with no objection from the various utility providers and a survey and proposed form of the new easement. Please schedule this matter on the City's public agenda to vacate the utility easement. I appreciate all your time and efforts regarding this matter.

Sincerely,

Booker & Associates, P.A.

By


Kim C. Booker, Attorney at Law

Attachment

cc: Brannon Construction, Inc.

BOUNDARY SURVEY FOR BRANNON CONSTRUCTION

DESCRIPTION:

THAT PART OF LOT 7, SEVILLA, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 3, PAGES 24-25, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHERNMOST CORNER OF SAID LOT 7, RUN THENCE S56°44'20"W A DISTANCE OF 139.94 FEET TO THE NORTHWEST CORNER THEREOF; THENCE FROM A TANGENT BEARING OF S26°36'44"E RUN SOUTHERLY 18.82 FEET ALONG THE ARC OF A CURVE CONCAVE TO THE WEST WITH A RADIUS OF 50 FEET, SAID ARC BEING THE WESTERLY LINE OF LOT 7, THENCE RUN S85°18'48"E A DISTANCE OF 68.53 FEET, THENCE RUN N56°44'20"E A DISTANCE OF 92.28 FEET TO THE EASTERLY LINE OF LOT 7, THENCE RUN N34°00'00"W A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.

AND LOT 8, SEVILLA, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 3, PAGES 24-25, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, LESS THE FOLLOWING PORTION:

BEGIN AT THE SOUTHWEST CORNER OF LOT 8, SEVILLA, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 3, PAGES 24-25, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, RUN THENCE N06°11'57"W ALONG THE WEST LINE OF SAID LOT 8, A DISTANCE OF 49.39 FEET; THENCE RUN S17°23'3"E A DISTANCE OF 22.97 FEET; THENCE RUN S02°01'44"E A DISTANCE OF 27.00 FEET TO A POINT ON A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 02°51'53", SAID POINT ALSO BEING ON THE RIGHT OF WAY LINE OF VALERA COURT, THENCE FROM A TANGENT BEARING OF S86°39'54"W RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE A DISTANCE OF 2.5 FEET TO THE POINT OF BEGINNING.

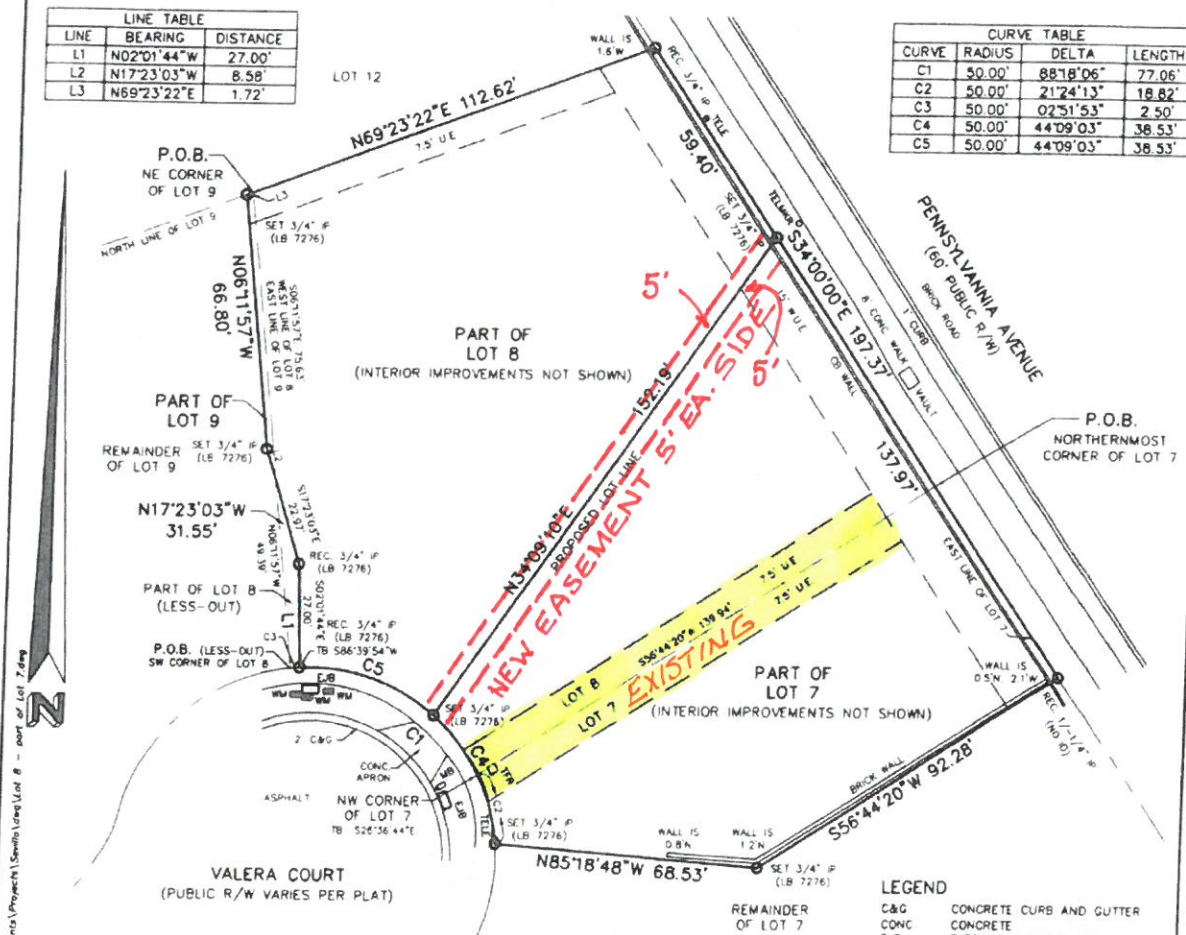
AND

THAT PORTION OF LOT 9, SEVILLA, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 3, PAGES 24-25, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 9, RUN THENCE S06°11'57" E ALONG THE EAST LINE OF SAID LOT 9, A DISTANCE OF 75.63 FEET; RUN THENCE N17°23'03"W A DISTANCE OF 8.58 FEET, RUN THENCE N06°11'57"W A DISTANCE OF 66.80 FEET TO THE NORTH LINE OF LOT 9, RUN THENCE N69°23'22"E ALONG SAID NORTH LINE 1.72 FEET TO THE POINT OF BEGINNING.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N02°01'44"W	27.00'
L2	N17°23'03"W	8.58'
L3	N69°23'22"E	1.72'

CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	50.00'	88°18'06"	77.06'
C2	50.00'	21°24'13"	18.82'
C3	50.00'	02°51'53"	2.50'
C4	50.00'	44°09'03"	38.53'
C5	50.00'	44°09'03"	38.53'



SURVEYOR'S NOTES:

- The lands as shown hereon lie within Section 07, Township 22 S., Range 30 E., Orange County, Florida.
- This survey represents a survey made on the ground under the supervision of the signing surveyor, unless otherwise noted.
- Underground improvements or underground foundations have not been located except as noted.
- This survey does not reflect or determine ownership.
- All easements of which the surveyor has knowledge of, or has been furnished, have been noted on this map.
- No title data has been provided to this surveyor unless otherwise noted.
- Bearings shown hereon are assumed relative to the West right-of-way line of South Pennsylvania Avenue; said bearing being S34°00'00"E per plat.
- According to the Federal Insurance Rate Map, this property lies in Zone "X", Community Panel number 1209SC0255 F, Dated: 9/25/2009.

LEGEND

C&G	CONCRETE CURB AND GUTTER
CONC	CONCRETE
EJB	ELECTRIC JUNCTION BOX
ID	IDENTIFICATION
IP	IRON PIPE
LB	LICENSED BUSINESS
MB	MAIL BOX
P.O.B.	POINT OF BEGINNING
R/W	RIGHT-OF-WAY
TB	TANGENT BEARING
TELE	TELEPHONE RISER
TELMKR	BURIED TELEPHONE LINE MARKER
TTR	TRANSFORMER
UE	UTILITY EASEMENT
WM	WATER METER
WUE	WALL & UTILITY EASEMENT

REVISIONS

Rev.	Date
Rev.	Date
Rev.	Date
Rev.	Date

HLSM, LLC
Henrich-Luke-Swaggerty-Menard
Professional Surveyors & Mappers
Licensed Business No. 7278
794 Big Tree Drive, Suite 108
Longwood, Florida 32750
P. (407) 647-7346
F. (407) 982-7166
Surveyor@HLSM.US

Job No. F-394
Date: 7/16/15
Drawn By: ADA
Scale: 1"=30'

THIS SURVEY MAP AND REPORT OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

William F. Menard
Professional Surveyor & Mapper
Florida Registration #5625

3-25

Cmpd	12	13	14	15	16	17	18	19	20	21
B	39.56	54.42	65.39	71.35	77.15	82.15	86.00	89.00	91.44	93.00
T	11.1	18.0	28.0	30.0	40.0	43.15	46.00	48.00	50.44	52.00
D	37.5	41.0	19.35	21.76	11.87	7.92	30.0	28.0	28.0	15.91
ARC	72.78	81.46	34.38	37.66	23.4	13.96	47.12	49.98	50.00	31.56

Case	31	32	33	34	35	36	37	38
Δ	104°41'28"	11°24'18"	9°03'34"	12°55'55"	12°56'55"	49°24'44"	49°24'44"	99°10'48"
Γ	40°	46.43	42.42	350	390	40°	80°	40°
Σ	1° 03'	46.60	38.61	70.99	72.11	18.47	36.98	46.98
AQC	72.10	92.70	67.08	140.88	156.09	34.61	69.88	69.88

DATE	39	40	41	42
Δ	48° 23' 32"	105° 57' 52"	74° 32' 37"	74° 38' 37"
B	90°	60°	80°	70°
T	11.94'	—	22.83'	55.27'
A.M.C.	22.72'	162.28'	39.02'	91.07'



SKETCH OF DESCRIPTION

(THIS IS NOT A SURVEY)

LEGAL DESCRIPTION OF NEW EASEMENT

DESCRIPTION

A PORTION OF LOT 8, SEVILLA, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 3, PAGES 24 AND 25 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHERNMOST CORNER OF SAID LOT 8, SAID POINT BEING A POINT ON THE WEST RIGHT-OF-WAY LINE OF PENNSYLVANIA AVENUE, A 60 FOOT PUBLIC RIGHT-OF-WAY; THENCE S 34°00'00" E, ALONG THE SAID EAST LINE AND WEST RIGHT-OF-WAY LINE, A DISTANCE OF 54.01 FEET TO THE POINT OF BEGINNING; THENCE S 34°00'00" E ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 10.77 FEET; THENCE DEPART FROM SAID LINE S 34°09'10" W A DISTANCE OF 151.03 FEET; TO A POINT ON A NON TANGENT CURVE, CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 11°33'26"; AND A CHORD BEARING OF N 49°09'24" W; THENCE NORTHWESTERLY, ALONG THE ARC OF SAID CURVE AND THE NORTHEASTERLY RIGHT-OF-WAY OF VALERA COURT, A VARIABLE PUBLIC RIGHT-OF-WAY, AN ARC DISTANCE OF 10.09 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE N 34°09'10" E A DISTANCE OF 153.86 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 0.03 ACRES (1,523 SQUARE FEET) MORE OR LESS.

Z:\Projects\Sevilla\dwg\Lot 8-500.dwg

SURVEYOR'S NOTES:

1. The lands as shown hereon lie within Section 07, Township 22 S., Range 30 E., Orange County, Florida.
2. All easements of which the surveyor has knowledge of, or has been furnished, have been noted on this map.
3. Bearings shown hereon are assumed relative to the West right-of-way line of South Pennsylvania Avenue; said bearing being S34°00'00"E per plat.
4. This is not a survey

SHEET 1 OF 2

HLSM, LLC

Henrich-Luke-Swaggerty-Menard
Professional Surveyors & Mappers

Licensed Business No. 7276

794 Big Tree Drive, Suite 108

Longwood, Florida 32750

P. (407) 647-7346

F. (407) 982-7166

Survey@HLSM.US

Job No: G-163
Date: 4/4/16
Drawn By: JJR
Scale: 1"=30'

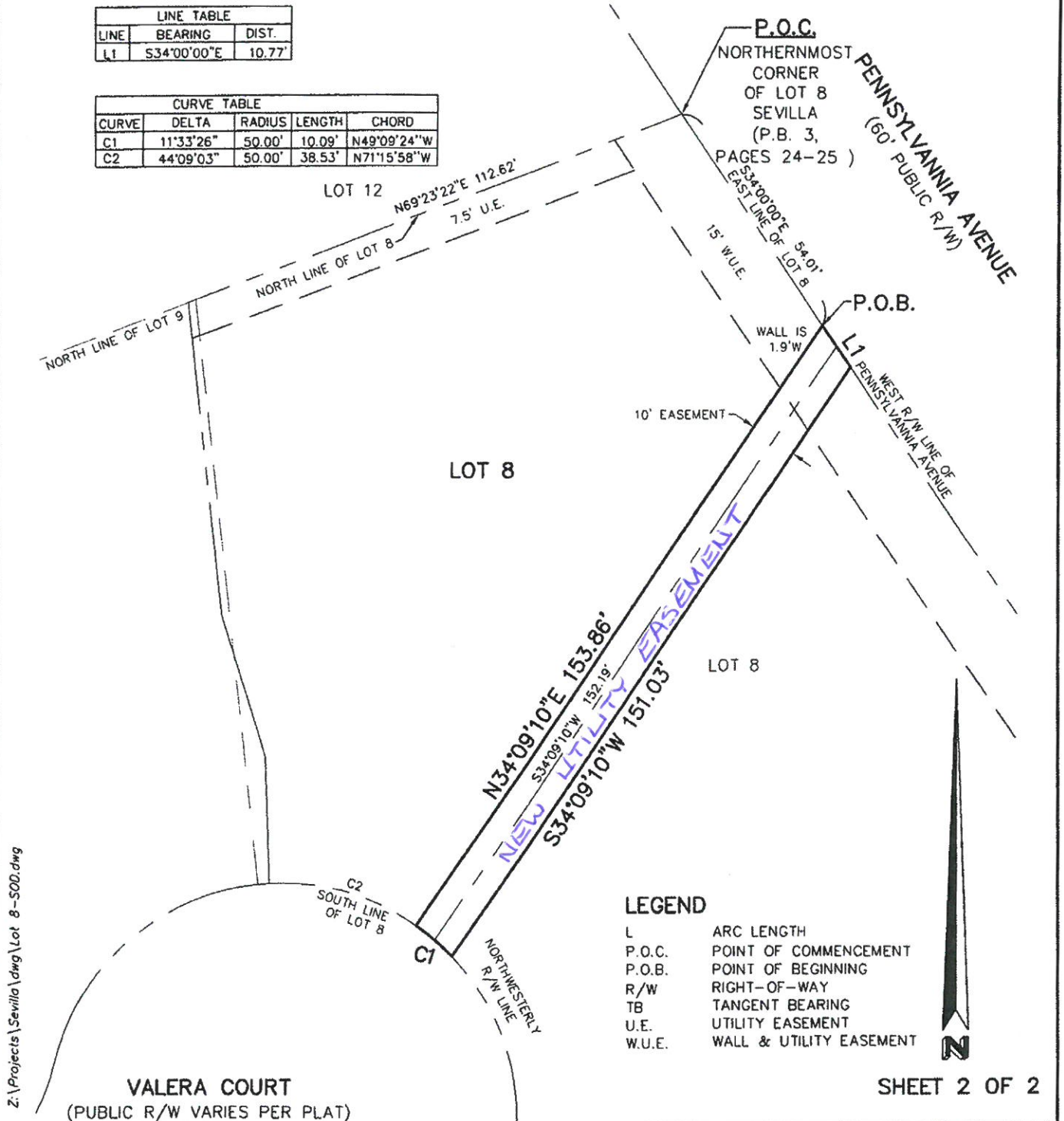
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

William F. Menard
Professional Surveyor & Mapper
Florida Registration #5625

SKETCH OF DESCRIPTION (THIS IS NOT A SURVEY)

LINE TABLE		
LINE	BEARING	DIST.
L1	S34°00'00"E	10.77'

CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	CHORD
C1	11°33'26"	50.00'	10.09'	N49°09'24"W
C2	44°09'03"	50.00'	38.53'	N71°15'58"W



Z:\Projects\Sevilla\dwg\Lot 8-SOD.dwg

HLSM, LLC

Henrich-Luke-Swaggerty-Menard
Professional Surveyors & Mappers
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794 Big Tree Drive, Suite 108
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P. (407) 647-7346
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Drawn By: JJR
Scale: 1"=30'

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

SEE SHEET 1 OF 2
FOR SIGNATURE & SEAL

SHEET 2 OF 2



city commission public hearing

Item type	Public Hearing	meeting date	June 13,2016		
prepared by	George Wiggins	approved by	<input checked="" type="checkbox"/>	City Manager	
department	Building & Permitting Services		<input type="checkbox"/>	City Attorney	
division			<input type="checkbox"/>	N/A	
board approval	Construction Board of Adjmts & Appeals	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> N/A	final vote 6-0
strategic objective	<input type="checkbox"/> Exceptional Quality of Life				
	<input type="checkbox"/> Fiscal Stewardship				
	<input checked="" type="checkbox"/> Intelligent Growth & Development				
	<input checked="" type="checkbox"/> Public Health & Safety				
	<input type="checkbox"/> Investment in Public Assets & Infrastructure				

subject

Ordinance Updating of Flood Regulations – SECOND READING OF ORDINANCE

motion | recommendation

Approve

background

The Florida Building Code has incorporated flood regulation provisions which require local communities to update our flood provisions to properly integrate with the Building Code and to reflect boilerplate language given to us by the Florida Department of Emergency Management.

The ordinance incorporates the following provisions:

- 1) Maintains the City's participation in the National Flood Insurance Program
- 2) Establishes a minimum base flood elevation for new construction in a flood hazard area which is one foot above the base flood elevation standard
- 3) Retains special provisions in current ordinance requiring a conditional use for any home proposed to be built in the city's flood plain areas adjacent two streams: from Lake Sue to Lake Virginia and the Howell Branch Creek north of Lake Maitland. [Only one request has been made to locate in this area. After granting the request with stringent no fill provisions, the owners decided to move the planned further home upland out of the flood hazard area.]
- 4) Repeals the current Ordinance and adopts similar but updated regulations required to be in force by the State of Florida Division of Emergency Management for participation in the National Flood Insurance Program and for integration with provisions in the Florida Building Code.

- 5) Carries forward the mechanism to process any variances and appeals which are to be heard by the Board of Adjustments, with the stipulation of limitations and restrictions related to variances.
- 6) Includes updated and expanded definitions as determined appropriate by the Federal Emergency Management Agency (FEMA).

alternatives | other considerations

Make minor changes to proposed ordinance which are also acceptable by the Florida Department of Emergency Management

fiscal impact

None

ORDINANCE NO. 3039-16

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, REPEALING AND REPLACING CHAPTER 58, ARTICLE V, DIVISION 3 FLOODPLAIN REGULATIONS; ADOPTING FLOOD HAZARD MAPS, DESIGNATING A FLOODPLAIN ADMINISTRATOR, ADOPTING PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; ADOPTING LOCAL TECHNICAL AMENDMENTS TO THE FLORIDA BUILDING CODE BY AMENDING CHAPTER 22, ARTICLE II, SECTION 22-28; PROVIDING FOR APPLICABILITY; PROVIDING FOR CODIFICATION, FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has, in Chapter 166 – Municipalities, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of Winter Park and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the City of Winter Park was accepted for participation in the National Flood Insurance Program on November 15, 1979 and the Winter Park City Commission desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, Chapter 553, Florida Statutes, was adopted by the Florida Legislature to provide a mechanism for the uniform adoption, updating, amendment, interpretation and enforcement of a state building code, called the *Florida Building Code*; and

WHEREAS, section 553.73(5), Florida Statutes, allows adoption of local technical amendments to the *Florida Building Code* to implement the National Flood Insurance Program; and

WHEREAS, the Winter Park Construction Board of Adjustments and Appeals recommends adoption of proposed floodplain management regulations;

WHEREAS, the Winter Park City Commission is adopting a requirement to increase the minimum elevation requirement for buildings and structures in flood hazard areas in accordance with the most current flood protection methods recommended by the Florida Division of Emergency Management and, pursuant to section 553.73(5), F.S., is formatting that requirement to coordinate with the Florida Building Code;

WHEREAS, the Winter Park City Commission has determined that it is in the public interest to adopt the proposed floodplain management regulations that are coordinated with the *Florida Building Code*.

NOW, THEREFORE, BE IT ENACTED by the City Commission of Winter Park that the following floodplain management regulations, and the following local technical amendment to the *Florida Building Code*, are hereby adopted as set forth herein.

SECTION 1. RECITALS.

The foregoing whereas clauses are true and correct and made a part hereof as findings of the City Commission.

SECTION 2. AMENDMENT. Chapter 58, Article V, Division 3 Floodplain Regulations of the City of Winter Park Code of Ordinances is hereby repealed and replaced in its entirety to read as follows:

SECTION 58-211 GENERAL

(a) Title. These regulations shall be known as the *Floodplain Management Ordinance* of Winter Park hereinafter referred to as “this ordinance.”

(b) Scope. The provisions of this ordinance shall apply to all development that is wholly within or partially within any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the *Florida Building Code*; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; installation of swimming pools; accessory buildings and any other development regulated in flood hazard areas.

(c) Intent. The purposes of this ordinance and the flood load and flood resistant construction requirements of the *Florida Building Code* are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

- (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;
- (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
- (3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
- (4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
- (5) Minimize damage to public and private facilities and utilities;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
- (7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
- (8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

(d) Coordination with the *Florida Building Code*. This ordinance is intended to be administered and enforced in conjunction with the *Florida Building Code*. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the *Florida Building Code*.

(e) Warning. The degree of flood protection required by this ordinance and the *Florida Building Code*, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this ordinance.

(f) Disclaimer of Liability. This ordinance shall not create liability on the part of the **Winter Park City Commission** or by any officer or employee of the city thereof for any flood damage that results from reliance on this ordinance or any administrative decision lawfully made thereunder.

SECTION 58-212 APPLICABILITY

(a) General. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

(b) Areas to which this ordinance applies. This ordinance shall apply to all flood hazard areas within **Winter Park**, as established in Section 58-212(c) of this ordinance.

(c) Basis for establishing flood hazard areas. The Flood Insurance Study for Orange County, Florida and Incorporated Areas, dated September 25, 2009 [Revised to reflect LOMR Effective: March 7, 2014] and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance article and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Building and Permitting Services Department.

(d) Submission of additional data to establish flood hazard areas. To establish flood hazard areas and base flood elevations, pursuant to Section 58-215 of this ordinance the Floodplain Administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:

- (1) Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of this ordinance and, as applicable, the requirements of the *Florida Building Code*.
- (2) Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.

(e) Other laws. The provisions of this ordinance shall not be deemed to nullify any provisions of local, state or federal law.

(f) Abrogation and greater restrictions. This ordinance supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including but not limited to land development regulations,

zoning ordinances, storm water management regulations, or the *Florida Building Code*. In the event of a conflict between this ordinance and any other ordinance, the more restrictive shall govern. This ordinance shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this ordinance.

(g) Interpretation. In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

SECTION 58-213 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

(a) Designation. The Director of Building and Permitting Services is the designated Floodplain Administrator and may delegate this responsibility to another qualified individual.

(b) General. The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this ordinance. The Floodplain Administrator shall have the authority to render interpretations of this ordinance consistent with the intent and purpose of this ordinance and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this ordinance without the granting of a variance pursuant to Section 58-217 of this ordinance.

(c) Applications and permits. The Floodplain Administrator, in coordination with other city departments, shall:

- (1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
- (2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this ordinance;
- (3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;
- (4) Provide available flood elevation and flood hazard information;
- (5) Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;
- (6) Review applications to determine whether proposed development will be reasonably safe from flooding;
- (7) Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*, when compliance with this ordinance is demonstrated, or disapprove the same in the event of noncompliance; and
- (8) Coordinate with and provide comments to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this ordinance.

(d) Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the *Florida Building Code* and this ordinance is required.

(e) Modifications of the strict application of the requirements of the *Florida Building Code*.

The Floodplain Administrator shall review requests submitted to the Building Official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the *Florida Building Code* to determine whether such requests require the granting of a variance pursuant to Section 58-217 of this ordinance.

(f) Notices and orders. The Floodplain Administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this ordinance.

(g) Inspections. The Floodplain Administrator shall make the required inspections as specified in Section 106 of this ordinance for development that is not subject to the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*. The Floodplain Administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

(h) Other duties of the Floodplain Administrator. The Floodplain Administrator shall have other duties, including but not limited to:

- (1) Establish procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 58-213(d) of this ordinance;
- (2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);
- (3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations,

flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available;

- (4) Review required design certifications and documentation of elevations specified by this ordinance and the *Florida Building Code* to determine that such certifications and documentations are complete; and
- (5) Notify the Federal Emergency Management Agency when the corporate boundaries of **Winter Park** are modified.

(i) Floodplain management records. Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this ordinance and the flood resistant construction requirements of the *Florida Building Code*, including Flood Insurance Rate Maps; Letters of Map Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the *Florida Building Code* and this ordinance; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance and the flood resistant construction requirements of the *Florida Building Code*. These records shall be available for public inspection at the Building and Permitting Services Department.

SECTION 58-214 PERMITS

(a) Permits required. Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this ordinance, including buildings, structures and facilities exempt from the *Florida Building Code*, which is wholly within or partially within any flood hazard area shall first make application to the Floodplain Administrator and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until compliance with the requirements of this ordinance and all other applicable codes and regulations has been satisfied.

(b) Floodplain development permits or approvals. Floodplain development permits or approvals shall be issued pursuant to this ordinance for any development activities not subject to the requirements of the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

(1) Buildings, structures and facilities exempt from the *Florida Building Code*. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals shall be required for the following buildings, structures and facilities that are exempt from the *Florida Building Code* and any further exemptions provided by law, which are subject to the requirements of this ordinance:

- (1) Railroads and ancillary facilities associated with the railroad.
- (2) Nonresidential farm buildings on farms, as provided in section 604.50, F.S.
- (3) Temporary buildings or sheds used exclusively for construction purposes.
- (4) Mobile or modular structures used as temporary offices.

- (5) Those structures or facilities of electric utilities, as defined in section 366.02, F.S., which are directly involved in the generation, transmission, or distribution of electricity.
- (6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
- (7) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
- (8) Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.
- (9) Structures identified in section 553.73(10)(k), F.S., are not exempt from the *Florida Building Code* if such structures are located in flood hazard areas established on Flood Insurance Rate Maps

(c) Application for a permit or approval. To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the city. The information provided shall:

- (1) Identify and describe the development to be covered by the permit or approval.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan or construction documents as specified in Section 58-215 of this ordinance.
- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant or the applicant's authorized agent.
- (7) Give such other data and information as required by the Floodplain Administrator.

(d) Validity of permit or approval. The issuance of a floodplain development permit or approval pursuant to this ordinance shall not be construed to be a permit for, or approval of, any violation of this ordinance, the *Florida Building Codes*, or any other ordinance of this community. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions.

(e) Expiration. A floodplain development permit or approval shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing and justifiable cause shall be demonstrated.

(f) Suspension or revocation. The Floodplain Administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this ordinance or any other ordinance, regulation or requirement of this community.

(g) Other permits required. Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:

- (1) The **St Johns River** Water Management District; section 373.036, F.S.
- (2) Florida Department of Health for onsite sewage treatment and disposal systems; section 381.0065, F.S. and Chapter 64E-6, F.A.C.
- (3) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; section 161.055, F.S.
- (4) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
- (5) Federal permits and approvals.

(h) Conditional use permits in designated areas of the city.

Conditional use permits are required for development in special flood hazard areas located adjacent to regulatory floodways ("floodway fringe") on the portion of Howell Branch Creek between Lake Sue and Lake Virginia, and the portion of Howell Branch Creek north of Lake Maitland. In those special flood hazard areas:

- (1) The addition of soil or fill materials shall not be permitted below the base flood elevation.
- (2) Requests for conditional use permits shall include, at a minimum, analyses of the effect of proposed development on flood storage capacity, assessment of environmental impacts on wetlands areas from the construction process, and environmentally sensitive areas impacted.
- (3) Structures shall be permitted only as a conditional use in accordance with the approval process outlined in Section 58-90, land development code.

Conditional use permits for development in the special flood hazard areas identified above shall be granted only upon approval by the city commission at two public hearings. The criteria utilized to evaluate requests for conditional use permits shall include, but not be limited to, evaluation of the documentation submitted with requests, including the precedence for similar construction in these areas and conformance to the comprehensive plan.

SECTION 58-215 SITE PLANS AND CONSTRUCTION DOCUMENTS

(a) Information for development in flood hazard areas. The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.
- (2) Where base flood elevations or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with Section 58-215(b)(2) or (3) of this ordinance.
- (3) Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with Section 58-215(b)(1) of this ordinance.

- (4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures.
- (5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
- (6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
- (7) Existing and proposed alignment of any proposed alteration of a watercourse.

The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this ordinance but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this ordinance.

(b) Information in flood hazard areas without base flood elevations (approximate Zone A).

Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator shall:

- (1) Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices.
- (2) Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.
- (3) Where base flood elevation and floodway data are not available from another source, where the available data are deemed by the Floodplain Administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:
 - (a) Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices; or
 - (b) Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.
- (4) Where the base flood elevation data are to be used to support a Letter of Map Change from FEMA, advise the applicant that the analyses shall be prepared by a Florida licensed engineer in a format required by FEMA, and that it shall be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

(c) Additional analyses and certifications. As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

- (1) For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in Section 58-215(d) of this

ordinance and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.

- (2) For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
- (3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in Section 58-215(d) of this ordinance.

(d) Submission of additional data. When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

SECTION 58-216 INSPECTIONS

(a) General. Development for which a floodplain development permit or approval is required shall be subject to inspection.

(1) Development other than buildings and structures. The Floodplain Administrator shall inspect all development to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.

(2) Buildings, structures and facilities exempt from the *Florida Building Code*. The Floodplain Administrator shall inspect buildings, structures and facilities exempt from the *Florida Building Code* to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.

a. Buildings, structures and facilities exempt from the *Florida Building Code*, lowest floor inspection. Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the *Florida Building Code*, or the owner's authorized agent, shall submit to the Floodplain Administrator:

- (1) If a design flood elevation was used to determine the required elevation of the lowest floor, the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor; or
- (2) If the elevation used to determine the required elevation of the lowest floor was determined in accordance with Section 58-215(b)(3)(b) of this ordinance, the documentation of height of the lowest floor above highest adjacent grade, prepared by the owner or the owner's authorized agent.

b. Buildings, structures and facilities exempt from the *Florida Building Code*, final inspection. As part of the final inspection, the owner or owner's authorized agent shall submit to the Floodplain Administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations shall be prepared as specified in Section 58-216(a)(2)(a) of this ordinance.

(3) Manufactured homes. The Floodplain Administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this ordinance and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted to the Floodplain Administrator.

SECTION 58-217 VARIANCES AND APPEALS

(a) General. The Board of Adjustments shall hear and decide on requests for appeals and requests for variances from the strict application of this ordinance. Pursuant to section 553.73(5), F.S., the Board of Adjustments shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the *Florida Building Code*.

(b) Appeals. The Board of Adjustments shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision of the Board of Adjustments may appeal such decision to the Circuit Court, as provided by Florida Statutes.

(c) Limitations on authority to grant variances. The Board of Adjustments shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 58-217(f) of this ordinance, the conditions of issuance set forth in Section 58-217(g) of this ordinance, and the comments and recommendations of the Floodplain Administrator and the Building Official. The Board of Adjustments has the right to attach such conditions as it deems necessary to further the purposes and objectives of this ordinance.

(1) Restrictions in floodways. A variance shall not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in Section 58-215(c) of this ordinance.

(d) Historic buildings. A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the *Florida Building Code, Existing Building*, Chapter 11 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the *Florida Building Code*.

(e) Functionally dependent uses. A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this ordinance, provided the variance meets the requirements of Section 58-217(c)(1), is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

(f) Considerations for issuance of variances. In reviewing requests for variances, the Board of Adjustments shall consider all technical evaluations, all relevant factors, all other applicable provisions of the *Florida Building Code*, this ordinance, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- (4) The importance of the services provided by the proposed development to the community;
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- (6) The compatibility of the proposed development with existing and anticipated development;
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

(g) Conditions for issuance of variances. Variances shall be issued only upon:

- (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this ordinance or the required elevation standards;
- (2) Determination by the Board of Adjustments that:
 - (a) Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
 - (b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
 - (c) The variance is the minimum necessary, considering the flood hazard, to afford relief;
- (3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and
- (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the

variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25 for \$100 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

SECTION 58-218 VIOLATIONS

(a) Violations. Any development that is not within the scope of the *Florida Building Code* but that is regulated by this ordinance that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this ordinance, shall be deemed a violation of this ordinance. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this ordinance or the *Florida Building Code* is presumed to be a violation until such time as that documentation is provided.

(b) Authority. For development that is not within the scope of the *Florida Building Code* but that is regulated by this ordinance and that is determined to be a violation, the Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.

(c) Unlawful continuance. Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to being given notice to appear before the Code Enforcement Board in order to impose fines or orders as determined by the Board in addition to other penalties as prescribed by law.

SECTION 58-219 GENERAL

(a) Scope. Unless otherwise expressly stated, the following words and terms shall, for the purposes of this ordinance, have the meanings shown in this section.

(b) Terms defined in the *Florida Building Code*. Where terms are not defined in this ordinance and are defined in the *Florida Building Code*, such terms shall have the meanings ascribed to them in that code.

(c) Terms not defined. Where terms are not defined in this ordinance or the *Florida Building Code*, such terms shall have ordinarily accepted meanings such as the context implies.

SECTION 58-220 DEFINITIONS

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

ASCE 24. A standard titled *Flood Resistant Design and Construction* that is referenced by the *Florida Building Code*. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a 1-percent chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 1612.2.] The base flood is commonly referred to as the "100-year flood" or the "1-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section 1612.2.]

Basement. The portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in FBC, B, Section 1612.2.]

Building Official. The Director of Building and Permitting Services or designee.

Design flood. The flood associated with the greater of the following two areas: [Also defined in FBC, B, Section 1612.2.]

- (1) Area with a floodplain subject to a 1-percent or greater chance of flooding in any year; or
- (2) Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Design flood elevation. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet. [Also defined in Florida Building Code, Building, Section 1612.2.]

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

Encroachment. The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

Existing building and existing structure. Any buildings and structures for which the "start of construction" commenced before November 15, 1979 [Also defined in Florida Building Code, Building, Section 1612.2.]

Existing manufactured home. A manufactured home for which the construction of facilities for servicing the lot on which the manufactured home is affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before November 15, 1979.

Expansion to an existing manufactured home park or subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land from: [Also defined in FBC, B, Section 1612.2.]

- (1) The overflow of inland waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood damage-resistant materials. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 1612.2.]

Flood hazard area. The greater of the following two areas: [Also defined in FBC, B, Section 1612.2.]

- (1) The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.
- (2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Flood Insurance Rate Map (FIRM). The official map of the community on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 1612.2.]

Flood Insurance Study (FIS). The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and Floodway Map (if applicable), the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 1612.2.]

Floodplain Administrator. The office or position designated and charged with the administration and enforcement of this ordinance (may be referred to as the Floodplain Manager)

Floodplain development permit or approval. An official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and that are determined to be compliant with this ordinance.

Floodway. The channel of a river or other riverine watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot. [Also defined in FBC, B, Section 1612.2.]

Floodway encroachment analysis. An engineering analysis of the impact that a proposed encroachment into a floodway is expected to have on the floodway boundaries and base flood elevations; the evaluation shall be prepared by a qualified Florida licensed engineer using standard engineering methods and models.

Florida Building Code. The family of codes adopted by the Florida Building Commission, including: *Florida Building Code, Building*; *Florida Building Code, Residential*; *Florida Building Code, Existing Building*; *Florida Building Code, Mechanical*; *Florida Building Code, Plumbing*; *Florida Building Code, Fuel Gas*.

Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the *Florida Building Code, Existing Building*, Chapter 11 Historic Buildings.

Letter of Map Change (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

Lowest floor. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure

is not built so as to render the structure in violation of the non-elevation requirements of the *Florida Building Code* or ASCE 24. [Also defined in FBC, B, Section 1612.2.]

Manufactured home. A structure, transportable in one or more sections, which is eight (8) feet or more in width and greater than four hundred (400) square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value. The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this ordinance, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, Actual Cash Value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser.

New construction. For the purposes of administration of this ordinance and the flood resistant construction requirements of the *Florida Building Code*, structures for which the "start of construction" commenced on or after November 15, 1979 and includes any subsequent improvements to such structures.

New manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after **November 15, 1979.**

Park trailer. A transportable unit which has a body width not exceeding fourteen (14) feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in section 320.01, F.S.]

Recreational vehicle. A vehicle which is: [see in section 320.01, F.S.)

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Special flood hazard area. An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 1612.2.]

Start of construction. The date of issuance of permits for new construction and substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The

actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 1612.2.]

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. [Also defined in FBC, B Section 1612.2.]

Substantial improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 1612.2.]

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure. [See *Instructions and Notes*]

Variance. A grant of relief from the requirements of this ordinance, or the flood resistant construction requirements of the *Florida Building Code*, which permits construction in a manner that would not otherwise be permitted by this ordinance or the *Florida Building Code*.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

FLOOD RESISTANT DEVELOPMENT (SECTIONS 221-227)

SECTION 58-221 BUILDINGS AND STRUCTURES

(a) Design and construction of buildings, structures and facilities exempt from the *Florida Building Code*. Pursuant to Section 58-214(b)(1) of this ordinance, buildings, structures, and facilities that are exempt from the *Florida Building Code*, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the *Florida Building Code* that are not walled and roofed buildings shall comply with the requirements of Section 58-227 of this division.

SECTION 58-222 SUBDIVISIONS

(a) Minimum requirements. Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

(b) Subdivision plats. Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats;
- (2) Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 58-215(b)(1) of this ordinance; and
- (3) Compliance with the site improvement and utilities requirements of Section 58-223 of this ordinance.

SECTION 58-223 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

(a) Minimum requirements. All proposed new development shall be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.

(b) Sanitary sewage facilities. All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

(c) Water supply facilities. All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

(d) Limitations on sites in regulatory floodways. No development, including but not limited to site improvements, and land disturbing activity involving fill or regrading, shall be authorized in the regulatory floodway unless the floodway encroachment analysis required in Section 58-215(c)(1) of this ordinance demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.

(e) Limitations on placement of fill. Subject to the limitations of this ordinance, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the *Florida Building Code*.

SECTION 58-224 MANUFACTURED HOMES

(a) General. Where permitted, all manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to section 320.8249, F.S., and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this ordinance.

(b) Foundations. All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that are designed in accordance with the foundation requirements of the *Florida Building Code Residential* Section R322.2 and this ordinance.

(c) Anchoring. All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

(d) Elevation. Manufactured homes that are placed, replaced, or substantially improved shall comply with Section 58-224(d)(1) or 58-224(d)(2) of this ordinance, as applicable.

(1) General elevation requirement. Unless subject to the requirements of Section 58-224(d)(2) of this ordinance, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code, Residential* Section R322.2 (Zone A).

(2) Elevation requirement for certain existing manufactured homes. Manufactured homes that are not subject to Section 58-224(d)(1) of this ordinance, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

- (1) Bottom of the frame of the manufactured home is at or above the elevation required in the *Florida Building Code, Residential* Section R322.2 (Zone A); or
- (2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 48 inches in height above grade.

(e) Enclosures. Enclosed areas below elevated manufactured homes shall comply with the requirements of the *Florida Building Code, Residential* Section R322 for such enclosed areas.

(f) Utility equipment. Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the *Florida Building Code, Residential* Section R322.

SECTION 58-225 RECREATIONAL VEHICLES AND PARK TRAILERS

(a) Temporary placement. Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:

- (1) Be on the site for fewer than 180 consecutive days; or
- (2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

(b) Permanent placement. Recreational vehicles and park trailers that do not meet the limitations in Section 58-225(a) of this ordinance for temporary placement shall meet the requirements of Section 58-224.

SECTION 58-226 TANKS

(a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

(b) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section 58-226(c) of this ordinance shall be permitted in flood hazard areas provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

(c) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be attached to and elevated above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.

(d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

- (1) At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
- (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

SECTION 58-227 OTHER DEVELOPMENT

(a) General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not included ~~specified~~ in this ordinance or the *Florida Building Code*, shall:

- (1) Be located and constructed to minimize flood damage;
- (2) Meet the limitations of Section 58-223(d) of this ordinance if located in a regulated floodway;
- (3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;

- (4) Be constructed of flood damage-resistant materials; and
- (5) Have mechanical, plumbing, and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

(b) Fences in regulated floodways. Fences in regulated floodways that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section 58-223(d) of this ordinance.

(c) Retaining walls, sidewalks and driveways in regulated floodways. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Section 58-223(d) of this ordinance.

(d) Roads and watercourse crossings in regulated floodways. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section 58-223(d) of this ordinance. Alteration of a watercourse that is part of a road or watercourse crossing shall meet the requirements of Section 58-215(c)(3) of this ordinance.

SECTION 3. AMENDMENT. Chapter 22, Article II, Section 22-28 of the City of Winter Park Code of Ordinances - Amendments to the Florida Building Code, is hereby amended by the following technical amendments to the *Florida Building Code, Residential* to read as follows (underlined language are additions; ~~stricken through~~ language are deletions; provisions not included are not being amended):

R322.2.1 Elevation requirements.

1. Buildings and structures in flood hazard areas not designated as Coastal A Zones shall have the lowest floors elevated to or above the base flood elevation plus 1 foot (305 mm) or the design flood elevation, whichever is higher.
2. Buildings and structures in flood hazard areas designated as Coastal A Zones shall have the lowest floors elevated to or above the base flood elevation plus 1 foot (305 mm), or to the design flood elevation, whichever is higher.
3. In areas of shallow flooding (AO Zones), buildings and structures shall have the lowest floor (including basement) elevated at least as high above the highest adjacent grade as the depth number specified in feet on the FIRM plus 1 foot, or at least 3 feet (914.4 mm) if a depth number is not specified.
4. Basement floors that are below grade on all sides shall be elevated to or above the base flood elevation plus 1 foot or (305 mm) the design flood elevation, whichever is higher.

Exception: Enclosed areas below the design flood elevation, including basements whose floors are not below grade on all sides, shall meet the requirements of Section R322.2.2.

SECTION 4. FISCAL IMPACT STATEMENT.

In terms of design, plan application review, construction and inspection of buildings and structures, the cost impact as an overall average is negligible in regard to the local technical amendments because all development has been subject to the requirements of the local floodplain management ordinance adopted for participation in the National Flood Insurance

Program. In terms of lower potential for flood damage, there will be continued savings and benefits to consumers.

SECTION 5. APPLICABILITY.

For the purposes of jurisdictional applicability, this ordinance shall apply in the City of Winter Park. This Ordinance shall apply to all applications for development, including building permit applications and subdivision proposals, submitted on or after the effective date of this ordinance.

SECTION 6. INCLUSION INTO THE CODE OF ORDINANCES.

It is the intent of the City Commission that the provisions of Sections 2 and 3 of this Ordinance shall become and be made a part of the City of Winter Park's Code of Ordinances, and that the sections of this ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions. The City Clerk is given liberal authority to correct scriveners' errors, such as incorrect code cross references, grammatical, typographical and similar or like errors when codifying this Ordinance.

SECTION 7 - CONFLICTS. In the event of any conflicts between this Ordinance and other ordinances, this Ordinance shall control over all other ordinances to the extent of the conflict.

SECTION 8. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

SECTION 9. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the 13th day of June, 2016.

Mayor Steve Leary

Attest _____
City Clerk Cynthia S. Bonham

**CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS
CITY OF WINTER PARK
MINUTES**

**Called Meeting
City Hall, Commission Chamber**

**January 7, 2016
8:30AM**

Present: Rodney, Kincaid, (Chairman), Eddie Cox, Joe Fisher, Robert Harris, Mark Sylvain, Bill Maroon (Alternate Member), Ashley Ong, Code Analyst. Kris Stenger, Assistant Director, George Wiggins, Building Director and Carla Bahlmann, Recording Secretary. Mark Kirby and Ray Holloway were absent. Mr. Holloway has moved out of State.

Minutes: The August 5, 2015 minutes were approved by unanimous vote.

Mr. Kincaid opened the meeting and welcomed Board members.

New Business

Ordinance updating Flood Plain regulations for new construction in flood hazard areas and local flood technical amendments to the Florida Building Code.

Mr. Kincaid asked George Wiggins, Director of Building, to explain this agenda item.

Mr. Wiggins explained the need for adopting updated City Flood Plain regulations as follows:

The Florida Building Code has incorporated flood regulation provisions which require local communities to update our flood provisions to properly integrate with the Building Code and to reflect boilerplate language given to us by the Florida Department of Emergency Management. The most recent version of the Florida Building Code(5th Edition) now contains flood plain regulations that must be incorporated into local administrative and technical amendments in jurisdictions to be fully implemented and effective.

The ordinance incorporates the following provisions:

- >Maintains the City's participation in the National Flood Insurance Program. The City has been participating since November 15, 1979.
- >Establishes a minimum base flood elevation for new construction in a flood hazard area which is one foot above the base flood elevation standard.
- >Retains special provisions in current ordinance requiring a conditional use for any home proposed to be built in the city's flood plain areas adjacent two streams: from Lake Sue to Lake Virginia and the Howell Branch Creek north of Lake Maitland. Only one request has been made to locate in this area.
- >Repeals the current Ordinance and adopts similar but updated regulations required to be in force by the State of Florida Division of Emergency Management for participation in the National Flood Insurance Program and for integration with provisions in the Florida Building Code.

Construction Board of Adjustments & Appeals Minutes

January 7, 2016

Page 2

>Carries forward the mechanism to process any variances and appeals which are to be heard by the Board of Adjustments, with the stipulation of limitations and restrictions related to variances.

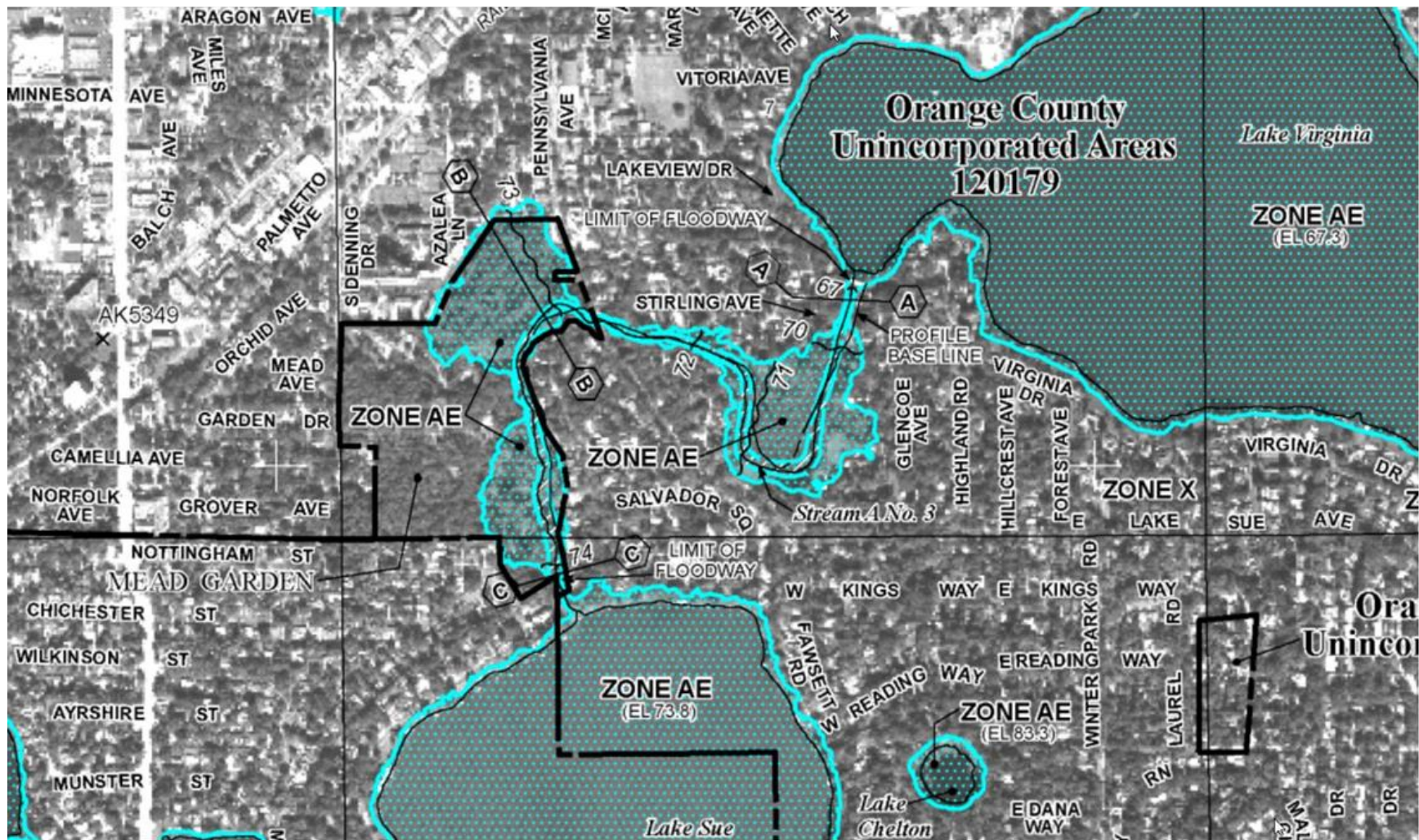
>Includes updated and expanded definitions as determined appropriate by the Federal Emergency Management Agency(FEMA).

The Board asked questions concerning the approval process, which includes forwarding this Ordinance to the City Commission for adoptions by two readings of the Ordinance. In response to a question about frequency of any building taking place in flood hazard areas, Mr. Wiggins responded that we very seldom see any new homes actually developed in flood areas. The flood hazard areas are located along the shoreline of the City's lakes and in floodways between Lake Sue & Lake Virginia, and along Howell Branch Creek north of Lake Maitland.

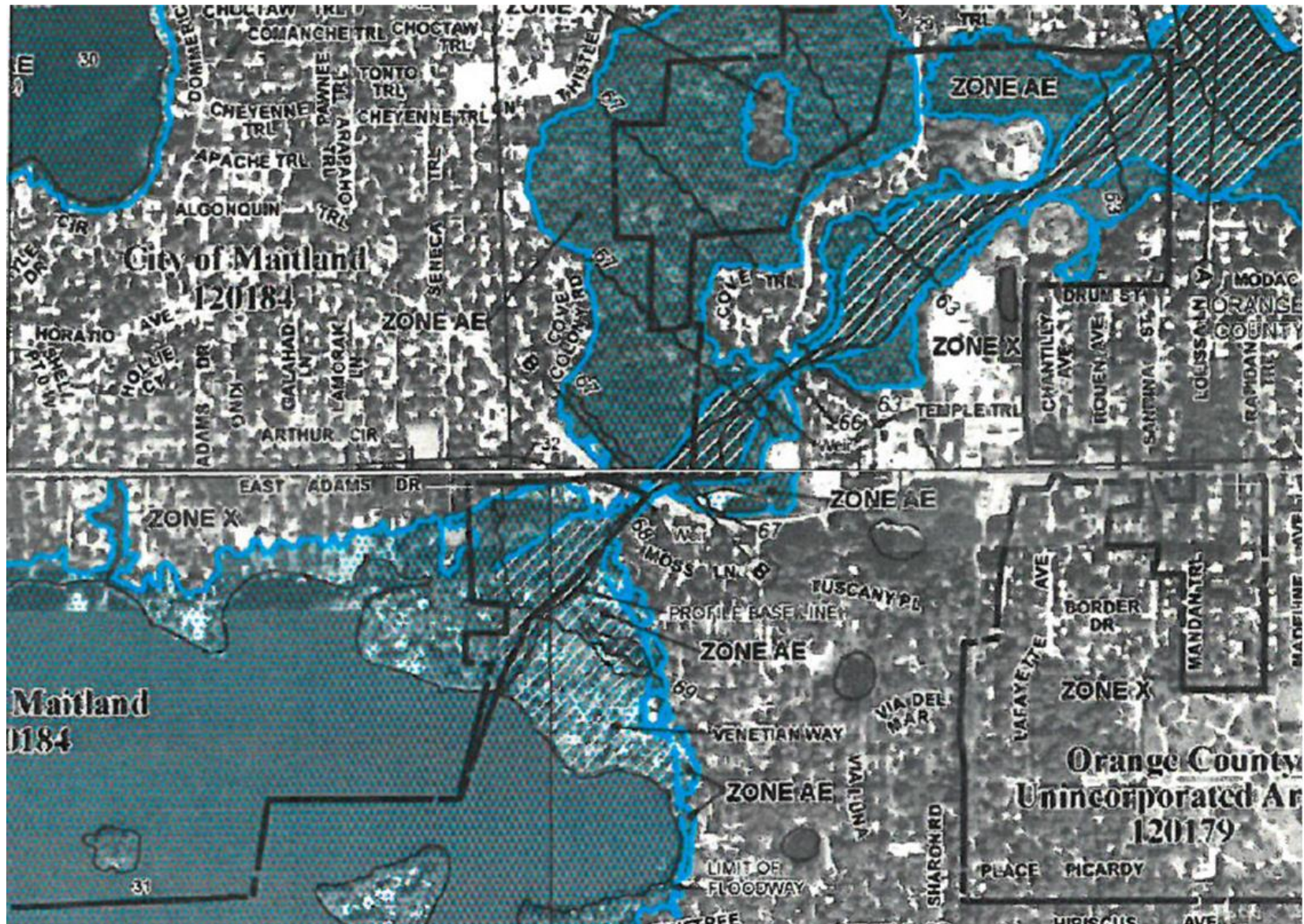
ACTION

After further discussion by the Board, a motion to recommend approving this updated Flood Plain Regulation Ordinance with administrative and technical amendments to the City Commission, was made by Joe Fisher, and seconded by Bill Maroon. The motion passed by a unanimous vote, 6-0.

With no other items coming before the Board the meeting was adjourned at 9:00AM



Floodway Map from Lake Sue to Lake Virginia



Floodway Map from Lake Maitland into the Howell Branch Creek North



city commission public hearing

Item type	Public Hearing	meeting date	June 13, 2016
prepared by	Dori Stone	approved by	<input checked="" type="checkbox"/> City Manager
department	Planning & Community Development		<input checked="" 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 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 type="checkbox"/> Investment in Public Assets & Infrastructure		

subject

Revisions to Section 58, Article VIII Historic Preservation - SECOND READING OF ORDINANCE

motion | recommendation

Recommend approval of the Ordinance revisions

background

On April 11, 2016, the City Commission authorized three changes to the adopted Historic Preservation Ordinance. These changes included revisions to Section 58-433 (b) (2), adding language regarding voluntary participation and Section 58-457 (2) (c), changing the district ownership requirements from fifty percent (50%) plus one to two thirds. The new language under Section 58-457 (8) provides a means to identify properties that are on the historic register or in a historic district.

An amended Ordinance is attached for review and consideration.

alternatives | other considerations

The Commission can choose to approve, approve with additional language or deny the proposed changes to the Historic Preservation Ordinance

fiscal impact

N/A

ORDINANCE NO. 3040-16

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AMENDING CHAPTER 58 "LAND DEVELOPMENT CODE" ARTICLE VIII, "HISTORIC PRESERVATION"; AMENDING SECTION 58-433 TO CLARIFY THE INTENT AND PURPOSE OF THE WINTER PARK HISTORIC PRESERVATION CODE; AMENDING SECTION 58-457 CONCERNING THE REQUIREMENTS AND VOTING THRESHOLDS FOR THE DESIGNATION OF A HISTORIC DISTRICT AND CONCERNING THE IDENTIFICATION OF DESIGNATED PROPERTIES AND PROPERTIES WITHIN HISTORIC DISTRICTS; PROVIDING FOR SEVERABILITY, CODIFICATION, CONFLICTS AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Winter Park, Florida ("City"), recognizes that the City has within its jurisdiction a significant number of historic resources, structures and properties; and

WHEREAS, the City Commission recognizes that the identification, protection, enhancement and use of such resources provides a public purpose; and

WHEREAS, the City Commission recognizes that these historic resources, structures and properties constitute valuable assets that contribute to the charm and appeal of the City and create a unique environment for both residential and commercial pursuits, thereby providing significant and substantial economic benefit to the City; and

WHEREAS, the City Commission desires to clarify the purpose and intent of the Winter Park Historic Preservation Code as set forth in this Ordinance; and

WHEREAS, the City Commission desires to amend the voting threshold for designating a historic district as set forth in this Ordinance;

WHEREAS, the City Commission finds that the provisions of this Ordinance are consistent with the City's Comprehensive Plan.

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

SECTION 1 – RECITALS. The above recitals are true and correct and are incorporated herein as legislative findings of the City Commission.

SECTION 2 – AMENDMENT. Chapter 58, Division 1, Section 58-433 of the Winter Park Code of Ordinances is hereby amended to read as follows (~~stricken through~~ language are deletions; underlined language are additions; provisions not referenced are not amended):

Sec. 58-433. - Short title; intent and purpose.

(a) *Short title.* This article shall be cited as the Winter Park Historic Preservation Code.

(b) *Intent and purpose*

(1) The purpose of these regulations is to establish the framework for a comprehensive historic preservation program in the city.

(2) It is the policy of the city to promote the educational, cultural, and economic welfare of the public by preserving and protecting historic structures, sites, portions of structures, groups of structures, manmade or natural landscape elements, works of art, or integrated combinations thereof, which serve as visible reminders of the history and cultural heritage of the city, state, or nation to achieve the following objectives including by encouraging voluntary participation:

- a. Safeguard the heritage of the city by encouraging the preservation of historic resources representing significant elements of its history;
- b. Enhance the visual character of the city by encouraging the preservation of these buildings which make a significant contribution to the older neighborhoods of the city particularly to the designated historic register structures reflecting unique and established architectural traditions;
- c. Foster public appreciation of and civic pride in the beauty of the city and the accomplishments of its past;
- d. Strengthen the economy of the city by protecting and enhancing the city's attractions to residents, tourists and visitors;
- e. Promote the private and public use of historic resources for the education, prosperity and general welfare of the people; and
- f. Stabilize and improve property values within the city.

(3) In addition, the provisions of this article will assist the city and private property owners to be eligible for federal tax incentives, federal and state grant funds, property tax abatement, and any other incentive programs for the purpose of furthering historic preservation activities.

SECTION 3 – AMENDMENT. Chapter 58, Division 3, Section 58-457 of the Winter Park Code of Ordinances is hereby amended to read as follows (~~stricken through~~ language are deletions; underlined language are additions; provisions not referenced are not amended):

Sec. 58-457. – Designation procedures.

(2) *Local historic districts.*

- a. Nominations for designation of historic districts may be submitted to the planning and community development department by petition from 20 percent of the proposed district property owners, at least half of whom shall be owners of individually designated historic homes in the proposed district, or owners of contributing homes in the proposed district who believe that the district meets the criteria for listing as set forth in section 58-456. The nomination shall include a description of the proposed boundaries of the district, and a brief statement setting forth: (i) that at least 50% of the homes in the proposed district are individually designated historic homes or contributing homes; (ii) explaining its historic, cultural, aesthetic or architectural significance, (iii) the specific National Register of Historic Places criteria (two or more) that apply to the proposed district; and (iv) including the required petition representing the ownership of at least 20 percent of the properties within the proposed district as described above. Designation of

historic districts shall only be considered by the HPB subsequent to meetings with district property owners and actions as described in subsections b. and c. below.

- b. Prior to consideration of designation by the HPB, the city shall first determine if the proposed district meets the criteria for designation as set forth in the petition. If so, the city shall then prepare a historic designation report which shall analyze and report upon: 1) proposed boundaries, 2) contributing and non-contributing buildings and elements, 3) district goals, 4) design guidelines to include district alteration criteria, 5) effects of designation and 6) available incentives. The city shall then mail the report and other necessary information to each property owner of record to notify them of the initial interest in establishing a historic district, the effects of establishing a historic district, and a schedule of informational meetings for owners and interested parties. The schedule of informational meetings will also be published in a newspaper of general circulation and posted on the city's web site. The city shall then facilitate conferences with property owners within the nominated district to discuss the proposed district. The city shall have 90 days to complete these requirements.
- c. After informational meetings have concluded, the city will mail a summarized final historic designation report to every property owner of record in the nominated district as of that date. The report will describe the voting process including a 14 day deadline to respond. The final report, voting process and deadline will also be posted on the city's web site. Property owners of record will be polled, with each property representing one vote. If a property is jointly owned by two or more persons or entities, all such persons or entities having an ownership interest in that property must agree in order to cast a vote in favor of creating the nominated district. Upon receipt of a favorable vote representing the ownership of two-thirds ~~fifty percent (50%) plus one~~ of the properties within the nominated district, a historic designation report shall be forwarded to the HPB recommending approval or disapproval of the nominated area as a historic district based upon the vote received and citing any other specific criteria for the decision.
- d. The nominated historic district shall have a historic designation report that shall be presented to the HPB at a regularly scheduled meeting. The designation report shall include the historic context, proposed boundaries, contributing and non-contributing elements, a staff recommendation and the results of listing which may include guidelines for review, and appropriate incentives. For each proposed designation of a historic district, the city is responsible for mailing a notice of public hearing to all property owners of record whose property is located within the boundary of the designation 15 days prior to the public hearing held pursuant to this section, however failure to receive such notice shall not invalidate the same as such notice shall also be given by publishing a copy thereof in a newspaper of general circulation at least 15 days prior to the hearing.

(8) The city shall prepare and maintain for public view information identifying the designated properties and properties within designated historic districts. The symbol of "(h)" for historic is to be added next to the underlying zoning classification for each of the designated properties and properties within historic districts. The symbol of "(h)" is not intended to be a rezoning of the designated properties and properties within historic districts, but merely an identifier for the public's information and awareness that such properties are affected by the regulations of this article and any applicable historic district guidelines.

SECTION 4 - SEVERABILITY. If any section, subsection, sentence, clause, phrase, provision, or word of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then such invalidity or unconstitutionality shall not be held to invalidate or impair the validity, force, or effect of any other remaining provisions of this Ordinance.

SECTION 5 - CODIFICATION. It is the intention of the City Commission of the City of Winter Park, Florida, and it is hereby ordained that the provisions of Sections 2 and 3 of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Winter Park, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word. The City Clerk is given liberal authority to correct scriveners' errors, such as incorrect code cross references, grammatical, typographical and similar or like errors when codifying this Ordinance.

SECTION 6 - CONFLICTS. In the event of any conflicts between this Ordinance and other ordinances, this Ordinance shall control over all other ordinances to the extent of the conflict.

SECTION 7 – EFFECTIVE DATE. This Ordinance shall become effective immediately upon its final 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 13th day of June, 2016.

Mayor Steve Leary

ATTEST:

Cynthia S. Bonham, City Clerk



city commission **public hearing**

item type	Public Hearing	meeting date	June 13, 2016
prepared by	Troy Attaway	approved by	<input checked="" type="checkbox"/> City Manager
department	Public Works		<input type="checkbox"/> City Attorney
division	Administration		<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 checked="" type="checkbox"/> Intelligent Growth & Development		<input type="checkbox"/> Public Health & Safety
	<input type="checkbox"/> Investment in Public Assets & Infrastructure		

Subject

Abandonment of a portion of Via Palermo right-of-way while retaining a utility easement over the entire area and also stipulating a 6-foot wide ingress/egress easement aligning with existing easement to the north.

motion | recommendation

Approve vacate

Background

Via Palermo, north of Via Lombardy, is a 50-foot platted right-of-way that has never been used as a roadway. In 2007, the adjacent residents to the north end of the Via Palermo right-of-way, abutting the Winter Park Racquet Club, requested of the City a vacate of this northern unused right-of-way. As the neighborhood had historically used this area as an access to the racquet club, a stipulation was made that an ingress/egress easement be granted to the racquet club to continue this use. A copy of the ordinance is attached for your use.

Recently, the residents abutting the southern portion of Via Palermo (immediately north of Via Lombardy) requested the City vacate this right-of-way (request attached). The City does have some storm drainage utilities in this area but has no need for a roadway. Therefore, Staff is amenable to the vacate of the unused right-of-way while retaining a utility easement over the entire area and requiring a continuation of the 6-foot wide ingress/egress easement for pedestrians.

alternatives | other considerations

Do not vacate the right of way

fiscal impact

None

After Recording Return To:
City of Winter Park, City Clerk's Office
401 Park Avenue South
Winter Park, Florida 32789

ORDINANCE NO. _____-16

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, PROVIDING FOR VACATION AND ABANDONMENT OF THAT PORTION OF THE NON-VACATED VIA PALERMO ROAD LYING NORTH OF VIA LOMBARDY AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR RESERVATION OF A UTILITY EASEMENT; AUTHORIZING EXECUTION OF EFFECTING DOCUMENTS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Winter Park has authority to adopt this Ordinance by virtue of its home rule powers and Charter with respect to abandoning and vacating rights of way no longer needed for public purposes; and

WHEREAS, the City has determined that portion of the non-vacated Via Palermo right of way lying north of Via Lombardy is no longer needed by the City of Winter Park.

NOW, THEREFORE, BE IT ENACTED by the City of Winter Park, Florida as follows:

Section 1. The City Commission of the City of Winter Park, Florida, hereby finds and declares that the property described below is no longer necessary for a public right of way and said property is vacated and abandoned as a public right of way:

THAT PART OF VIA PALERMO, OF SICILIAN SHORES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "O", PAGE 34, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF LOT 4, BLOCK "E" AND THE WEST RIGHT OF WAY LINE OF VIA PALERMO, OF SAID SICILIAN SHORES; THENCE RUN S.00°45'00"W. ALONG SAID WEST RIGHT OF WAY LINE 186.00 FEET TO THE SOUTHEAST CORNER OF LOT 7, OF SAID BLOCK "E"; THENCE DEPARTING SAID WEST RIGHT OF WAY LINE RUN N.79°29'21"E. A DISTANCE OF 50.98 FEET TO THE SOUTHWEST CORNER OF LOT 14, BLOCK "C", OF SAID SICILIAN SHORES; THENCE N.00°45'00"E. ALONG THE EAST RIGHT OF WAY LINE OF THE AFORESAID VIA PALERMO, A DISTANCE OF 188.70 FEET TO THE NORTHWEST CORNER OF LOT 12, OF SAID BLOCK "C"; THENCE DEPARTING SAID WEST RIGHT OF WAY LINE RUN N.89°15'00"W. A DISTANCE OF 25.00 FEET TO THE CENTER LINE OF SAID VIA PALERMO; THENCE S.00°45'00"W. ALONG SAID CENTER LINE 12.65 FEET; THENCE DEPARTING SAID CENTER LINE RUN N.89°15'00"W. 25.00 FEET TO THE POINT OF BEGINNING.

Reserving to the City of Winter Park, its successors and assigns, a utility easement over the entire portion of the right of way of Via Palermo Road vacated by this ordinance, and a pedestrian and bicycle easement over the middle six (6) feet of said vacated right of way.

Section 2. The City Manager is hereby authorized and directed to execute such instruments as may be necessary or required to abandon, vacate and close that portion of the Via Palermo right of way as well as other necessary instruments relating to the reservation of a utility easement and pedestrian and bicycle easement to be recorded in the public records of Orange County, Florida.

Section 3. That this vacation and abandonment is specifically conditioned upon the conveyance to the Winter Park Racquet Club of the middle six (6) feet of the right of way by the property owners to the east and west sides of the portion of the right of way of Via Palermo Road vacated by this ordinance, for purposes of pedestrian and bicycle passage; and, further, that the Winter Park Racquet Club shall not install a locked gate preventing use of the easement.

Section 4. In the event of any conflict between this Ordinance and any other ordinance or portions of ordinances, this Ordinance controls.

Section 5. The parties intend that any error in legal description or in depiction of the portion of the easement vacated and abandoned may be corrected by subsequent curative document if the parties agree that there was an error in the survey or description.

Section 6. This ordinance shall take effect immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the _____ day of _____, 2016.

Mayor Steven Leary

ATTEST:

City Clerk Cynthia S. Bonham

PETITION
Via Palermo Abandonment
East Half ; North of Via Lombardy

December 22, 2015

Mr. Jeff Briggs
Manager Planning & Zoning Commission; Executive Secretary
City of Winter Park
401 Park Ave. S.
Winter Park, Florida 32789

RE: Abandonment Request: Via Palermo (formerly a Street between Via Lombardy and the Winter Park Racquet Club:

Petitioner Requesting Deed of Ownership:

Address:	Michael J. & Jane M. Schweitzer
Description:	903 Via Lombardy, Winter Park. Sicilian Shores 0/34 Lots: 12,13 &14 of BLK C

History: Via Palermo, running North from Via Lombardy to the Winter Park Racquet Club, approximately 50 feet in width, was closed approximately 60 years ago; since that time the Northern portion of the Road nearest to the Racquet Club was abandoned and deeded to Sicilian Shores: Lots 9 &10 of Block C; and to Lots 3 &4 of BLK E. Collectively the two beneficial properties, ceded a walkway ('Klingler Way') of 6 feet, with a one foot setback for fencing, totaling 8 feet (thereby dividing the 50 equally into two 25 foot, less a total of 3 feet; netting 22 feet each as deeded), for the continuation of a foot path to respect legacy access for neighborhood residents to enter the racquet club.

Petitioner will respect the same footpath ('Klingler Way') setback as currently exists from the negotiated previous abandonment to the North of subject property.

As required:

- A. Petitioner below provides the approval, by signature, of the owner of the Property that abuts to the West, the abandoned Via Palermo; 845 Via Lombardy, Sicilian Shores; BLK E, Lots 5,6,and 7.
- B. The Approval of the Winter Park Racquet Club; as required in the first abandonment for the creation of 'Klingler Way', the 6 foot access foot path; is provided below.

Thank you in advance for your consideration. Please advise if there are any questions.

Page 1 of 2

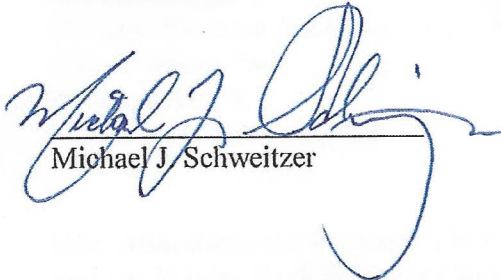
PETITION
Via Palermo Abandonment
East Half ; North of Via Lombardy

Page 2 of 2

SIGNATURE PAGE:

Note: This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

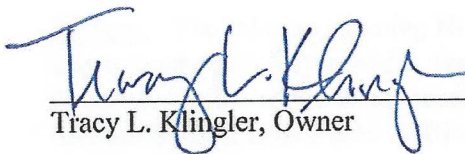
Petitioners/Owners:

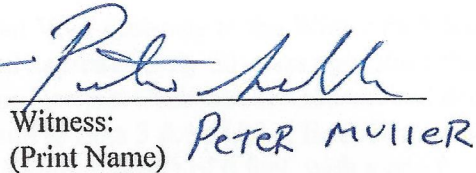

Michael J. Schweitzer


Jane M. Schweitzer

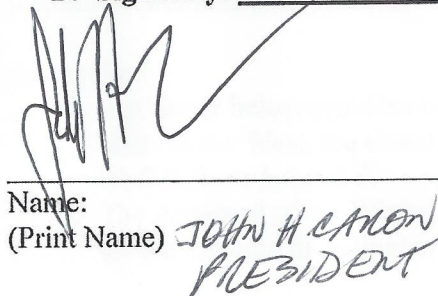
Agreed to Petitioner's Request for Abandonment described herein:

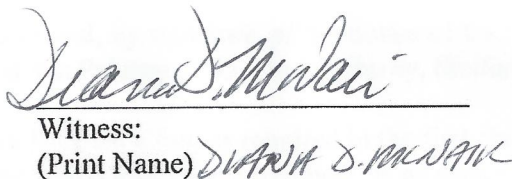
A. Signatory: 845 Via Lombardy (Sicilian Shores; BLK E, Lots 5,6,and 7)


Tracy L. Klingler, Owner


Witness:
(Print Name) PETER MULLER

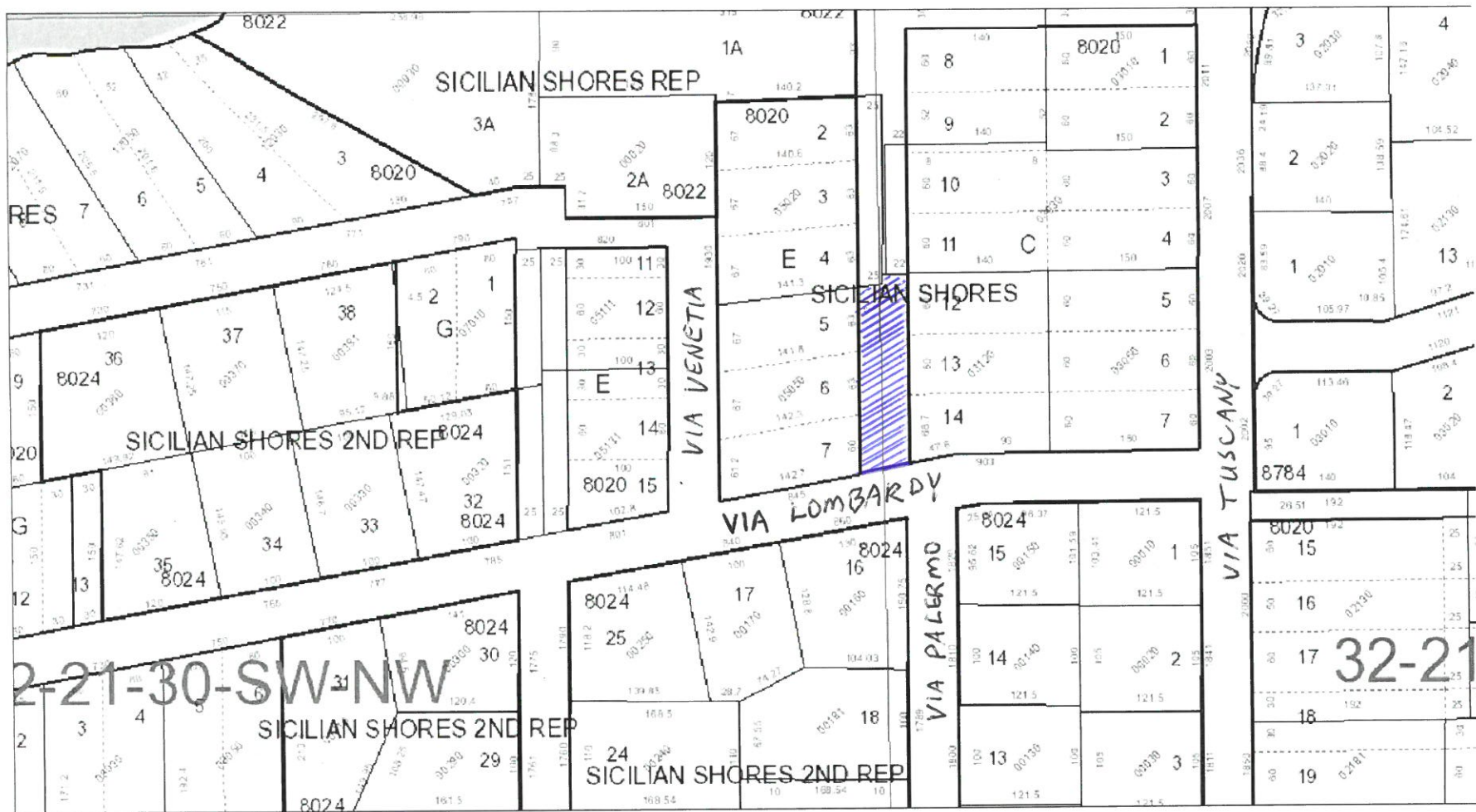
B. Signatory: Winter Park Racquet Club: 2111 Via Tuscany


Name:
(Print Name) JOHN H. CANON
PRESIDENT

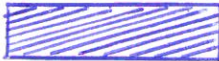

Witness:
(Print Name) DIANA S. MWANIK

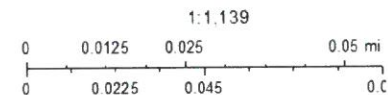
Seal:

Exhibit "A"



May 31, 2016

 = AREA OF VIA PALERMO
PROPOSED FOR VACATION





INSTR 20070244152 OR BK 09212 PG 3389 PGS=4 RECD 04/16/2007 11:06:06 AM
MARTHA O. HAYNIE, COMPTROLLER, ORANGE COUNTY
REC FEE 35.50

ORDINANCE NO. 2700-07

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA RELATING TO ABANDONMENT OF A RIGHT-OF-WAY; ABANDONING THAT PORTION OF VIA PALERMO ROAD EXTENDING APPROXIMATELY 282 FEET SOUTH FROM THE NORTH LINE OF LOT 1A OF SICILIAN SHORES, PLAT BOOK O, PAGE 34, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED HEREIN; RETAINING UTILITY RIGHTS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, it appears that the northernmost portion of the platted right-of-way of Via Palermo Road is not now used and has not been used for public vehicular traffic for some years; and

WHEREAS, the property owners adjacent to the northernmost portion of the platted right-of-way of Via Palermo Road have properly and appropriately requested that the City of Winter Park vacate and abandon said right-of-way; and

WHEREAS, the City of Winter Park is concerned about the preservation of pedestrian and non-motorized bicycle access and passage upon the Via Palermo Road right-of-way; and

WHEREAS, the property owners who will directly benefit from the vacation and abandonment have agreed that said access to the Winter Park Racquet Club will be maintained in perpetuity through the transfer of a six-foot path in the middle of the existing Via Palermo Road right-of-way; and

WHEREAS, this commitment by the property owners to pedestrian and non-motorized bicycle access is necessary for the City of Winter Park to consider vacation and abandonment appropriate, and, further, such commitment has been represented by the affected parties to have been reduced to writing in a legally enforceable, recordable document;

NOW, THEREFORE, LET IT BE ENACTED by the People of the City of Winter Park, Florida as follows:

Section 1. The City Commission of the City of Winter Park hereby vacates and abandons that portion of the right-of-way of Via Palermo Road extending approximately 282 feet South from the North line of Lot 1A of Sicilian Shores, Plat Book O, Page 34, Public Records of Orange County, Florida, more particularly described as follows:

See Exhibit "A" attached hereto and made a part hereof.

Reserving to the City of Winter Park, its successors and assigns, a utility easement over the entire portion of the

right-of-way of Via Palermo Road vacated by this ordinance, and a pedestrian and bicycle easement over the middle six (6) feet of said vacated right-of-way.

Section 2. That this vacation and abandonment is specifically conditioned upon the conveyance to the Winter Park Racquet Club of the middle six (6) feet of the right-of-way by the property owners to the East and West sides of the portion of the right-of-way of Via Palermo Road vacated by this ordinance, for purposes of pedestrian and bicycle passage; and, further, that the Winter Park Racquet Club shall not install a locked gate barring passage over the easement.

Section 3. All ordinances or portions of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall take effect immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the 12th day of February, 2007.





Mayor David C. Strong

Attest:



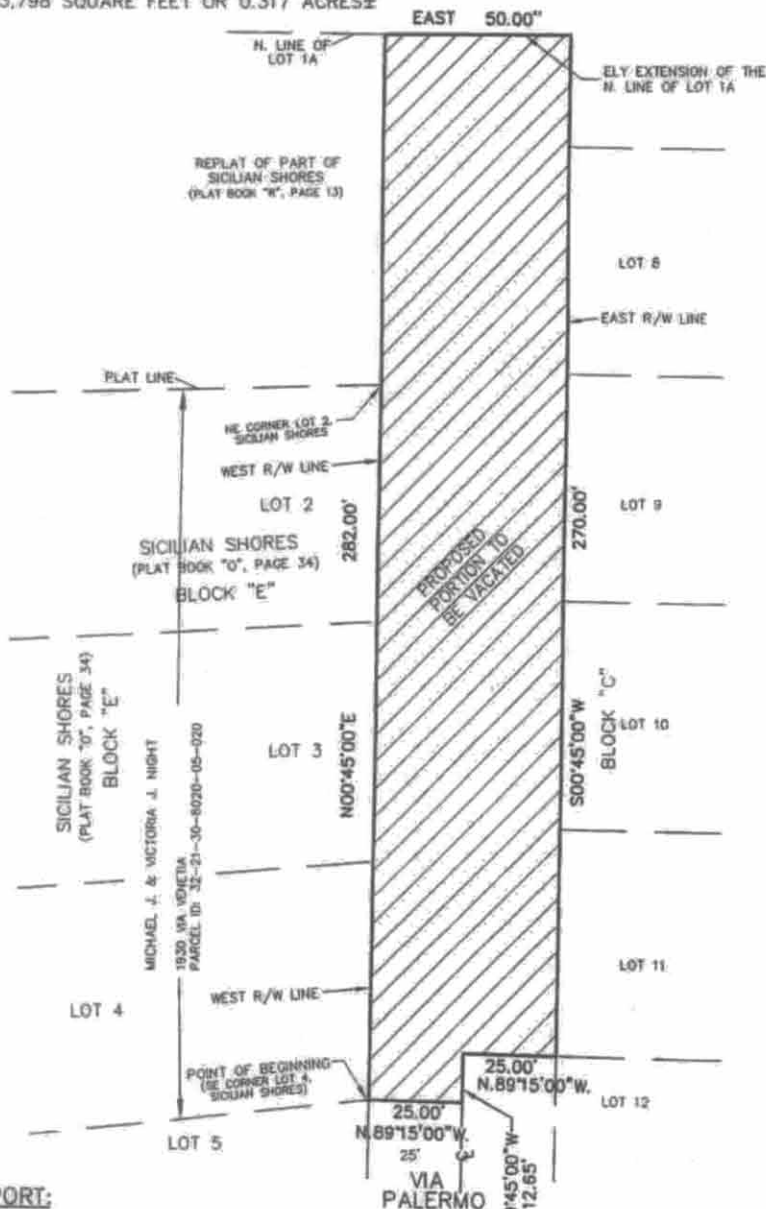
City Clerk

SKETCH AND DESCRIPTION
FOR
CHARLES CLAYTON CONSTRUCTION

DESCRIPTION: (PROPOSED VACATED PORTION
OF VIA PALERMO)

THAT PART OF VIA PALERMO, LYING IN SICILIAN SHORES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK "O", PAGE 34, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, AND REPLAT OF PART OF SICILIAN SHORES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "R", PAGE 13, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 4, BLOCK "E" AND THE WEST RIGHT OF WAY OF VIA PALERMO OF SAID SICILIAN SHORES; THENCE RUN N.00°45'00"E. ALONG THE WEST RIGHT OF WAY LINE OF VIA PALERMO, A DISTANCE OF 282.00 FEET TO A POINT ON THE NORTH LINE OF LOT 1A OF SAID REPLAT OF PART OF SICILIAN SHORES; THENCE DEPARTING SAID WEST RIGHT OF WAY LINE RUN EAST, ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 1A, A DISTANCE OF 50.00 FEET TO THE EAST RIGHT OF WAY LINE OF SAID VIA PALERMO; THENCE DEPARTING SAID EASTERLY EXTENSION RUN S.00°45'00"W., ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 270.00 FEET; THENCE DEPARTING SAID EAST LINE RUN N.89°15'00"W., A DISTANCE OF 25.00 FEET; THENCE S.00°45'00"W. 12.65 FEET; THENCE N.89°15'00"W. 25.00 FEET TO THE POINT OF BEGINNING. CONTAINING 13,798 SQUARE FEET OR 0.317 ACRES±



SURVEY REPORT:

1. This is not a survey. This is a sketch for the purpose of depicting the right of way to be vacated.
2. This sketch does not reflect or determine ownership.
3. Bearings or angles and distances shown on this survey are as plotted or as deduced, and are unchanged according to field measurements.
4. This property lies Section 32, Township 21 S., Range 30 E., Orange County, Florida.

HENRICH-LUKE & SWAGGERTY, LLC
surveyors & mappers

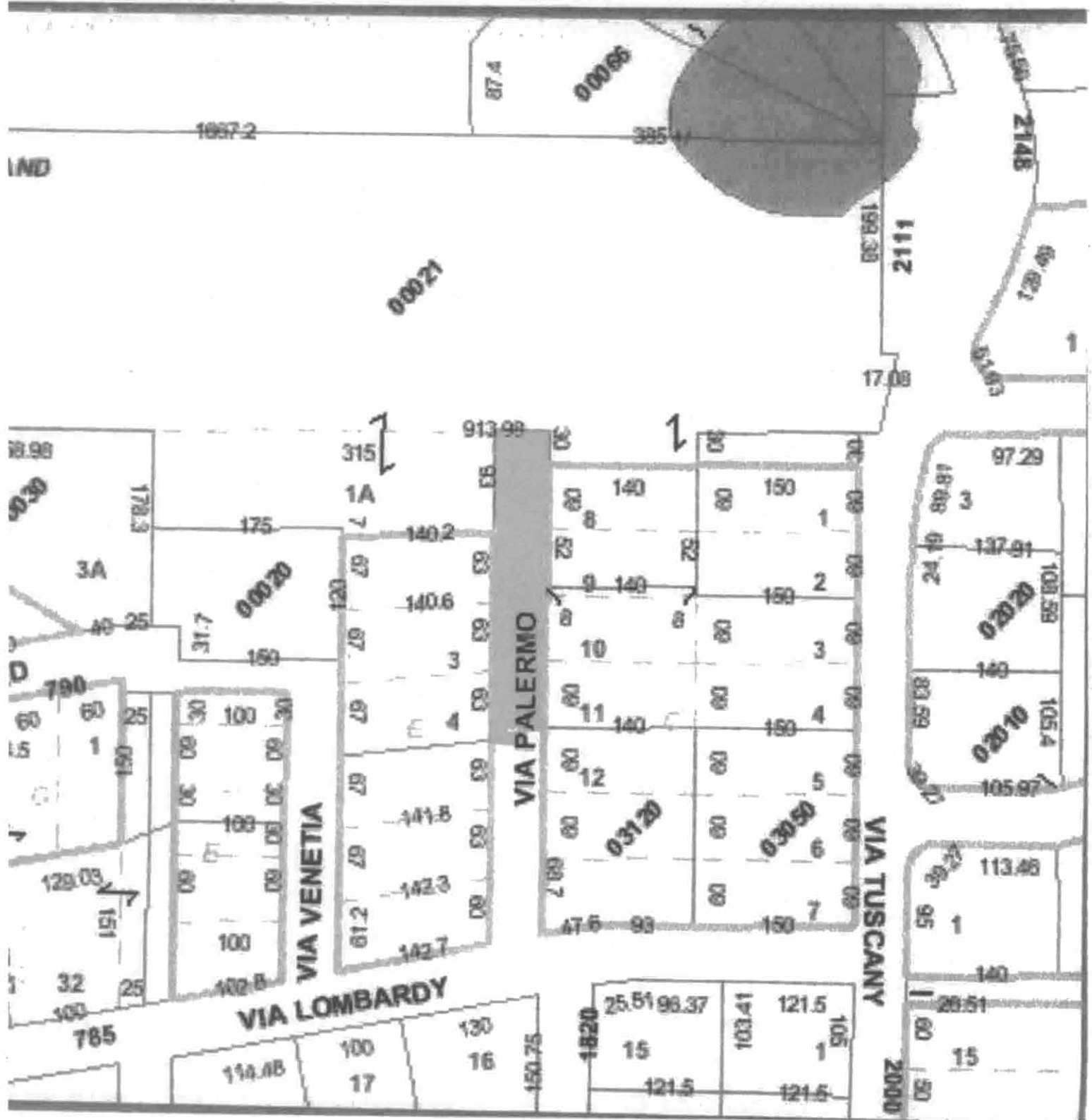


250 S. Ronald Reagan Blvd., Ste. 114
Longwood, Florida 32750
(407) 647-7346
FAX (407) 647-8097
E-mail: hls@hlsurveyors.com

SKETCH AND
DESCRIPTION: 5-22-06

Mark T. Luke
Professional Surveyor and Mapper
Florida License No. 5006

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city commission public hearing

Item type	Public Hearing	meeting date	June 13, 2016
prepared by	Michelle Neuner	approved by	<input checked="" type="checkbox"/> City Manager
department	City Management		<input checked="" type="checkbox"/> City Attorney
division			<input type="checkbox"/> N/A
board approval	<input type="checkbox"/> yes <input type="checkbox"/> no <input 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 type="checkbox"/> Investment in Public Assets & Infrastructure		

subject

Solid Waste Franchise

motion | recommendation

Adopt recommended ordinance granting solid waste franchise to Waste Pro of Florida, Inc.

background

Through a competitive RFP process, the City has selected Waste Pro of Florida, Inc. as its recommended franchise partner for delivery of exclusive solid waste services. The agreement is proposed for seven years with one additional three-year renewal option.

Kessler Consulting, Inc. (KCI) was hired to manage the RFP process, negotiate with the successful vendor, establish new rates, and modernize the city code related to solid waste. KCI worked with staff, Keep Winter Park Beautiful and Sustainable Board, and many merchants to develop a modern RFP with emphasis on moving towards a more sustainable waste program and offering flexibility in future years to further enhance the City's solid waste and recycling program.

Highlights of the new agreement:

- Provides new 95-gallon garbage carts and new 65-gallon recycling carts that the City will own at the expiration of the franchise.
- Utilizes RFID technology on all containers serviced to help in facilitating contract management, verifying services, validating franchise payments, ensuring accurate billing, adding visibility and accountability, managing assets, and much more.

- Maintains current residential collection service level with twice per week garbage and once per week recycling and yard waste and keeping all service dates -the same.
- Unbundles collection and disposal costs, potentially reducing costs and adding flexibility for future recycling efforts
- Provides a comprehensive Center Street Service Area program with shared containers and a daily cardboard collection valet service with potential expansion to other Central Business District areas.

Residents and businesses will receive educational material related to the cart swap, recycling programs offered and an explanation of important points of the new franchise. The agreement is set to take effect on October 31, 2016.

alternatives | other considerations

Five vendors responded to the RFP.

fiscal impact

The approximate annual value of the contract is \$3.3 million.

ORDINANCE NO. _____

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

WHEREAS, the City of Winter Park, Florida (the "City") has previously granted a franchise for the collection of solid waste materials from residential and commercial establishments within the city, the term of which franchise expires October 30, 2016; and

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

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

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

WHEREAS, after due and proper review, evaluation, and consideration of the proposals submitted, the city finds that it is expedient and in the best interest of the City to award a franchise to Waste Pro of Florida, Inc. a Florida corporation ("Franchisee"), for the collection and delivery for disposal of solid waste, yard waste, bulk waste, recyclables, and construction and demolition debris (collectively "Waste") from residents, businesses, and other entities within the municipal boundaries of the City.

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

SOLID WASTE COLLECTION FRANCHISE

Section 1. Grant of franchise.

That there is hereby granted to the Franchisee, certain exclusive and certain non-exclusive rights, privileges and franchise to collect and deliver for disposal, Waste from residential, commercial and other establishments within the City, all as provided in the attached Franchise Agreement.

Section 2. Exclusive right.

So long as Franchisee shall perform the services set forth herein and in the attached Franchise Agreement, no other private refuse collector shall be permitted by the City to provide residential and commercial solid waste collection services within the City, except as provided in the attached Franchise Agreement or upon the prior written consent of the Franchisee.

Section 3. Contract.

The franchise shall be carried out in accordance with the Franchise Agreement attached to this Ordinance which Franchise Agreement is incorporated herein as part of this Ordinance, provided however the Franchise Agreement shall not be codified.

Section 4. Illegal provisions.

If any provision of the franchise shall be declared illegal, void, or unenforceable by a court of competent jurisdiction, the other provisions shall not be affected but shall remain in full force and effect.

Section 5. Conflict.

In the event of any conflict between this Ordinance and any other ordinances or portions of other ordinances, this Ordinance controls.

Section 6. Effective date.

This Ordinance shall take effect on October 31, 2016. The franchise herein created shall become effective as to the Franchisee named herein on the date when the Franchisee accepts the same in writing, which date shall not be more than thirty (30) days after the date of final passage and adoption.

Adopted at a regular meeting of the City Commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida on the day of June, 2016.

Steve Leary, Mayor

ATTEST:

Cynthia S. Bonham, City Clerk

Ordinance No. _____



**Solid Waste and Recyclables Collection
Franchise Agreement**

Between

**City of Winter Park
("City")**

And

**Waste Pro of Florida, Inc.
("Franchisee")**

SOLID WASTE AND RECYCLABLES COLLECTION FRANCHISE AGREEMENT

THIS AGREEMENT made and entered into this <<#>> Day of <<MONTH>>, 2016, by and between the **CITY OF WINTER PARK, FLORIDA**, a Florida Municipal Corporation, located at 401 Park Avenue South, Winter Park, Florida 32789 (hereinafter "City") and **WASTE PRO OF FLORIDA, INC.**, a Florida Corporation, located at 2101 West State Road 434, Suite 305, Longwood, Florida 32779 (hereinafter "Franchisee").

WITNESSETH:

WHEREAS, there is an immediate and continuing need for the collection and disposal of Solid Waste, Recyclables, Yard Waste, and Bulk Waste from residents, businesses, and other entities within the municipal boundaries of the City of Winter Park; and

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

WHEREAS, it appears to be in the best interests of the public health, safety, and welfare of the citizens of the City of Winter Park and its resident businesses and entities to award a franchise to Franchisee to provide for the collection and disposal of Solid Waste, Recyclables, Yard Waste and Bulk Waste, upon the terms and conditions more particularly described herein.

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

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ARTICLE 1. DEFINITIONS

To the extent that any definition contained herein conflicts with any similar definition contained in any federal, state, or local law, the definition herein shall prevail for the purposes of this Agreement. However, nothing contained herein shall be interpreted to require Franchisee to undertake any conduct that is prohibited by Applicable Law. Whenever the context may require, any pronoun which is used in this Agreement shall include the corresponding masculine, feminine and neuter forms and the singular shall include the plural and vice versa.

Applicable Law shall mean all applicable federal and State of Florida laws, local (municipal and county) ordinances, and the rules and regulations of all authorities having jurisdiction over any part of the services provided under this Agreement.

Bulk Waste shall mean any non-vegetative item that cannot be containerized, bagged or bundled, or whose large size or weight precludes its handling, processing, or disposal by normal methods.

Center Street Service Area shall mean the specified area which generally encompasses any Commercial Establishment or place of business or residence located within the boundaries of Canton Avenue to the north, Knowles Avenue to the east, Lyman Avenue to the south, and Park Avenue to the west, adjacent to the Center Street or having frontage on that portion of streets intersecting Center Street, within the described area. [A graphic depiction of the Center Street Service Area is provided in Exhibit 4.]

Change in Law shall mean (i) the adoption, promulgation, or modification after the Effective Date of any law, regulation, order, statute, ordinance, or rule that was not adopted, promulgated, or modified on or before the Effective Date; or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, or approval after the Effective Date, which in the case of either (i) or (ii) establishes requirements affecting Franchisee's operation under this Agreement more burdensome than the requirements that are applicable to Franchisee in effect as of the Effective Date. A change in any federal, state, county, or other tax law or worker's compensation law shall not be a Change in Law. However, in the event that a federal, state, or local entity imposes a fee, charge, or tax after the Effective Date that applies to Franchisee's operations per se, such fee, charge, or tax shall be treated as a Change in Law.

City shall mean the City of Winter Park, Florida.

City Commission or **Commission** shall mean the City Commission of the City of Winter Park, Florida.

Code shall mean the Code of Ordinances of the City of Winter Park, Florida.

Commencement Date shall mean October 31, 2016, the date services pursuant to the Agreement shall commence.

Commercial Collection Service shall mean the collection of Solid Waste within the Service Area from Commercial Establishments.

Commercial Customers shall mean any person receiving Commercial Collection Service.

Commercial Establishment shall mean a business, corporation, company, incorporated or limited concern, licensed to do business in the City, whether owned, leased, or rented.

Compactor shall mean a Container that has a compaction mechanism, whether stationary or mobile.

Construction and Demolition or **C&D** shall mean discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of C&D with other types of Solid Waste will cause it to be classified as other than C&D. The term also includes:

- (a) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;
- (b) Unpainted, non-treated wood scraps from facilities manufacturing materials used for construction of structures or their components and unpainted, non-treated wood pallets provided the wood scraps and pallets are separated from other Solid Waste where generated and the generator of such wood scraps or pallets implements reasonable practices of the generating industry to minimize the commingling of wood scraps or pallets with other Solid Waste; and
- (c) De minimis amounts of other nonhazardous wastes that are generated at construction or destruction projects provided such amounts are consistent with best management practices of the industry.

Container shall mean Roll Cart, Dumpster, Compactor, Roll-Off, or any other container approved by the City intended for collection of Solid Waste or Recyclable Materials.

Contaminates or **Contamination** means the same as Rejects: that portion of the Recyclable Materials stream that does not consist of materials included in the definition of Program Recyclables.

Contract Manager shall mean the person designated by the City to act as City's representative during the term of this Agreement.

Day shall mean one calendar day.

Designated Facility shall mean the facility designated by the City for delivery of materials collected pursuant to this Agreement.

Dumpster shall mean a large metal or plastic box for multi-family or commercial Solid Waste or Recyclables, usually of the two-cubic-yard to eight-cubic-yard size which is lifted by mechanical means. Dumpsters normally have plastic lids.

Effective Date shall mean the date this Agreement has been executed by both the City and Franchisee, whichever is later.

E-Waste shall mean discarded electronic devices and components including, but not limited to, computers, monitors, keyboards, mice, terminals, printers, modems, scanners, cell phones, televisions, copiers, and other electronic equipment as defined by the City.

Franchise Agreement or **Agreement** shall mean this Franchise Agreement between the City and Franchisee, together with all exhibits and other documents that are expressly incorporated by reference.

Franchisee shall mean the person, firm, corporation, organization, agency, or joint venture with whom the City has executed this Franchise Agreement.

Hazardous Waste shall mean solid waste or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. The term does not include human remains that are disposed of by persons licensed under F.S. § Chapter 497

Holidays shall mean the Days in which the Designated Facility is closed. The current Holidays include New Year's Day, Thanksgiving, and Christmas.

Household Hazardous Waste or **HHW** shall mean household products that contain corrosive, toxic, ignitable, or reactive ingredients, including but not limited to, paints, cleaners, oils, batteries, and pesticides, or other household materials that contain potentially hazardous ingredients, and that require special care for disposal.

Multi-Family Collection Service shall mean the collection of Solid Waste and Program Recyclables from Multi-Family Units, and delivery of collected materials to the Designated Facility. Residential Units not desiring to receive curbside Residential Collection Service may choose to receive Multi-Family Collection Service.

Multi-Family Customers shall mean any person receiving Multi-Family Collection Service.

Multiple Dwelling Unit or **Multi-Family Unit** shall mean any building containing four (4) or more permanent residential living units.

Program Recyclables refers to Recyclables, including Single Stream and segregated cardboard, collected from Residential and Multi-Family Units, Center Street Service Area, City facilities, City-sponsored events, and City-designated public areas. Program Recyclables shall include the following list of materials which may be amended at the City's discretion as markets develop for additional materials: all paper; aseptic cartons; all plastic bottles and containers; rigid bulky plastics; glass food and beverage containers; and aluminum, tin/seal, bimetal food and beverage containers, aluminum foil, and scrap metal. Program Recyclables include incidental amounts of rejects and non-designated materials as can normally be expected as part of municipal recycling collection.

Recyclable Materials or **Recyclables** shall mean those materials that are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste.

Rejects means that portion of the Recyclable Materials stream that does not consist of materials included in the definition of Program Recyclables, also referred to as Contaminates or Contamination.

Residential Collection Service shall mean curbside collection of Solid Waste, Program Recyclables, Yard Waste, and Bulk Waste from Residential Units, and delivery of collected materials to the Designated Facility. Multi-Family Units with adequate curbside access may choose to receive Residential Collection Service and be billed individually as a Residential Unit.

Residential Customers shall mean any person receiving Residential Collection Service.

Residential Unit shall mean single family detached homes, duplexes, and triplexes.

Residue or Residuals means the portion of the Recyclable Materials stream, other than Rejects, accepted by the Franchisee that is not converted to Recovered Materials due to breakage and/or transportation or processing limitations or inefficiencies.

Roll Cart shall mean a wheeled container designed and intended to be used for automated collection of Solid Waste and Program Recyclables, which is a type and size approved by the City.

Roll-Off Container or Roll-Off shall mean a large metal box normally used for C&D debris or other large amounts of Solid Waste, usually of the ten-, twenty-, thirty-, or forty-cubic-yard size which are lifted by mechanical means. These containers may be either open top or closed compaction type.

Service Area shall mean the area within the municipal boundaries of the City of Winter Park, Florida, as may be modified from time to time pursuant to F.S. § Chapter 171.

Single Stream refers to a recycling process that allows for Recyclables to be collected commingled, with containers and paper collected in the same Container.

Sludge shall mean the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar waste disposal appurtenances.

Solid Waste as defined by Section 403.703(13), F.S., as may be amended, to mean Sludge that is not regulated under the federal Clean Water Act or Clean Air Act, as well as Sludge from a waste treatment works, water supply treatment plant, or air pollution control facility; or garbage, rubbish, refuse, Special Wastes, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. For the purposes of this Agreement, Solid Waste shall not include Sludge or Recyclable Materials.

Special Collection Service shall mean any Solid Waste collection services provided to Residential, Multi-Family, and Commercial Customers upon customer request.

Special Wastes shall mean Solid Waste that can require special handling and management, including but not limited to, White Goods, waste tires, used oil, lead acid batteries, C&D debris, ash residue, yard waste, and biological wastes.

Ton means a short ton, 2,000 pounds.

Uncontrollable Force shall mean any event that results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, hurricanes, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, terrorism, sabotage, and governmental actions. Labor disputes, including, without limitation, strikes and slowdowns, are not an Uncontrollable Force.

White Goods shall mean and include discarded air conditioners, heaters, refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances.

Yard Waste shall mean vegetative matter resulting from yard and landscaping maintenance and land clearing operations and includes associated rocks and soils. For the purposes of the City's ordinance, yard waste does not include land clearing operations or associated rocks and soils. Additionally, Yard Waste does not include debris generated by landscapers or lawn maintenance services.

ARTICLE 2. TERM

2.1. Effective and Commencement Dates

The Effective Date is the date the Agreement is executed and has been signed by the City and Franchisee, whichever date is later. The Commencement Date is the date that collection services required by this Agreement shall commence. The Commencement Date shall be October 31, 2016.

2.2. Initial Term

The term of this Agreement shall be for a period of seven (7) years beginning on the Commencement Date, October 31, 2016, and terminating October 29, 2023.

2.3. Renewal Option

At the sole option of the City, this Agreement may be renewed for one (1) additional term of three (3) years under the same terms and conditions as the initial term, including amendments. Franchisee shall be notified no later than one hundred eighty (180) Days prior to the end of the initial term of the City's intent to renew or not renew this Agreement. If renewed, the additional three (3) year term will begin on October 30, 2023, and terminate on October 31, 2026.

ARTICLE 3. COLLECTION SERVICES

3.1. Exclusive Services

Franchisee is herein granted the exclusive right to provide the following collection services in the Service Area:

- a. Residential Collection Service including the collection of Solid Waste, Program Recyclables, and Yard Waste from Residential Units.
- b. Multi-Family Collection Service including the collection of Solid Waste and Program Recyclables from Multi-Family Units.
- c. Commercial Collection Service including the collection of Solid Waste from Commercial Establishments.

3.2. Non-Exclusive Services

- 3.2.1. Franchisee shall provide Special Collection Service to Residential, Multi-Family, and Commercial Customers upon request; however, this service is not exclusive to the Franchisee.
- 3.2.2. Franchisee shall provide collection of Recyclables from Commercial Establishments upon request and as required in this Agreement; however, provision of this service is not exclusive to Franchisee.
- 3.2.3. The Franchisee is not granted the exclusive right to collect Yard Waste from Multi-Family Customers, Commercial Customers, or contractor-generated waste. The Franchisee may provide these services at competitive rates that shall not be controlled by this Agreement.
- 3.2.4. The Franchisee is not granted the exclusive right to collect, haul, and dispose of C&D generated from existing residential single family dwelling units, duplexes, and triplexes. Existing means that the unit has been built at time collection service for C&D is desired.

- 3.2.5. The City reserves the right to exclude the collection of other materials from this Agreement in the future for the purposes of increasing waste diversion.

ARTICLE 4. TITLE TO SOLID WASTE AND RECYCLABLE MATERIALS

After Solid Waste or Program Recyclables have been placed by the customer/generator to be collected by Franchisee, the Franchisee shall hold title and ownership to all such materials. However, the Franchisee shall have no right to take, keep, process, alter, remove or otherwise dispose of any such materials, unless provided for in this Agreement or by prior written agreement of the Contract Manager, except that Franchisee shall have the right and obligation to transport all such materials to the Designated Facility.

ARTICLE 5. TRANSITION OF COLLECTION SERVICES

5.1. Transition Prior to Commencement of Collection Services

Franchisee is responsible for providing a smooth transition in services to minimize inconvenience to customers. To accomplish this objective, Franchisee shall participate in transition meetings as scheduled and conducted by the Contract Manager, to plan and manage the transition process so that no service interruption occurs.

Franchisee shall submit to the Contract Manager, no later than fifteen (15) Days following the Effective Date, a transition plan detailing how the Franchisee will plan and prepare for providing Residential Collection Services, Multi-Family Collection Services, Commercial Collection Services, and Special Collection Services leading up to the Commencement Date. The transition plan must be in Microsoft Excel format, detailed to the task level, and provide a thorough action plan with description by task, responsible party, and due date for each action item.

The transition plan must meet the approval of the Contract Manager. If the Contract Manager does not approve any part of the transition plan, the Franchisee shall provide a revised proposed transition plan within five (5) Days of notification.

At a minimum, Franchisee must address the following categories in the transition plan. This list is not intended to identify all necessary tasks to be performed by the Franchisee, but to provide a springboard for the Franchisee to develop a comprehensive transition plan:

- a) Contact List: List of key transition personnel including, but not limited to, service transition project manager, education and outreach coordinator, and operations director (or similarly titled positions).
- b) Transition Meeting and Call Schedules: Proposed meeting and call schedules to include, but not be limited to, meetings with the Contract Manager, City staff, and outgoing franchisee leading up to the Commencement Date.
- c) Local Office: Schedule for setting up local office, installing local telephone number routed to the local office, and staffing in place to begin receiving calls.
- d) Cart Procurement: Schedule for purchase and manufacturing of Franchisee-provided Roll Carts for Residential Collection Service including artwork approval by City and prototype delivery. The City retains the

right to require acceptable documentation including, but not limited to, purchase orders, delivery schedules, and receipts of payment.

- e) Cart Assembly and Distribution (A&D): Schedule for Roll Cart A&D including cart shipment dates, days and hours of operations, and completion of A&D. An A&D plan should also be included identifying contractor and contact information, staging areas, A&D route schedule, number of crews, expected number of carts delivered per crew per day, method of assigning carts to addresses, data points to be collected at time of A&D, and upload frequency of data into central A&D database.
- f) Cart Swaps: Schedule for Roll Cart swaps including plan for receiving swap requests, initiating exchanges, and maintaining asset management database.
- g) Fleet: Schedule for ensuring that all vehicles are street legal (registered, insured, licensed, and tagged) and providing a vehicle/equipment list and route summary to the Contract Manager. For all new purchases, contractor shall provide a list of vehicles, manufacturer, purchase order, and documentation of anticipated delivery date.
- h) Education and Outreach: Schedule for delivering information brochure to all customers prior to the Commencement Date. Schedule to produce, acquire City approval, print and collate information packet to be attached to Roll Carts during A&D.
- i) Staffing and Training: Schedule for obtaining necessary labor and training staff on equipment and routes.
- j) Commercial Containers: Schedule for purchasing Containers, equipping Containers with Radio Frequency Identification (RFID) tags, and removing/replacing all multi-family and commercial Containers owned by outgoing franchisee. Or, if applicable, plan to purchase current containers from outgoing service provider, paint containers, and equip with RFID tags.
- k) Routing: Schedule for developing waste and recycling routes, identifying obstacles such as low trees and overhead wires, and conducting dry-runs of collection routes.
- l) RFID: Schedule for testing/calibrating truck-mounted RFID readers. Schedule for onsite training for City staff on the use of web-based service verification system by appropriately-trained professional personnel.

5.2. Solid Waste Service Contracts

- 5.2.1. Any and all contracts that provide exclusive Solid Waste collection service, disposal, and/or related Solid Waste services between the previous franchisee, including without limitation Waste Pro of Florida, Inc., and customers within the municipal boundaries of the City, not including non-exclusive services and any indemnification, hold harmless and prior franchisee continuing liability obligations, shall be null and void as of 11:59 p.m. on October 30, 2016.
- 5.2.2. The term of any contract written by the Franchisee for Solid Waste collection service, disposal, and/or related Solid Waste Services, not including non-exclusive services, shall not extend past the term of this Agreement.

5.3. Transition Prior to Expiration of Collection Services

- 5.3.1. Should the City choose not to renew this Agreement or should no renewal options remain, the City anticipates awarding a new agreement at least six (6) months prior to the expiration of this Agreement or any subsequent renewals. In the event a new agreement has not been awarded within such time frame, Franchisee agrees to provide service to the City for an additional ninety (90) Day period beyond the expiration of the Agreement at the then established service rates, provided the City requests said services in writing at such time.
- 5.3.2. At the expiration of this Agreement, Franchisee shall work with the City and the newly selected franchisee to ensure a smooth transition period with no interruption of service, including, but not limited to, attending coordination meetings with the City and newly selected franchisee, coordination and cooperation in removal of Containers, a comprehensive customer list, and providing service information, as requested.
- 5.3.3. Franchisee will coordinate with City to ensure the transmission of a complete and accurate asset management database including all information associated with Roll Cart management.
- 5.3.4. The City reserves the right to withhold payment to Franchisee for the final month of service until Franchisee has complied with all requirements of this Article.

ARTICLE 6. RESIDENTIAL SERVICE

6.1. Service Requests

Residential Customers will initiate and terminate service directly with the City. The City shall promptly notify the Franchisee of all changes in service.

6.2. Residential Collection Service

- 6.2.1. Solid Waste shall be collected twice per week in Franchisee-provided Roll Carts. See Article 9.2 for further details regarding Roll Carts.
- 6.2.2. Residents will be instructed to place all materials inside of Roll Carts. Should a resident place materials outside of the Roll Cart for collection, the Franchisee shall collect the materials outside the Roll Cart and leave a notice instructing the resident that in the future materials left outside of the Roll Cart will not be collected and providing instruction for how to request an additional Roll Cart should the resident require it. After the initial notice has been left, the Franchisee shall leave a non-collection notice on materials left outside of the Roll Cart.
- 6.2.3. Program Recyclables shall be collected once per week in Franchisee-provided Roll Carts in Single Stream. The types of materials included for collection as Program Recyclables may be modified upon mutual agreement between the City and the Franchisee. Such modification shall be at no additional cost to the City or resident unless the Franchisee can document that the addition of such items substantially impacts the cost of providing service.
- 6.2.4. Yard Waste placed curbside by Residential Customers for collection according to the provisions herein shall be collected once per week. Residential Customers are to containerize in Franchisee-provided roll

carts (Franchise-provided Yard Waste are roll carts that are repurposed solid waste carts used during the City's previous franchise), resident-provided cans, plastic or paper bags, bundle, or neatly stack Yard Waste and place it curbside. Yard Waste may not exceed four (4) feet in length or be greater than fifty (50) pounds in weight for any single can, bag, or bundle. Franchisee shall collect all Yard Waste set out for collection that does not require a special vehicle for collection service.

- 6.2.5. Franchisee shall provide collection of all small piles of Bulk Waste not requiring a special vehicle to service twice per week at the same time as Solid Waste collection. In addition, Franchisee shall provide an unlimited collection of Bulk Waste from Residential Customers twice per year at a time agreed upon by the City and Franchisee (typically during the months of May and November) at no cost to the City or customer.

6.3. Side/Backdoor Collection

Franchisee shall, at no additional cost to the Residential Customer or the City, provide side/backdoor collection of Solid Waste, Program Recyclables, and Yard Waste in Roll Carts to Residential Customers who are unable to deliver their Solid Waste or Program Recyclables to the curb. Franchisee shall commence backdoor collection within one (1) week of notification by the City.

6.4. Procedures for Non-Collection

- 6.4.1. In the event that the Solid Waste or Yard Waste placed out for collection does not comply with set out procedures pursuant to this Agreement, Franchisee is not required to collect it. If Franchisee elects to not collect such materials, a non-collection notice shall be placed on the container or non-conforming materials explaining why collection was not made and Franchisee shall notify the Contract Manager pursuant to Article 13.2.
- 6.4.2. In the event that Program Recyclables are contaminated through commingling with materials that are not a Program Recyclable, Franchisee shall collect the Program Recyclables and leave material that is not Program Recyclables in the Recycling Roll Cart along with a non-collection notice explaining why all materials were not collected. However, in the event that the Program Recyclables and materials that are not Program Recyclables are commingled to the extent that they cannot easily be separated by the Franchisee, or the nature of the non-Program Recyclables renders the entire Recycling Roll Cart contaminated, Franchisee shall leave all the materials along with a non-collection notice explaining why collection was not made.
- 6.4.3. In the event that a repurposed Yard Waste roll cart is contaminated through commingling with non-Yard Waste, Franchisee shall collect the Yard Waste and leave material that is not Yard Waste in the roll cart along with a City-provided non-collection notice explaining why all materials were not collected. However, in the event that the Yard Waste and materials that are not Yard Waste cannot be easily separated by Franchisee, or the nature of the non-Yard Waste renders the entire Yard Waste roll cart contaminated, Franchisee shall leave all the materials along with a City-provided non-collection notice explaining why collection was not made. Franchisee shall collect contaminated Yard Waste containers with Solid Waste collection if non-collection notices

have been issued. Should a Residential Customer continue to set out contaminated Yard Waste in the repurposed roll cart, the Franchisee shall remove the Yard Waste roll cart from the customer's residence.

6.4.4. Franchisee shall develop and produce non-collection notices for Solid Waste, Yard Waste, and Program Recyclables collection. The City shall provide the Franchisee a special non-collection notice for repurposed roll carts used for segregated Yard Waste. The design and content of non-collection notice are subject to approval by the City.

6.4.5. As further specified in Article 13.2, Franchisee shall electronically notify the Contract Manager regarding all non-collection events.

6.5. Hours and Holidays

6.5.1. Residential Collection Service shall take place between 7:00 a.m. and 7:00 p.m. Monday through Friday, unless prior approval by the Contract Manager is obtained. There shall be absolutely no Residential Collection Service on Saturdays or Sundays, unless prior approval is given by the Contract Manager.

6.5.2. Residential Collection Service is not required on Days in which the Designated Facility is closed for a Holiday.

6.5.3. No makeup collection is required for Solid Waste but missed Recyclables and Yard Waste must be collected on the next Day. The Franchisee may provide makeup collection services for Recyclables and Yard Waste on the Saturday following each of the three Holidays. No other Saturday collection is permissible. All holiday makeup collection schedules must have prior approval by the Contract Manager.

ARTICLE 7. MULTI-FAMILY SERVICE

7.1. Service Requests

Multi-Family Customers will initiate, change, and terminate services directly with the City. The City will electronically transmit initiated, terminated, or changed service requests to the Franchisee on a daily basis. Collection service shall start, terminate, or change on the next scheduled collection day from the date requested by the Multi-Family Customer.

7.2. Multi-Family Collection Service

7.2.1. The Franchisee shall collect Solid Waste from Multi-Family Units at least once per week. Franchisee shall provide Containers for the accumulation of Solid Waste. The number and size of Containers shall be mutually agreed upon by the customer and Franchisee. The City retains the right to determine the appropriate number and size of Containers.

7.2.2. The Franchisee shall collect Program Recyclables from Multi-Family Units at least once per week. Franchisee shall provide Containers for the accumulation of Program Recyclables. The number and size of Containers shall be mutually agreed upon by the customer and the Franchisee. The City retains the right to determine the appropriate number and size of Containers.

- 7.2.3. Franchisee shall provide an unlimited collection of Bulk Waste from Residential Customers twice per year at a time agreed upon by the City and Franchisee (typically during the months of May and November) at no cost to the City or customer.

7.3. Hours and Holidays

- 7.3.1. Multi-Family Collection Service shall take place between 7:00 a.m. and 7:00 p.m. Monday through Friday. Any variation must have prior approval by the Contract Manager.
- 7.3.2. Franchisee shall not be required to provide Multi-Family Collection Service on a Holiday.

ARTICLE 8. COMMERCIAL COLLECTION SERVICE

8.1. Service Requests

- 8.1.1. Commercial Customers will initiate, change, and terminate service directly with City, excluding Roll-Off services. The City will electronically transmit initiated, terminated, or changed service requests to the Franchisee on a daily basis. Collection service shall start, terminate, or change on the next scheduled collection day from the date requested by the customer.
- 8.1.2. Commercial Customers utilizing Roll-Offs will initiate, terminate, or change level of service directly with the Franchisee.

8.2. Commercial Collection Service

- 8.2.1. Collection of Solid Waste shall be provided at least once per week, unless otherwise approved by the City. Collection shall be provided frequently enough to prevent the creation of a public nuisance or a threat to the public health, safety, or welfare. If necessary, the Contract Manager or their designee shall assist Franchisee and customer in confirming that the size of the collection Container and frequency of collection are sufficient to ensure that Solid Waste is not routinely placed or stored outside of the collection Container.
- 8.2.2. Collection Containers shall be placed at locations that are mutually acceptable to Franchisee and Commercial Customer, and in compliance with Code. If a dispute should arise between a Commercial Customer and Franchisee regarding the location of a Container, the Contract Manager shall designate the location.

8.3. Center Street Service

- 8.3.1. The City shall designate the size, quantity, type, and location of all shared Containers for Solid Waste and Recyclables in the Center Street Service Area.
- 8.3.2. No other Commercial Collection Service is allowed in the Center Street Service Area without the written approval of the Contract Manager.
- 8.3.3. All Recyclables collected from City-designated shared Containers shall be considered Program Recyclables.
- 8.3.4. Franchisee shall provide daily valet service to collect cardboard from Commercial Establishments and residences that set cardboard out at

their back door. Franchisee shall collect properly prepared and set out cardboard once per day Monday through Saturday. Saturday collection shall be scheduled to facilitate the completion of the valet service prior to 12:00 p.m. The City shall pay the Franchisee the per cubic yard rate for loose commercial Recyclables as identified in Exhibit A. The daily valet service shall be provided only with the coordination of and at the direction of the Contract Manager.

- 8.3.5. The City retains the right to designate other areas within the City, similar to Center Street Service Area, for shared Container program(s).

8.4. Commercial Recycling

- 8.4.1. Franchisee shall encourage all persons utilizing a Commercial Establishment to recycle and shall provide for collection of Recyclables. The types of Recyclables collected from Commercial Customers shall, at a minimum, include those materials collected as Program Recyclables.
- 8.4.2. Frequency of collection for Recyclables may be provided as agreed upon by the Commercial Customer and Franchisee.
- 8.4.3. The rate charged by Franchisee for collection of commercial Recyclables shall be less than the collection rate charged for servicing a Solid Waste Container of equal size and frequency.

8.5. Hours and Holidays

- 8.5.1. Commercial Collection Service shall take place between 6:00 a.m. and 6:00 p.m. Monday through Sunday. Any variation must have prior Contract Manager approval.
- 8.5.2. Franchisee shall not be required to provide Commercial Collection Service on Holidays.

ARTICLE 9. CONTAINERS

9.1. Customer-Provided Containers

Franchisee shall replace personal containers used for Yard Waste of a Residential Customer within three (3) business days after being notified by a customer or the City that Franchisee or its employees damaged the customer's container. Franchisee shall provide a replacement container (as applicable) that is similar in style, material, quality, and capacity to the customer's original container. Franchisee is not responsible for a replacement container if it can satisfactorily prove to the Contract Manager that Franchisee or its employees did not damage the customer's container.

9.2. Residential Roll Carts

- 9.2.1. Prior to the Commencement Date, in accordance with transition plan specified in Article 5, Franchisee shall deliver Solid Waste and Recyclables Roll Carts for all Residential Customers within the Service Area. Following the Commencement Date Franchisee shall deliver Solid Waste and Recyclable Roll Carts within three (3) business days of notification of a new Residential Customer. Roll Carts must meet the technical specifications provided in Exhibit 6. Roll carts shall be delivered with information attached pursuant to Article 14.1.

- 9.2.2. Ownership of Roll Carts provided for Residential Collection Service shall rest with Franchisee until expiration or termination of this Agreement, at which point ownership and warranty transfer shall rest with the City. Should the Agreement be terminated early for convenience, the City shall pay the Franchisee a prorated amount for the purchase price of the Roll Carts based on the initial term of the Agreement.
- 9.2.3. The standard program-size Roll Carts include a ninety-five (95) gallon cart, or similar size, for Solid Waste and a sixty-five (65) gallon cart, or similar size, for Program Recyclables issued to each Residential Customer. However, ≈ 95 -, ≈ 65 -, and ≈ 35 -gallon Solid Waste and Recycling Roll Cart sizes will be made available for customers that request alternative sizes.
- 9.2.4. Franchisee shall exchange a Residential Customer's Roll Cart with an alternatively-sized Roll Cart. Franchisee shall provide one (1) Roll Cart exchange for Solid Waste and one (1) Roll Cart exchange for Recyclables per customer at no charge to the customer or the City. Should a Residential Customer request additional exchanges, Franchisee may charge the Residential Customer no more than thirty-five dollars (\$35) per Roll Cart that is exchanged. Franchisee shall track and report exchanges as specified in Article 13.2.
- 9.2.5. If a customer generates large quantities of Solid Waste, the customer may request up to one (1) additional Roll Cart to accommodate the extra materials. The City will request the Franchisee to deliver additional Roll Carts at no charge to the Residential Customer or the City.
- 9.2.6. If a customer generates large quantities of Program Recyclables, the customer may request an additional Roll Cart to accommodate the extra materials. The City will request the Franchisee to deliver additional Roll Carts at no charge to the Residential Customer or the City.
- 9.2.7. Franchisee shall repair or replace a Roll Cart within three (3) business days of receiving notice from the City or customer of the need for repair, or if identified unserviceable by Franchisee.
- 9.2.8. Roll Carts shall be delivered to customers within three (3) business days from the date of request.
- 9.2.9. Franchisee shall make every reasonable effort to track and locate all Roll Carts reported by a Residential Customer as stolen, lost, or missing. If a Roll Cart is unable to be located after sixty (60) Days from the date a claim was made, the City will reimburse the Franchisee for the lost, stolen, or missing cart. Franchisee must provide the Contract Manager a recent Roll Cart invoice showing the price paid for a replacement Roll Cart.
- 9.2.10. If the Franchisee can prove that a damaged Roll Cart is the fault of the customer, the City will reimburse the Franchisee for the damaged Roll Cart. Franchisee must provide the Contract Manager a recent Roll Cart invoice showing the price paid for a replacement Roll Cart.
- 9.2.11. The City will inform residents of options for repurposing or recycling their recycling bins. Recycling options will include placing bins curbside during first month of carted collection service. If placed curbside, Franchisee shall collect and recycle the recycling bins.

- 9.2.12. Franchisee shall provide one (1) repurposed solid waste roll cart from the City's previous franchise to Residential Customers, upon request, for segregated Yard Waste. Ownership of the repurposed Yard Waste roll carts shall rest with the Franchisee. The Contract Manager shall provide a sticker identifying that the repurposed roll cart is for segregated Yard Waste only. Franchisee shall only provide repurposed roll carts to Residential Customers based on Franchise's existing inventory. At no time shall the Franchisee be required to purchase Roll Carts for Yard Waste collection.

9.3. Multi-Family and Commercial Containers

- 9.3.1. Franchisee shall purchase, equip, and maintain Ultra High Frequency (UHF) RFID tags on all commercial Containers serviced, with the exception of Compactors and Roll-Offs. However, receiving containers used with vertical compactors in the Center Street Service Area are required to have RFID tags. Technical specifications for the required RFID tags are provided in Exhibit 7. Roll Cart RFID tags shall meet the technical specifications as described in Exhibit 6.
- 9.3.2. Prior to the Commencement Date and in accordance with transition plan specified in Article 5, Franchisee shall provide appropriate Solid Waste and Recyclables Containers, as required to service Multi-Family and Commercial Customers.
- 9.3.3. All Containers shall be painted (with the exception of Roll Carts) and have the Franchisee's name and phone number clearly displayed. No advertising shall be posted on Containers.
- 9.3.4. Roll Carts used for Multi-Family and Commercial Collection Service shall meet the specifications in Exhibit 6, with the exception of markings and warranty transfer. Roll Carts used for Multi-Family and Commercial Collection Service shall have the Franchisee's name displayed on the outside of the Roll Cart and remain the property of the Franchisee at the expiration or termination of this Agreement.
- 9.3.5. Containers shall be maintained in accordance with general industry standards, which include being rust-free, having drain plugs installed to retain storm water and prevent leaching, having properly fitting lids that close tightly, and are in proper, safe, working condition.
- 9.3.6. Maintenance of all Containers is the sole responsibility of the Franchisee. RFID technology maintenance shall be considered part of Container maintenance. The Franchisee shall repair or replace any Container in need of such repair or replacement within three (3) business days of notification. All repair or replacement costs shall be borne by the Franchisee.
- 9.3.7. Franchisee shall maintain Containers so they are clean and free from offensive odors. Containers (with the exception of Roll Carts) shall also be painted on a regular basis to maintain an acceptable appearance. Upon request, Franchisee shall deodorize, wash-out, paint, or switch out Containers as needed.
- 9.3.8. Any Container not conforming to the requirements in this Article 9.3, as determined by the Contract Manager, shall be replaced within three (3) business days.

- 9.3.9. Franchisee shall provide Containers to new Multi-Family and Commercial Customers within two (2) business days of request, or as agreed upon by the customer.

ARTICLE 10. ADDITIONAL COLLECTION SERVICES

10.1. Special Collection Service

- 10.1.1. Franchisee shall provide Special Collection Services to Residential, Multi-Family, and Commercial Customers upon request.
- 10.1.2. Special Collection Services shall be provided according to the pricing schedule in Exhibit 3. Prices for Special Collection Services are approved by the City and may be periodically adjusted, but are not subject to the annual service fee adjustment.
- 10.1.3. All requests for Special Collection Services shall initiate with the City. The Franchisee shall provide the City access to an electronically transmitted or web-based work order system that will track the status of all Special Collection Service requests including customer request for collection, request for quote, Franchisee quote, customer acceptance of price, completion of work, and any other pertinent information. Items requested for Special Collection Service shall not be collected by the Franchisee unless the price has been accepted by the customer.

10.2. Household Hazardous Waste and E-Waste Collection

Franchisee shall provide one (1) HHW and E-Waste collection event for residents within the Service Area per Agreement year. Event dates, hours, and location are subject to approval by the City; however, collection events are typically a single Day event on a weekend scheduled from 9:00 a.m. to 3:00 p.m. Franchisee shall be responsible to provide sufficient, qualified, and trained staff to accept and properly manage materials delivered including, as required, pallets, shrink wrap, fork-lift, gaylord boxes, containers, transport truck and any other equipment needed. Franchisee personnel shall receive residential household HHW and E-Waste from residents, properly containerize it, load it, and deliver it to the Designated Facility. Franchisee shall screen residents at the HHW and E-Waste collection event to reasonably assure that only residential household waste from City residents is received. Properly prepared HHW and E-Waste will be received at the Designated Facility at no cost to Franchisee.

Upon request of the City, Franchisee shall provide one (1) additional HHW and E-Waste collection event within the Service Area per Agreement year, as described above, for the fee provided in Exhibit 1.

10.3. City Facilities

Franchisee shall, at no cost to the City, provide collection services at all City facilities and designated bus shelter locations. Collection services shall include collecting and delivering materials to the appropriate Designated Facility, as well as providing and maintaining Containers, if required by the City. The bus shelter location containers will be provided by the City but the Franchisee shall provide plastic liners. Franchisee shall service all Solid Waste and Recyclables containers on Park Avenue prior to 7:00 a.m. The City reserves the right to modify these services, within reason, throughout the duration of this Agreement as necessary. The Franchisee agrees to provide reasonable modified services at no cost.

10.4. City-Sponsored Events

Contractor shall provide temporary Containers and/or collection service for the following City-sponsored events at no cost to the City: Taste of Winter Park, winter holiday events, Winter Park Sidewalk Art Festival, Autumn Art Festival, July 4th Celebration, Dinner on the Avenue, and downtown road races (4 per year).

10.5. Dead Animals

Franchisee shall collect dead animals from City right of ways within twenty-four (24) hours of notice.

ARTICLE 11. DESIGNATED FACILITIES

11.1. Disposal

11.1.1. Franchisee shall deliver all Solid Waste collected pursuant to the Agreement to a facility designated by the City, unless otherwise approved by the Contract Manager in writing. The Designated Facilities are specified below.

a. Solid Waste

Seminole County Central Transfer Station
1950 State Road 419, Longwood, FL 32750

b. Yard Waste

Seminole County Central Transfer Station
1950 State Road 419, Longwood, FL 32750

c. C&D

Franchisee may deliver C&D to any legally permitted facility to receive such materials. Franchisee is encouraged to deliver C&D to a facility that recycles C&D.

11.1.2. The City reserves the right to change a Designated Facility during the term of the Agreement. Should the City change a Designated Facility, collection fees may be adjusted according to the average change in distance driven by the Franchisee. Supporting information justifying the need for an adjustment will be required.

11.2. Processing

11.2.1. All Recyclables must be processed and/or disposed at a legally permitted and licensed facility to process such materials. The Franchisee shall not dispose of or landfill any Recyclables or deliver such Recyclables to another agent that landfills or disposes of material other than through recycling without prior approval by the City.

11.2.2. Franchisee shall be responsible for the transport, processing, and marketing of Recyclables collected pursuant to this Agreement in accordance with all Applicable Law.

11.2.3. Franchisee shall deliver the City's Program Recyclables to the Waste Management Inc. of Florida – Recycle America (Waste Management) MRF in Orange County at no charge to the City. Should Waste Management begin charging a tip fee for Recyclable Materials, the City shall be responsible to pay the tip fee.

- 11.2.4. Should the Contract Manager request the Franchisee to identify an alternative processing location, upon identification of a mutually acceptable facility the City and the Franchisee shall negotiate a reasonable processing payment based on market prices that shall not to exceed the processing payment in Exhibit 8.
- 11.2.5. The City reserves the right to amend this clause and designate a facility for the processing and marketing of Program Recyclables. Should the City designate a facility for the processing of Program Recyclables, the City shall no longer be responsible for making payments pursuant to Article 11.2.3 and Exhibit 8 herein and shall be responsible for any associated processing and marketing fees. Should the Designated Facility change, collection rates may be adjusted to take into account the change in location if Franchisee submits adequate documentation that its costs have increased and the City approves such increase.

ARTICLE 12. GENERAL SERVICE REQUIREMENTS

12.1. Restrictions on Collection of Mixed Loads

- 12.1.1. Franchisee shall collect materials generated within the City Service Area separate from materials generated outside of the City Service Area.
- 12.1.2. Franchisee shall collect Solid Waste, Yard Waste, and Recyclables separate from each other, and shall not combine loads of different material types. Franchisee shall be responsible for all disposal costs associated with loads of mixed materials.
- 12.1.3. Franchisee shall collect Solid Waste and Yard Waste generated by Residential Customers separate from Solid Waste and Yard Waste generated by Multi-Family and Commercial Customers, unless otherwise approved by the City. If it is operationally more efficient, the Franchisee may choose to include the collection of Multi-Family and Commercial Solid Waste collected in Roll Carts with Residential Solid Waste collected in Roll Carts. If Multi-Family and Commercial Solid Waste collected in Roll Carts is combined with Residential Solid Waste collected in Roll Carts, the Residential Solid Waste tonnage report must note the additional sources of Solid Waste.
- 12.1.4. Franchisee shall collect Program Recyclables separate from Recyclables from Commercial Customers. Any Recyclables from Commercial Customers that are commingled with Program Recyclables shall be considered Program Recyclables.

12.2. Future Recycling Initiatives

To further the City's sustainability goal the City may expand future recycling initiatives, such as residential, multi-family and commercial food waste collection programs. Nothing in this Agreement shall preclude the City from allowing a Commercial Establishment or resident to source separate and provide for the transport of food waste or recyclable material outside of this Agreement for the purpose of diverting it from disposal.

12.3. Routes and Schedules

- 12.3.1. Franchisee shall not change the scheduled collection days until Franchisee receives the Contract Manager's prior written authorization.

The Contract Manager's approval of such changes shall not be unreasonably withheld. In the event that the Contract Manager authorizes a change in schedule that alters the collection day for any Residential Customer, Franchisee shall, at its expense, notify each affected Residential Customer by mail or other manner approved by the Contract Manager not less than one (1) week prior to the change.

12.3.2. Franchisee shall provide routes and map information in GIS-compatible format to the Contract Manager at least thirty (30) Days prior to the Commencement Date. All updates during the term of this Agreement shall be provided in a GIS-compatible format prior to implementation.

12.3.3. In those instances where a public or private street is temporarily closed to vehicular traffic, Franchisee shall return within twenty-four (24) hours of the normal collection schedule for that street to service customers located on the street. If at that time the street is still temporarily closed, Franchisee shall notify the City immediately and work with the City to determine appropriate service alternatives.

12.4. Manner of Collection

12.4.1. All containers and Roll Carts shall be completely emptied and placed back in an upright position at the point where collected. Containers with an unattached lid shall be completely emptied and placed back in an upright or inverted position with the lid set on top, or placed beside the container. Roll Carts shall be placed with the lid in the closed position.

12.4.2. Franchisee shall provide all collection services with as little noise and disturbance as possible.

12.4.3. No trespassing by Franchisee's employees will be permitted. Franchisee's employees are permitted access to residential property when providing approved side/backdoor collection service.

12.4.4. No Franchisee employee shall remove or tamper with any property not placed for collection.

12.4.5. All collection vehicles shall remain on the right-hand side of the road when providing Residential Collection Service and at no time shall collection crews cross to the left-hand side of the road to retrieve containers, Roll Carts, or materials that have been set out for collection. In situations where it is impossible or difficult to turn around to serve a location from the right side of the vehicle, then left side service is permitted, but only in a manner that ensures the safety of residents and collection workers. At no time shall collection workers use the riding steps when the vehicle is backing up, exceeding 10 miles per hour, or traveling more than 0.2 miles.

12.4.6. Franchisee's vehicles shall not unduly interfere with vehicular or pedestrian traffic. Vehicles shall not be left on the street unattended.

12.5. Protection of Private and Public Property

12.5.1. Franchisee acknowledges that collection points on right of ways are frequently co-located with other utility easements. Therefore, particular attention shall be given to the location of water meters, transformers, guy wires, utility poles, and irrigation structures. Authorization to use

the easement does not abrogate Franchisee's responsibility to exercise caution in relationship to the property of other authorized users.

12.5.2. Franchisee shall take care to prevent damage to all public and private property while conducting services pursuant to this Agreement, including, but not limited to, buildings, monuments, markers or fences, vehicles, pipes and underground structures, storm water inlet covers, gutters, curbs, public streets, trees and tree canopies, flowers, shrubs, and other plantings. The City acknowledges this does not preclude normal wear and tear of streets resulting from normal use by Franchisee.

12.5.3. Franchisee shall immediately notify the Contract Manager of any personal injury or damage to public or private property caused by Franchisee during the provision of collection services. Wherever such property is damaged due to the activities of Franchisee, it shall be restored to its original condition by Franchisee at Franchisee's expense. If any damage caused by the Franchisee impacts the safety, health, or welfare of the City's citizens and the Franchisee fails to restore such property or make good such damage or injury with a sense of urgency, the City may, upon twenty-four (24) hours written notice to the Franchisee, proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary and to bill the cost to the Franchisee. The repairs will be arranged by the City and billed to the Franchisee based on the actual cost incurred to repair the said damages, plus ten percent (10%) to account for the City's administrative costs. In addition, if on City property, Franchisee shall submit an accident/investigation report within forty-eight (48) hours to Contract Manager.

12.6. Spillage and Littering

12.6.1. Franchisee shall not litter or cause any spillage to occur upon the premises or the right of way wherein the collection and transport of materials shall occur. During transportation, all collected materials shall be contained, tied, or enclosed to prevent leaking, spilling and blowing.

12.6.2. In the event of any confirmed spillage/leakage/blowing from a Franchisee's vehicle, Franchisee shall promptly, at least within twenty-four (24) hours, clean up all spillage/leakage/blowing at no cost to the City. Franchisee is responsible to clean such spills, leaks, or blown materials to the satisfaction of the Contract Manager up to, and including, resealing or resurfacing depending on the severity of the damage. If Franchisee can satisfactorily prove to the Contract Manager that the responsibility for the spillage/leakage/blowing belongs to a third party, then Franchisee will not be responsible for the cleanup.

12.7. Collection Plan

Franchisee shall maintain a collection plan, initially developed during the transition prior to Commencement Date, describing in detail how Franchisee will provide collection services in compliance with the requirements in the Agreement. Any change to the collection plan shall be submitted to the Contract Manager for approval.

12.8. Permits and Licenses

Franchisee shall obtain, at its own expense, all permits and licenses required by Applicable Law and maintain same in full force and effect. Any revocation of Franchisee's licenses or permits shall be reported to the Contract Manager within three (3) business days.

12.9. Relationship with the City

Franchisee shall cooperate with the City in every reasonable way to facilitate the successful completion of the activities contemplated in this Agreement. Franchisee shall assign a qualified person or persons as a point of contact to be in charge of Franchisee's operations within the City. The City shall have direct access to Franchisee's point of contact as designated by Franchisee. The City's point of contact shall be the Contract Manager. Alternates may be designated by either party upon written notification.

12.10. Personnel

- 12.10.1. Within three (3) business days following the Effective Date, Franchisee shall provide the Contract Manager with a written list containing the names, addresses, emails, and telephone numbers of Franchisee's operations manager and other key personnel, and the telephone numbers that are to be used to contact Franchisee in the event of an emergency.
- 12.10.2. Franchisee shall use competent, qualified, sober, drug-free personnel to provide collection services pursuant to this Agreement. Employees shall adhere to a no smoking policy while performing services for the City. Franchisee shall only utilize personnel in providing services pursuant to this Agreement that have passed criminal background checks. Franchisee shall devote sufficient personnel, time, and attention to its operations under this Agreement to ensure that its performance will be satisfactory to the City.
- 12.10.3. Franchisee shall furnish each employee with an appropriate means of identifying him or her as an employee of Franchisee. At a minimum each Franchisee employee shall have a uniform with a nametag and company logo. Franchisee's employees shall wear the uniform and identification at all times while on duty.
- 12.10.4. All of Franchisee's personnel shall maintain a courteous and respectful attitude at all times. Franchisee shall instruct its employees to avoid loud or profane language at all times during the performance of their duties under this Agreement. Franchisee's employees shall not conduct themselves in a negligent, disorderly, or dishonest manner.
- 12.10.5. Franchisee shall comply with all Applicable Law relating to wages, hours, overtime, disability, and all other matters relating to the employment and protection of employees, now or hereafter in effect.
- 12.10.6. The City reserves the right to disapprove and request removal of any Franchisee personnel assigned to the City's work. Such disapproval or request shall be for reasonable cause only and shall be addressed in writing to Franchisee. Notwithstanding the foregoing, Franchisee shall not be required to take any action with regard to Franchisee's personnel that would violate any Applicable Law.

12.11. Employee Training and Licenses

- 12.11.1. All of Franchisee's employees shall be qualified and appropriately trained for the tasks assigned to them. Franchisee shall provide refresher courses and additional training to its employees, as needed, to ensure compliance with the requirements of this Agreement and all Applicable Law. The City has the right to review Franchisee's training records.
- 12.11.2. At all times when operating vehicles or equipment pursuant to this Agreement, Franchisee's employees shall carry a valid Florida driver's license for the type of vehicle or equipment being operated.

12.12. Office Requirements

- 12.12.1. Franchisee shall maintain a local office within a two-hour drive time from City Hall that is accessible to customers from 8:00 a.m. to 5:00 p.m., Monday through Friday, except Holidays.
- 12.12.2. Franchisee's local office shall be equipped with adequate and appropriate personnel and equipment to receive, document, and respond to inquiries, issues, and complaints in a timely manner (not longer than twenty-four (24) hours). Franchisee's office staff shall be familiar with the City and Franchisee's obligations under this Agreement.
- 12.12.3. Franchisee shall maintain a local telephone number routed to the local office where service inquiries and complaints can be received by Franchisee. Franchisee shall use either a telephone answering service or answering machine to receive service inquiries and complaints during those times when the office is closed. Messages shall be answered no later than noon the following business day. Should the answering service or answering machine be used during office hours, such as during lunch time or when all telephone lines are full, these services must be monitored regularly, so that Franchisee can respond to the message within sixty (60) minutes.
- 12.12.4. Franchisee shall establish a process, subject to the Contract Manager's approval, for receiving and handling emergency calls, both during and after normal operating hours.

12.13. Customer Service Standards

- 12.13.1. Franchisee shall be responsible for providing the highest quality service to all customers under the provisions of this Agreement.
- 12.13.2. Franchisee shall designate Route Managers to ride behind all routes in order to pick up misses or late set outs.
- 12.13.3. Franchisee shall keep a written record of all calls it receives regarding the Franchisee's service under this Agreement including, but not limited to, inquiries, missed pickups, and complaints. Franchisee shall use a standard form to record the pertinent facts regarding each call, how it was responded to, and resolution, if required. The form shall identify source of the call (customer name, customer type – residential, multi-family, or commercial, account number, and contact information), the time and date when a call was received, when Franchisee responded to the call, and the date and time when any issue was resolved. Franchisee's records and forms shall be kept up to date and a record of all calls shall be submitted daily as outlined in Article 13.2, unless

otherwise directed by the Contract Manager. In addition, Franchisee's records and forms shall be maintained throughout the term of this Agreement. The call log shall be maintained at Franchisee's office in Orange or Seminole County and shall be electronically transmittable upon request.

- 12.13.4. Franchisee shall resolve all complaints as expeditiously as possible and shall take whatever steps are necessary to remedy the cause of a complaint within twenty-four (24) hours after receiving notification.
- 12.13.5. If the City receives a complaint regarding Franchisee's service under this Agreement, the complaint shall be immediately forwarded to Franchisee by telephone or electronic communication. Within twenty-four (24) hours of receipt the Franchisee shall notify the City by telephone or electronic communication of the action taken to resolve the complaint.
- 12.13.6. If the City or customer notifies Franchisee of a missed collection before 12:00 p.m. Monday through Friday, Franchisee shall return to the customer's premises before 6:00 p.m. the same Day of the notification and collect all of the Solid Waste or Recyclables that have been set out for collection. If Franchisee is notified after 12:00 p.m. Monday through Friday of a missed collection, collection shall be made by 12:00 p.m. the next Day following notification. Notifications received Friday after 12:00 p.m. Friday through Sunday shall be corrected before 12:00 p.m. on Monday.
- 12.13.7. Franchisee shall notify the Contract Manager regarding any issues that have not been resolved within twenty-four (24) hours after receiving notification. Franchisee may request, and the Contract Manager may grant, additional time to remedy a complaint when necessary. If a dispute is not resolved to a customer's satisfaction, the City shall have the authority to determine how the dispute will be resolved.

12.14. Vehicle and Collection Equipment

- 12.14.1. Franchisee shall maintain a dedicated frontline fleet of collection vehicles designated for the City of Winter Park to fulfill this Agreement. No single frontline or spare vehicle shall exceed the maximum age of ten (10) years. The City reserves the right, at its discretion, to require a vehicle be taken out of service for habitual maintenance issues.
- 12.14.2. Franchisee shall provide the Contract Manager with a list of vehicles and other collection equipment that will be used by the Franchisee to provide services under this Agreement as required in Article 5.1. This list shall identify the use of each vehicle (e.g., garbage or recycling collection, residential or commercial collection, etc.), make and model, license tag number, and age for each vehicle. Franchisee shall revise and resubmit the list to the Contract Manager during the term of this Agreement if there are any changes to the list of vehicles or other collection equipment. The requirements of this paragraph do not apply to: (a) vehicles and other collection equipment used in the City for thirty (30) Days or less; or (b) bona fide demonstration trucks and other collection equipment.
- 12.14.3. Franchisee shall purchase and/or lease, maintain, and repair all of the vehicles and equipment necessary to comply with the requirements of

- this Agreement. Franchisee's vehicles and equipment shall be compatible (in size and weight) with, and appropriate for, the areas where such vehicles and equipment are utilized.
- 12.14.4. All of Franchisee's collection vehicles shall have waterproof seals and shall be watertight to a depth sufficient to prevent the discharge or leaking of liquids that have accumulated in the vehicle's cargo area during loading and transport operations.
- 12.14.5. Franchisee shall monitor, maintain and repair its collection vehicles and equipment, at a minimum, in compliance with the manufacturer's recommendations and Applicable Law. Oil/hydraulic systems and waterproof seals/enclosures shall be kept in good condition at all times to prevent spills and leaks.
- 12.14.6. All collection vehicles shall be painted a uniform color.
- 12.14.7. The City reserves the right to conduct periodic inspections of operations, vehicles, and equipment to ensure compliance with Applicable Law, as well as requirements of this Agreement.
- 12.14.8. All vehicles used to provide collection service under this Agreement shall be equipped at all times with: (a) all safety supplies, equipment, and first aid supplies required by Applicable Laws; (b) a fire extinguisher; (c) a heavy-duty broom, a rake, and a large dustpan; (d) a spill response kit; (e) an audible back-up warning device; and (f) back-up cameras. The spill response kit shall be suitable and adequate for cleaning up any leaks or spills of oil, hydraulic fluid, or other liquids from Franchisee's collection vehicles.
- 12.14.9. Franchisee shall have sufficient reserve vehicles and equipment available to complete daily routes. The use of reserve vehicles and equipment shall include, but not be limited to, occasions when frontline vehicles and equipment are out of service, or when unanticipated delays will prevent frontline vehicles and equipment from completing the collection route(s) within the established hours of collection.
- 12.14.10. The reserve vehicles and equipment shall be in service within two (2) hours of any breakdown or delay of the frontline collection vehicle. The reserve vehicles and equipment shall be similar in size and capacity to the vehicles and equipment being replaced.
- 12.14.11. Franchisee shall keep all collection vehicles and equipment cleaned. All collection vehicles used for the collection of Solid Waste shall be washed thoroughly and sanitized with a suitable disinfectant and deodorant at least once each week, unless the Contract Manager approves an alternate cleaning schedule. Other collection vehicles shall be cleaned and washed, as necessary, to minimize the potential for odors and nuisance conditions.
- 12.14.12. Franchisee's vehicles shall clearly display Franchisee's logo, name, and telephone number printed in letters not less than four inches (4") on each side of the vehicle.
- 12.14.13. Franchisee vehicles shall be numbered with numbers not less than four inches (4") high on each side of the vehicle. Franchisee shall keep a record of the vehicle to which each number is assigned.

12.14.14. Franchisee shall display the City theme and logo on the sides and rear of every frontline vehicle used to collect Solid Waste or Program Recyclables pursuant to this Agreement. The signs shall be appropriately sized, as mutually agreed. The City will provide the approved artwork for the Franchisee's vehicles.

12.15. Service Verification System

12.15.1. Franchisee shall provide, populate, and maintain a web-based service verification system to which the City has access. Service verification software shall be capable of providing reports online that can be downloaded in PDF and Excel formats. Franchisee is responsible for all associated costs and maintenance. The service verification system must be operational and accessible no later than by the Commencement Date.

12.15.2. Service verification system shall be capable of providing map-based location visibility of frontline and reserve collection vehicles. Service verification system shall be capable of providing location-based Container collection service and be able to generate reports as needed based on Container collection service activity, including, but not limited to, collection and non-collection events and set-out data. Variables and fields used to supply and manage this information shall include, but not be limited to:

- a. Roll Cart or Container type (garbage or recycling)
- b. Generator type (residential, multi-family, or commercial)
- c. Customer name/ID and address
- d. Collection event date, time, and latitude/longitude coordinates
- e. RFID tag number
- f. Serial number
- g. Cart/Container size
- h. Route and truck information

12.15.3. Service verification system shall include an asset management database through which Franchisee shall be responsible for reporting and tracking the movement of all Roll Carts used for Residential Collection Service, including deliveries, removals, exchanges, repairs, warranty recovery, and any other information necessary to manage cart assets, subject to City approval. The initial database must be populated and uploaded into the web-based Service Verification Database no later than seven (7) Days following the Commencement Date. All database adjustments must be made within forty-eight (48) hours of physical inventory exchange and completion of work order. The service verification system shall be able to generate reports as needed on residential Roll Cart activity including maintenance and inventory reports. If a cart is swapped out, data for the cart removed and the cart replaced is to be provided. Data fields shall include, but not be limited to:

- a. Work order number, date, and status
- b. Roll Cart type (garbage or recycling)
- c. Residential Customer name/ID and address

- d. RFID tag numbers
- e. Serial number
- f. Cart size
- g. Recovery and delivery latitude/longitude coordinates
- h. Route information

12.15.4. Franchisee shall provide necessary access to the City of the Franchisee's web-based service verification and asset management system and work with the City to develop regular reports.

ARTICLE 13. RECORD KEEPING AND REPORTING

13.1. Record Keeping

Franchisee shall maintain books, records, documents, time and cost accounts, and other evidence directly related to its provision or performance of services under this Agreement. All time-records and cost data shall be maintained in accordance with generally accepted accounting principles.

Franchisee shall maintain and allow access to the records required under this section for a minimum period of five (5) years after the completion of the provision or performance services under this Agreement and date of final payment for said services, or date of termination of this Agreement.

13.2. Reporting

13.2.1. Franchisee shall provide the City with complete visibility of daily collection service operations through the use of a web-based RFID tracking software system. The software shall have the ability to generate reports based on Container activity such as inventory reports, maintenance reports, set out rates, non-collection events, and any others requested by the City. Reports should be able to be viewed in Adobe PDF format or downloadable in Microsoft Excel format. The system shall also have the following capabilities and/or requirements:

- a. Visibility of every collection event by customer, truck, route, Container, location, date, and time.
- b. Visibility of Containers serviced by associated customer/address, serial number (for Roll carts), GPS location of service, date and time of collection event.
- c. The system shall be free of any requirements for the City to install and support any back office software for the collection and delivery of collection data.
- d. The system provider shall provide onsite training as part of the transition (Article 5.1.)

13.2.2. Daily Report: Franchisee shall electronically submit a daily report, by 11:00 a.m. each day, to the Contract Manager, in a format pre-approved by the Contract Manager, containing the following information for the previous day:

- a. Weight ticket information for all Solid Waste delivered to the Designated Facility on behalf of the City including daily tonnage by material type and individual load tonnage by route type.
 - b. Weight ticket information for all Program Recyclables collected and delivered to the Designated Facility by the Franchisee.
 - c. Call log for all calls received (cumulative for the current month) as specified in Article 12.13.
 - d. Non-collection as specified in Article 6.4.
 - e. Incidences of personal injury or property damage, including vehicular damage, to public or private property by Franchisee as specified in Article 12.5.
 - f. Spillage and Littering occurrences as specified in Article 12.6.
- 13.2.3. Monthly Report: Franchisee shall electronically submit a monthly report, prior to the fifteenth (15) Day of each month, to the Contract Manager, in a format pre-approved by the Contract Manager, containing the following information for the previous service month:
- a. Tonnage of Solid Waste, Yard Waste, and Bulk Waste collected from Residential Customers during the previous month, each reported separately.
 - b. Tonnage of Solid Waste collected from Multi-Family Customers and Commercial Customers during the previous month. If it is operationally more efficient, the Franchisee may choose to include the collection of Multi-Family and Commercial Solid Waste collected in Roll Carts with Residential Solid Waste collected in Roll Carts. If Multi-Family and Commercial Solid Waste collected in Roll Carts is combined with Residential Solid Waste collected in Roll Carts, the Residential Solid Waste tonnage report must note the additional sources of Solid Waste.
 - c. Tonnage of Program Recyclables collected during the previous month.
 - d. A summary of calls as specified in Article 12.13.
 - e. Roll Cart asset management report as specified in Article 12.15.
 - f. List of customers receiving commercial Recyclables collection service. Include customer name, address, type of material (such as segregated cardboard, paper, commingled containers, glass, Single Stream, etc.) container size, frequency of collection and billing rate. If possible, the total tonnage of Recyclables collected from Commercial Customers during the previous month.
 - g. Documentation of all activities conducted by the Franchisee to encourage participation in recycling.
- 13.2.4. Franchisee shall provide any additional information or reports as requested by the Contract Manager to monitor this Agreement or the City's Solid Waste and recycling programs.

ARTICLE 14. EDUCATION AND OUTREACH

14.1. Distribution of Information

- 14.1.1. All forms of communication regarding the City's Solid Waste and Recycling program including, but not limited to, electronic, written, audio, video, graphics, logos, etc. shall be reviewed and approved by the Contract Manager, or designee, prior to disseminating or presenting publically. The City desires to follow the Recycle Across America standards but may choose alternative messaging.
- 14.1.2. Prior to the Commencement Date and at least annually thereafter, the Franchisee shall provide each customer with an informational brochure summarizing the obligations of the customer and the Franchisee. Residential Customer information should include, but is not limited to, information regarding Solid Waste, Program Recyclables, Yard Waste, and Bulk Waste collection, and Special Collection Services, and include setout procedures, regulations, days of collection, and complaint procedures. Multi-Family and Commercial Customers information should include information appropriate for their collection service. The brochure(s) must be approved by the Contract Manager prior to distribution. The Franchisee shall be responsible for all costs of production and distribution.
- 14.1.3. At the time of Roll Cart delivery to a Residential Customer, Franchisee shall include, at a minimum, the information brochure described in Article 14.1.2. and service day notice bagged and secured to each Roll Cart in a manner approved by the City. The City reserves the right to provide additional documents to the Franchisee for distribution in the Roll Cart delivery packet. If both a Solid Waste Roll Cart and Recycling Roll Cart are delivered at the same time to the same Residential Customer, the information packet shall be secured to the Solid Waste Roll Cart and is not required for the Recycling Roll Cart.

14.2. City and Franchisee Responsibilities

The City shall have the primary responsibility for creating public education and outreach promotional materials for the City's Solid Waste services in partnership with the Franchisee. The Franchisee shall contribute a yearly education and outreach fee of twenty-five thousand dollars (\$25,000) to support the City's education and outreach efforts. A check shall be due by August 1 prior to each year during the term of the Franchise Agreement. The first year's education and outreach fee shall be due October 30, 2016.

ARTICLE 15. FRANCHISE FEE

The Franchise Fee shall pertain to collection and disposal service for all Multi-Family and Commercial Customers with Compactor and Roll-Off services, except for City-designated Compactors and/or Roll-Offs in the Center Street Service Area. Franchisee shall remit a Franchise Fee in the amount of fifteen percent (15%) of services provided in the immediately preceding month pursuant to the Franchise granted herein to the City, by check, on or before the fifteenth (15th) Day of each month.

ARTICLE 16. COMPENSATION

16.1. Billing and Payment

- 16.1.1. The City will bill and collect payment for collection services, including Special Collection Services, from all Residential, Multi-Family, and Commercial Customers, with the exception of Compactor and Roll-Off service. However, the City will bill and collect payment for all services provided in the Center Street Service Area including Compactor and Roll-Off services. An account of the customers receiving collection services and the level of service provided will be taken each month and used to determine the amount due to the Franchisee. The City will remit payment for services each month by the fifteenth (15th) Day of the following service month.
- 16.1.2. The City shall be responsible for payment for disposal services to the Designated Facilities for Solid Waste collected in Roll Carts and Dumpsters from Residential, Multi-Family, and Commercial Customers pursuant to this Agreement. Franchisee shall be responsible for payment for disposal services to Designated Facilities for Solid Waste collected in Compactors and Roll-Offs from Multi-Family and Commercial Customers, with the exception of City-designated Compactors and/or Roll-Offs from the Center Street Service Area. The City shall be responsible for payment for disposal services to the Designated Facilities for Solid Waste collected in Compactors or Roll-Offs in the Center Street Service Area.
- 16.1.3. Billing and collection of all other non-exclusive services including, but not limited to, collection of commercial Recyclables and C&D generated from existing residential single family dwelling units, duplexes, and triplexes shall be the sole responsibility of the Franchisee.

16.2. Collection Service Fees

- 16.2.1. Service fees for Residential, Multi-Family, and Commercial Collection Service are provided in Exhibit 1. Service fees for Special Collection Service are provided in Exhibit 3.
- 16.2.2. Annual Service Fee Adjustments
 - All fees in Exhibit 1 are subject to annual service fee adjustments as set forth in Exhibit 5.
 - 16.2.2.1. Service fees shall remain the same through the first year of the Franchise Agreement.
 - 16.2.2.2. On October 1, 2017 and October 1 of each subsequent year during the term of this Agreement, service fees, shall be adjusted as specified in Exhibit 5. The annual service fee adjustment shall not exceed three and a half percent (3.50%).
- 16.2.3. Change in Law Fee Adjustment
 - Franchisee may petition the City for an additional collection service fee adjustment resulting from a Change in Law. Franchisee's request shall contain substantial proof and justification to support the need for the fee adjustment. The City may request from Franchisee such further

information as may be reasonably necessary in making its determination. Within sixty (60) Days of receipt of the request and all other additional information required by the City, the Contract Manager shall make a determination regarding the fairness of the request and shall make a recommendation to the Commission. The Commission shall consider the request at a regularly scheduled meeting. If the Commission approves the request, adjusted fees shall become effective upon the Commission's approval.

16.2.4. Limitation on Fee Changes

Franchisee shall not be allowed a collection service fee increase for any reason other than those expressly specified in this Agreement. Notwithstanding the foregoing, in the event that a federal, state, or local entity imposes a fee, charge, or tax after August 1, 2016 that applies to Franchisee's operations, such fee, charge, or tax shall be treated as a Change in Law and shall be passed through as a separate billed item after notice to, and confirmation by, the City.

16.3. Processing Payment

The processing payment shall be remitted quarterly for all Single Stream and segregated cardboard Program Recyclables collected from Residential Customers, Multi-Family Customers, the Center Street Service Area, City Facilities, City-sponsored events, and City-designated public areas. The processing payment shall be based on the inbound tons of Program Recyclables as measured by the facility scales at which the Recyclables are initially received. Commercial Recyclables collected with Program Recyclables shall thereby be considered Program Recyclables. Payment shall be made according to the following schedule with a report detailing monthly tonnage and revenue calculation in a format approved by the Contract Manager. Revenue payment per ton shall be calculated as specified in Exhibit 8.

Collection Schedule	Payment Due Date
October 1 – December 31	January 31
January 1 – March 31	April 30
April 1 – June 30	July 31
July 1 – September 30	October 31

ARTICLE 17. EMERGENCY SERVICES

17.1. Contingency Plan

In the event of a hurricane, tornado, major storm, natural disaster, or other such event, resulting in the temporary closure of the Designated Facility, the Contract Manager may grant Franchisee a variance from regular routes and schedules. However, Franchisee shall resume regular collection service upon re-opening of the Designated Facility. Should the Designated Facility be in operation but the Franchisee is unable to perform regular collection service, the Franchisee may be granted a variance upon request by Franchisee in writing to the Contract Manager. Franchisee shall coordinate with the City to inform customers of any change in schedule as soon as possible after variance has been granted. In such cases, Franchisee shall make the City its highest priority and additional effort will be

rendered to make up for missed collections. As soon as practicable after such event, Franchisee shall advise the Contract Manager when it is anticipated that normal routes and schedules can be resumed. All of the vehicles normally used by Franchisee in the City shall be dedicated to the collection of Solid Waste in the City during the emergency and any subsequent recovery periods.

17.2. Franchisee Unable to Provide Contracted Services

In the event that Franchisee is unable to provide adequate services during an emergency or other event involving an Uncontrollable Force, the City may hire other contractors to provide those services. In such case, the City, as applicable, reserves the right to charge Franchisee for all costs and expenses that the City incurs while providing the services that Franchisee is obligated to provide pursuant to the requirements of this Agreement, subject to set-off for the amounts that would have been paid to Franchisee for services.

17.3. Disaster Response Plan

Franchisee shall develop and provide to the City a written disaster preparedness and response plan (Disaster Plan) thirty (30) Days prior to the Commencement Date. Thereafter, Franchisee shall provide an updated Disaster Plan by April fifteenth (15th) of each year. This Disaster Plan shall include provisions for additional personnel and equipment, and shall establish a reasonable, verifiable basis for any charges associated therewith. The City shall coordinate with Franchisee if a disaster should require temporary closure, or modification to the hours of operation of the Designated Facility. Franchisee shall be familiar with local, state, or federal agency documentation requirements, including but not limited to the generality of the foregoing, rules, regulations, and guidelines applicable to the Federal Emergency Management Agency's (FEMA's) Public Assistance Program for Debris Removal, as such requirements change from time to time. Franchisee shall maintain complete and accurate records of any and all such disaster work and provide all required and necessary documentation for submission of cost reimbursement requests. Franchisee shall be required to submit its FEMA documentation of costs to the City as a condition of payment for additional personnel and equipment pursuant to this section.

ARTICLE 18. PERFORMANCE

18.1. Performance Bond

Upon award, the Franchisee shall be required to furnish and pay for bonds covering faithful performance of the Agreement and payment of all obligations arising thereunder by delivering to the City a Performance & Payment (P&P) bond. The P&P bond shall be furnished in the amount equal to fifty percent (50%) of the annual Agreement value, in such a form as the City may prescribe and with a surety company acceptable to the City. The amount of the performance bond shall be adjusted in accordance with this provision annually on October 1, 2017 and October 1 of each subsequent year during the term of this Agreement.

All P&P bonds are to be issued from a company licensed to sell bonds in the State of Florida and with a rating no less than A in the Best Key Rating Guide. The City has the right but not the obligation to verify that these requirements are met. The Performance & Payment Bond must be delivered to the City within ten (10) Days following the Effective Date. Failure or neglect to deliver said bond as specified shall be considered as having abandoned the contract. Letters of Credit are not acceptable in lieu of the required bond.

18.1.1. Said bond shall be forfeited should Franchisee:

- a. Fail to comply with the requirements of this Agreement; or
- b. Take the benefit of any present or future insolvency status or make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of reorganization or the readjustment of indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of Franchisee's property; or
- c. By an order or decree of a court to be adjudicated bankrupt; or
- d. Have an order or decree of a court entered approving a petition filed by any of Franchisee's creditors seeking a reorganization or readjustment of Franchisee's indebtedness under the Federal Bankruptcy laws or any law or statute of the United States or any state thereof.

18.2. Liquidated Damages

- 18.2.1. It is the intent of the City to ensure that the Franchisee provides a quality level of Solid Waste and Recyclables collection service. The City and Franchisee acknowledge and agree that it is impossible to precisely determine the amount of damages that would be incurred by the City due to service failures or circumstances described in this section for which the Franchisee would otherwise be liable. Accordingly, the City has determined terms and amounts of liquidated damages set forth herein, and the parties agree that the liquidated damages are reasonable under the circumstances. Therefore, the following shall constitute liquidated damages, not penalties, for the Franchisee's breach of this Agreement.
- 18.2.2. The Contract Manager shall notify Franchisee in writing by the twenty-fifth (25th) Day of the month of the City's intent to deduct any liquidated damages, including the basis for each assessment, from payments due or to become due to Franchisee for service provided under this Agreement.
- 18.2.3. In the event Franchisee wishes to contest such monthly assessment, Franchisee must do so within five (5) Days of issuance of each assessment notification by requesting, in writing, a meeting with the Contract Manager to resolve the issue. Following such a meeting, the Contract Manager shall notify Franchisee in writing of any action taken with respect to Franchisee's claims. Franchisee may further appeal, in writing, the decision of the Contract Manager to the City Manager, who shall conduct a review of all of the facts and circumstances, and make a determination in writing. The City Manager's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.
- 18.2.4. Prior to the Commencement Date, the Franchisee shall prepare to provide its collection services in a responsible manner. Franchisee shall, at a minimum, adhere to the requirements set out in Article 5.1 including

gaining approval of a detailed transition plan by the Contract Manager. In the event that the Franchisee fails to meet the deadlines in the transition plan without prior Contract Manager approval, the City has the right to assess liquidated damages for each deadline that is missed. Failure to meet the deadline of more than two (2) tasks may lead to the termination of this Agreement. The Contract Manager may impose liquidated damages for the Franchisee's actions during the Transition Period, as set forth below, and deduct from payments due or to become due to Franchisee for services provided under this Agreement.

Transition Performance Standard Violation		Liquidated Damages
1	Failure to provide the Contract Manager with contact information for the Franchisee's operations manager and other key personnel within three (3) business days of the Effective Date. (Article 12.10.1)	\$1,000 per Day past the due date
2	Failure to submit a detailed, task-level transition plan to the Collection Manager no later than fifteen (15) Days following the Effective Date. (Article 5.1.)	\$3,500 per Day past the due date
3	Failure to revise the transition plan based on Contract Manager directive within five (5) Days of notification. (Article 5.1.)	\$7,000 per Day past the due date
4	Failure to provide, populate, and maintain the Service Verification System no later than by the Commencement Date. (Article 12.15.)	\$5,000 per Day past the due date
5	Missed deadline on Contract Manager-approved transition plan	\$1,000 per incident per Day past the due date

18.2.5. The Contract Manager may assess the following liquidated damages pursuant to this Article on a monthly basis in connection with the Agreement:

Performance Standard Violation		Liquidated Damages
1	Failure to deliver materials to a Designated Facility. (Article 11.)	Per occurrence (occ.) 1 st occ. = \$1,000 2 nd occ. = \$5,000 3 rd + occ. = \$10,000
2	Mixing materials. (Article 12.1.)	\$5,000 per occ.
3	Failure to submit to City all plans, reports, or other documents in the time required under the provision of this Agreement, unless otherwise approved by the Contract Manager. (Article 13)	\$500 per item per Day past the due date
4	Failure to leave a non-collection notice for customer explaining why material was not collected. (Article 6.4)	\$50 per occ.

5	Failure to comply with the hours and days of operation. (Articles 6.5., 7.3., and 8.5.)	\$100 per occ. per vehicle
6	Failure to repair, replace, or deliver a Container or RFID tag on commercial Containers within the required timeframe. (Article 9.)	\$50 per Container per Day
7	Failure to complete each route on the regularly scheduled day except when such completion is made impossible by weather or other conditions, as determined by City.	\$250 per incomplete route per Day
8	Changing routes or route order without proper notification. (Article 12.3.)	\$1,000 per occ.
9	Failure to clean spillage, leakage, or blowing of material (oil, hydraulic fluid, Solid Waste, Recyclables, etc.) within twenty-four (24) hours. (Article 12.6.)	\$250 per incident per Day
10	Failure to have vehicle operators properly licensed. (Article 12.11.)	\$1,000 per occ. per Day
11	Failure to maintain a local customer service office for the hours required (Article 12.12.)	\$500 per occ. per Day
12	Failure to resolve missed pickups or complaints within the specified time frame, unless otherwise approved by the Contract Manager. (Articles 12.13.)	\$100 per unresolved missed pickup or complaint per Day
13	Failure to provide proper vehicles and equipment as required. (Article 12.14.)	\$250 per occ.

ARTICLE 19. TERMINATION

19.1. Failure to Maintain Performance Bond and Insurances.

The City reserves the right to terminate this Agreement if Franchisee fails to obtain and maintain the Performance Bond as set forth in Article 18.1 or the insurance set forth in Article 20.

19.2. Scrutinized Companies

Franchisee is advised that section 287.135, Florida Statutes, prohibits agencies from contracting with companies for goods or services of One Million Dollars (\$1,000,000.00) or more that are on either the Scrutinized Companies with Activities in the Sudan List and/or the Scrutinized Companies with Activities in the Iran Petroleum Energy List. Both lists are created pursuant to section 215.473, Florida Statutes. The City reserves the right to terminate this Agreement if the City discovers that Franchisee has submitted a false certification regarding the Scrutinized Companies with Activities in the Sudan List and/or the Scrutinized Companies with Activities in the Iran Petroleum Energy List, and/or if, during the term of the Agreement, Franchisee has been placed on the Scrutinized Companies with Activities in the Sudan List and/or the Scrutinized Companies with Activities in the Iran Petroleum Energy List.

19.3. Bankruptcy

- 19.3.1. The City reserves the right to terminate this Agreement if Franchisee takes the benefit of insolvency statute, or shall make a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy, petitions or answers seeking an arrangement for its reorganization or readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States, or any state thereof, or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.
- 19.3.2. The City reserves the right to terminate this Agreement if by order or decree of a court, Franchisee shall be adjudged bankrupt, or an order shall be made approving a petition filed by any of its creditors or by any of the Stockholders of Franchisee seeking its reorganization or the readjustment of its indebtedness under federal bankruptcy laws or under any law or statute of the United States or of any state thereof; provided that, if any such judgment or order is stayed or vacated within sixty (60) Days after the entry thereof, any notice of cancellation shall be and become null, void, and of no effect.
- 19.3.3. The City reserves the right to terminate this Agreement if by or pursuant to or under authority of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency, or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Franchisee, and such possession or control shall continue in effect for a period of sixty (60) Days.

19.4. Convenience

The City may terminate this Agreement in whole, or in part, by giving Franchisee thirty (30) Days advanced written notice, to be served as hereafter provided, under determination by the City Manager that such termination is in the best interest of the City. Any such termination shall be effected by the delivery, via mail or otherwise, to the address provided in Article 21.17., of a Notice of Termination specifying the extent to which performance of work under the Agreement is terminated and the date upon which such termination becomes effective. Upon such termination for convenience, Franchisee shall be entitled to payment, in accordance with the payment provisions, for services rendered up to the termination date and the City shall have no other obligations to the Franchisee. Franchisee shall be obligated to continue performance of services, in accordance with this Agreement, until the termination date and shall have no further obligation to perform services after the termination date.

ARTICLE 20. INSURANCE

The Franchisee, and any subcontractors, shall require its insurance carriers, with respect to all insurance policies, to waive all rights of subrogation against the City. The Franchisee shall instruct their agent to issue certificates of insurance to the City immediately upon signed Agreement, attesting to insurance coverage for Worker's Compensation Insurance as required by the Florida Statutes, Public Liability, Property Damage Insurance, Professional Liability Insurance (when applicable) in the amount of \$1,000,000.00, and other requirements, as summarized on and in the amounts specified below. The Franchisee shall not commence work under this Agreement until obtaining

all insurance coverage under this section and until the City has received and approved such insurance.

The City of Winter Park shall be named as an **ADDITIONAL INSURED** on the General Liability coverage. Insurance companies must be licensed to do business in the State of Florida with a Best's Key Rating Guide rate of no less than A. This information will be verified at the City's discretion.

The certificate holder shall be named as City of Winter Park. Thirty (30) Days cancellation notice is required.

Insurance Type		Required Limits
✓	Worker's Compensation	Statutory Limits of Florida Statutes, Chapter 440 and all Federal Government Statutory Limits
✓	Employer's Liability	\$500,000.00 each accident, single limit per occurrence
✓	Commercial General Liability (Occurrence Form) patterned after the current ISO form	\$1,000,000.00 single limit per occurrence \$2,000,000.00 aggregate for Bodily Injury Liability & Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products & Completed Operations & Contractual Liability.
✓	Automobile Liability	\$1,000,000.00 each person; Bodily Injury & Property Damage, Owned/Non-owned/Hired; Automobile Included. \$2,000,000.00 each accident; Bodily Injury & Property Damage, Owned/Non-owned/Hired; Automobile Included.

ARTICLE 21. OTHER TERMS AND CONDITIONS

21.1. Indemnification

The Franchisee hereby agrees to indemnify and hold harmless the City, and its officials, representatives, agents, officers, and employees from and against all claims for infringement of any United States Patent and all other claims, damages, losses and expenses (including without limitation costs of defending the same and attorney's fees) arising out of or resulting from the performance of the work, furnishing of services, or furnishing of materials, goods, or equipment (including but not limited to claims regarding defects in materials, goods or equipment) which is caused in whole or in part by any breach of contract, act, or omission of the Franchisee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The Franchisee shall indemnify and hold harmless the City from and against any and all claims against the City, or any of its officials, representatives, agents, officers, and employees, by any employee of the successful proposer or of any subcontractor. The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Franchisee or any subcontractor under any Worker's Compensation Act, Disability Benefit Act, or other Employee Benefit Act.

In addition to and without limitation of the foregoing provisions regarding protection of the City from liabilities, the Franchisee agrees for good and valuable consideration to protect, defend, indemnify and hold the City, its officials, officers, employees, representatives, and agents free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character including, but not limited to, attorney's fees and other legal costs such as those for paralegal, investigation and legal support services, and the actual costs incurred for expert witness testimony arising out of or resulting from the performance or provision of services required under this Agreement, arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of the error, omission or negligent act of the contractor, its agents, servants, officers, officials, employees or subcontractors. Without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury, failure to act, malfeasance, misfeasance, conducts or misconduct, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. Franchisee agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at its sole expense and agrees to bear all other costs and expenses related thereto, even if such claim is groundless, false or fraudulent.

21.2. Assignment

21.2.1. Assignment

Assignment of this Agreement, or any portion of this Agreement, cannot be made without the advance written consent of the City, in the City Commission's sole discretion.

21.2.2. Subcontracting

Franchisee shall not employ subcontractors without the advance written permission of the Purchasing Division or Contract Manager, in the City's sole discretion. Franchisee shall be fully responsible for the services and work provided by a subcontractor under the terms of this Agreement. Franchisee agrees that any employee or agent of the Franchisee and any agent/employee of a subcontractor to the Franchisee shall be removed from the City jobsite or City premises upon request by the City Manager or designee. Such request will only be issued to remove a person if the City Manager or designee has a reasonable basis (as determined in his or her discretion) that the presence of such person on City property or at a City jobsite is not in the best interest of the City, or its employees, guests, visitors or citizens. Additionally, a person may be directed to be removed if the person is reasonably deemed to be under the influence of drugs or alcohol, or is behaving in any manner reasonably determined to be unacceptably disruptive or in violation of any criminal law.

21.3. Severability

If any term, provision or condition contained in this Agreement shall to any extent, be held invalid against public policy, or otherwise unenforceable by a court of law,

the remainder of this Agreement, or the application of such term or provision shall otherwise be fully enforceable.

21.4. Compliance with Laws and Regulations

The Franchisee at all times shall be familiar with and observe and comply with all Applicable Law, which in any manner may apply and those which may be enacted later, or bodies or tribunals having jurisdiction or authority over the work and shall indemnify and hold harmless the City against any claims or liability arising from, or based on, the violation of any Applicable Law. Noncompliance may be considered grounds for termination of this Agreement.

The Franchisee is assumed to have made himself/herself/itself familiar with all Applicable Law, including which in any manner affect those engaged or employed in the work, or the materials or equipment used in or upon the work, or in any way affect the work. No plea of misunderstanding will be considered an excuse for the ignorance thereof.

21.5. Compliance with Occupational Safety and Health

Franchisee certifies that all material, equipment, etc. meets all O.S.H.A. requirements. Franchisee further certifies that if material, equipment, etc. delivered is subsequently found to be deficient in any O.S.H.A. requirement in effect on the day of delivery, all costs, necessary to bring the materials, equipment, etc. into compliance with the aforementioned requirements shall be borne by the Franchisee. Franchisee certifies that all employees, subcontractors, agents shall comply with all O.S.H.A. and state safety regulations and requirements.

21.6. License, Permits or Fees

It shall be the responsibility of the Franchisee to obtain all licenses and permits, as required, to complete this service at no additional cost to the City. Permits and the payment of related fees are required from the City of Winter Park within the scope of work in these specifications. Said fees paid for required building permits may be reduced by 33% for the City of Winter Park, only. Fees paid for trade permits including plumbing, electrical, gas, mechanical and demolition permits cannot be waived. The successful proposer is required to obtain the permits; however, the successful proposer may inform the Building Division they are under contract to the City, and request a reduction of the required fees as referenced above. Payment of these fees does not relieve the successful proposer from the financial responsibilities or other requirements imposed by other governmental agencies relating to permits, licenses or fees which they may impose. This does not include waiving school impact fees or Competency Card License fee when applicable. The Franchisee is required to obtain all necessary inspections including building, plumbing, mechanical and electrical inspections and the Certificate of Occupancy must be obtained prior to occupancy as is required by the Winter Park Building Division. All other related Land Development Code requirements related to building projects must be observed including, but not limited to, landscape, irrigation, lighting and storm water provisions. All required licenses and permits shall be disclosed by true and correct copy thereof upon submission of the proposal, and thereafter, shall be readily available for review by the City.

21.7. Sovereign Immunity

The City reserves and does not waive any and all defenses provided to it by the laws of the State of Florida or other Applicable Law, and specifically reserves and does not waive the defense of sovereign immunity.

21.8. Modification

No waiver, alterations, consent or modification of any of the provisions of the contract shall be binding unless in writing and signed by the City Manager, Assistant City Manager and/or Commission.

21.9. Reservation of Rights

The City hereby expressly reserves the right to amend this Agreement, which may be necessary or proper to secure and protect the health, safety, moral, general welfare and accommodation of the public including, but not limited to, amendments related to rates, and to protect the public from danger and inconvenience in the management and operations of solid waste services business, and to provide such services as is contemplated by this Agreement.

21.10. Independent Franchisee

It is understood and agreed that nothing herein contained is intended or should be construed as in any way establishing the relationship of co-partners or a joint venture between the parties hereto or as constituting Franchisee as an agent, representative or employee of the City for any purpose whatsoever. Franchisee is to be, and shall remain, an independent contractor with respect to all services performed under this Agreement. Persons employed by Franchisee in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the City's officers and employees either by operation of law or by the City.

21.11. Governing Law, Venue

In the event of any litigation or claim between the Franchisee and the City, including but not limited to any claim or litigation the venue shall be in Orange County, Florida, where all Applicable Law shall be used in the adjudication.

21.12. Public Access and Public Records

Franchisee acknowledges and agrees that the City is a public entity that is subject to Florida's public records laws and as such, documents in Franchisee's possession relating to services performed pursuant to this Agreement are subject to inspection pursuant to Chapter 119, Florida Statutes, unless otherwise exempt or excepted by applicable law. Franchisee agrees that any record, document, computerized information and program, e-mail, audio or video tape, photograph, or writing of the Franchisee and its employees, agents and subcontractors related, directly or indirectly, to this Agreement or the services contemplated by this Agreement, shall be deemed to be a Public Record whether in the possession or control of the City or the Franchisee. Specifically but without limiting Franchisee's obligations, Franchisee agrees to: i. at Franchisee's expense, keep, secure, maintain, preserve, and retain the Public Records in the manner specified pursuant to the Public Records Law; ii. provide the public with access to the Public Records on the same terms and conditions that apply to the City and at a cost that does not

exceed the cost provided by law; iii. ensure that the Public Records that are exempt or confidential and exempt from disclosure to the public are not disclosed except as authorized by law for the duration of this Agreement and following the termination and expiration of this Agreement if the Franchisee does not transfer the Public Records to the City; and iv. Meet all requirements for retaining Public Records, and transfer, at no cost to the City, all Public Records in the Franchisee's possession upon termination and expiration of the Agreement or keep and maintain the Public Records required by the City. If the Franchisee transfers all Public Records to the City upon termination and expiration of this Agreement, the Franchisee shall destroy any duplicates that are exempt or confidential and exempt. If the Franchisee keeps and maintains the Public Records upon termination and expiration of this Agreement, the Franchisee shall meet all applicable requirements for retaining Public Records. Upon request from the City's custodian of Public Records, Franchisee must provide the electronically stored Public Records to the City in a format that is compatible with the City's information technology systems. During the effectiveness of this Agreement, upon request by the City, the Franchisee shall, within three business days, supply copies of any requested Public Records to the City. All books, cards, registers, receipts, documents, and other papers in connection with this Agreement shall, at any and all reasonable times during the normal working hours of the Franchisee, be open and freely exhibited to the City for the purpose of examination and/or audit. Since the City's documents are of utmost importance to the conduct of City business and because of the legal obligations imposed upon the City and Franchisee by the Public Records Law, Franchisee agrees that it shall, under no circumstances, withhold possession of any Public Records, including originals, copies or electronic images thereof when such are requested by the City, regardless of any contractual or other dispute that may arise between Franchisee and the City. This provision shall survive expiration and termination of this Agreement.

IF THE FRANCHISEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FRANCHISEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 407-599-3277, CITYCLERK@CITYOFWINTERPARK.ORG, 401 S. PARK AVE., WINTER PARK, FL 32789.

21.13. Waiver

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provisions.

21.14. Survival of Obligation

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations shall survive final payment, completion and acceptance of the work and termination or completion of the Agreement.

21.15. Dispute Resolution

Dispute resolution shall be by litigation. Each party shall bear its own costs and fees.

21.16. Headings

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

21.17. Notice

Unless otherwise specified by the Contract Manager, all notices required or contemplated by this Agreement shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the City and Franchisee as follows:

To the City: City of Winter Park
Michelle Neuner, Assistant City Manager
401 South Park Avenue
Winter Park, FL 32789

To Franchisee: Waste Pro of Florida, Inc.
Tim Dolan, Regional Vice President
3705 St. Johns Pkwy
Sanford, FL 32771

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

City of Winter Park, Florida

Waste Pro of Florida, Inc.

Steve Leary

Tim Dolan

Mayor

Regional Vice President

Signature

Signature

Attest

Attest

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

By: _____

EXHIBIT 1 – COLLECTION SERVICE FEES

2-1-1 RESIDENTIAL COLLECTION SERVICE	Monthly Collection Fee/Unit*
Solid Waste: 2x/week in Franchisee-provided Roll Carts	\$1.50
Recyclables: 1x/week in Franchisee-provided Roll carts	\$5.52
Yard Trash: 1x/week	\$6.36
Total Monthly Residential Collection Service Fee	\$13.38
Monthly Service Fee for 2 nd Solid Waste Roll Cart	\$1.50

COMMERICAL RECYCLING	Monthly Collection Fee/Unit*
Cart Service: 95-gallon Roll Cart collected 1x/week	\$2.30
Dumpster Service: per cubic yard (loose)	\$3.75

COMMERCIAL COLLECTION SERVICE		Monthly Collection Fee/Unit*
95-gallon Roll Cart collected 2x/week		\$20.00
Per Cubic Yard (loose)		\$3.76
Per Cubic Yard (compacted)		\$3.76
	Container and Maintenance Fee/Month**	Fee/Pull
Open Top Roll-Off - 15 cubic yards	\$0.00	\$187.50
Open Top Roll-Off - 20 cubic yards	\$0.00	\$187.50
Open Top Roll-Off - 30 cubic yards	\$0.00	\$187.50
Open Top Roll-Off - 40 cubic yards	\$0.00	\$187.50
Compactor - Vertical	\$200.00	\$0.01
Compactor - 15 cubic yards	\$400.00	\$187.50
Compactor - 20 cubic yards	\$425.00	\$187.50
Compactor - 30 cubic yards	\$450.00	\$187.50
Compactor - 40 cubic yards	\$475.00	\$187.50

*Includes container and maintenance

** Maximum fee charged for monthly container and maintenance fee; Franchisee may negotiate lower container and maintenance fees. Franchisee may not charge the container and maintenance fee for the collection of Program Recyclables.

NOTE: Disposal fees for compactors and roll-offs will be actual.

2 nd HHW/E-Waste Collection Event, if requested	\$20,000.00
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EXHIBIT 2 – SERVICE AREA

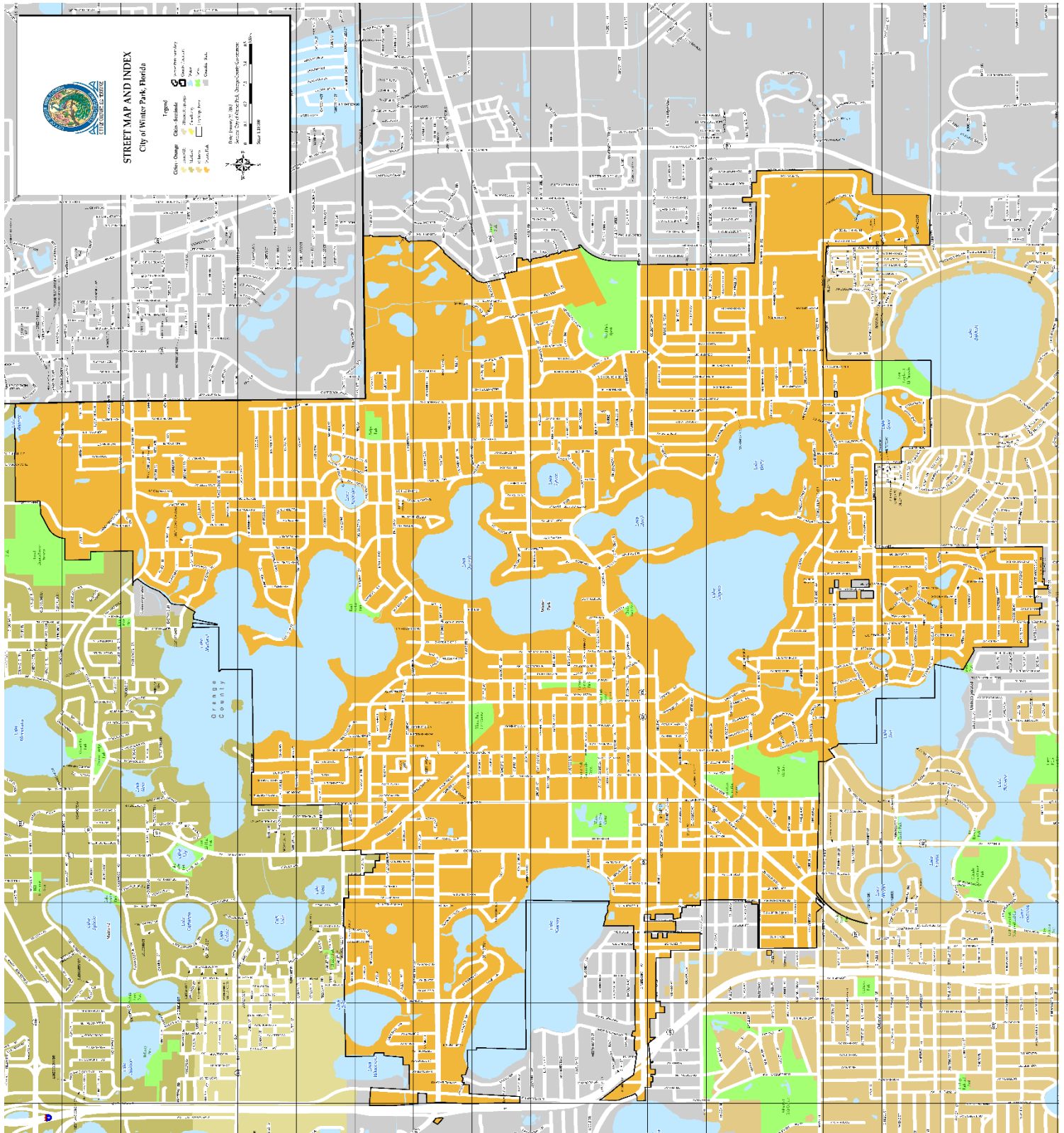


EXHIBIT 3 – SPECIAL COLLECTION FEES

Item	Fee
White Goods	\$30.00 each
Furniture	\$20.00 each
E-Waste	\$20.00 each
Yard Waste	\$10.00 per cubic yard
C&D	\$15.00 per cubic yard

EXHIBIT 4 – CENTER STREET SERVICE AREA

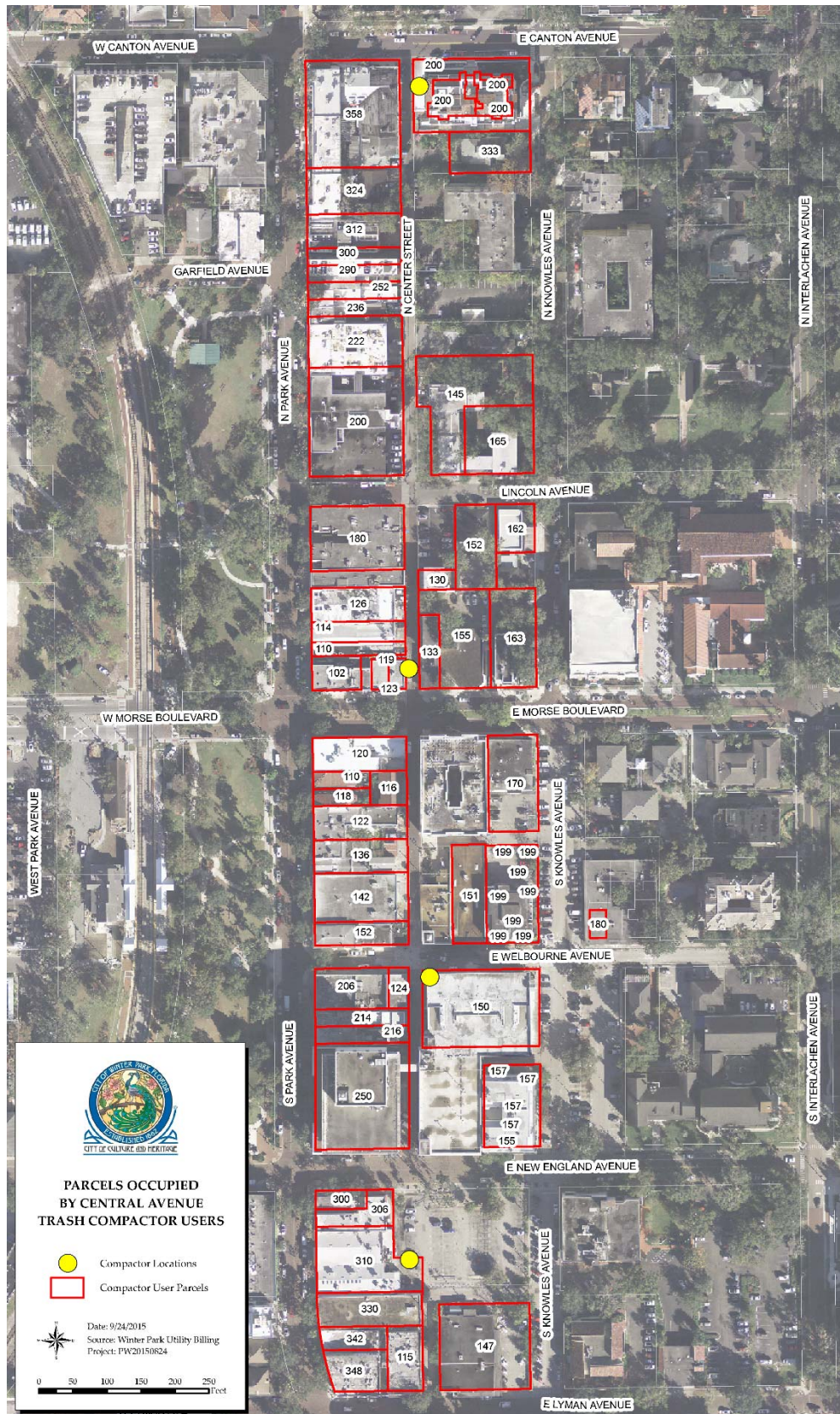


EXHIBIT 5 – CALCULATION OF RATE ADJUSTMENT

Ninety percent (90%) of the rate adjustment shall be based on seventy five percent (75%) of the change in the average monthly Consumer Price Index (CPI) from July through June in the prior year (CPI1) and the average monthly CPI from July through June in the current year (CPI2). The index used shall be the CPI for All Urban Consumers; South Urban Region; All Items, not seasonally adjusted, 1982-1984=100 reference base, published by the United States Department of Labor, Department of Labor Statistics (Series ID = CUUR0300SA0).

Ten percent (10%) of the rate adjustment shall be based on the percentage change in the average monthly fuel price from July through June in the prior year (FI1) and the average monthly fuel price from July through June of the most recent year (FI2). If Franchisee utilizes primarily CNG vehicles, fuel prices shall be based on the Henry Hub Gulf Coast Natural Gas Spot Price (dollars/million BTUs) published by the United States Energy Information Administration. If Franchisee utilizes primarily diesel vehicles, fuel prices shall be based on the Lower Atlantic (PADD1C) No. 2 Diesel Ultra Low Sulfur Diesel (0-15 ppm) Retail Prices (dollars per gallon) published by the United States Energy Information Administration.

If any of the designated indices are discontinued or substantially altered, the City may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices.

The total rate adjustment is rounded to the nearest hundredth of a percent and in any given year shall not exceed three and a half percent (3.50%) of the previous rate.

EXCEL FORMULA FOR CALCULATING RATE ADJUSTMENT

$$\text{Rate Adjustment (\%)} = \text{ROUND} \left(\left(\left(\text{CPI2} - \text{CPI1} \right) / \text{CPI1} \right) * 0.75 * 0.90 \right) + \left(\left(\text{FI2} - \text{FI1} \right) / \text{FI1} \right) * 0.10, 4 \right)$$

Where:

"CPI1" = averaged published monthly CPI from July through June of the year prior to CPI2.

"CPI2" = averaged published monthly CPI from July through June of the most recent year

"FI1" = average published monthly fuel price from July through June of the year prior to FI2

"FI2" = average published monthly fuel price from July through June of the most recent year

SAMPLE CALCULATION OF RATE ADJUSTMENT

Assumptions: Current Rate = \$8.00	CPI1 = 225.838	FI1 = 3.9185
	CPI2 = 230.195	FI2 = 3.8747

Rate Adjustment:

$$= \text{ROUND} \left(\left(\left((230.195 - 225.838) / 225.838 \right) * 0.75 * 0.90 \right) + \left((3.8747 - 3.9185) / 3.9185 \right) * 0.10 \right), 4 \right) = 1.19\%$$

Rate Adjustment of 1.19% is less than 3.5%, the maximum allowed.

$$\text{New Rate} = \text{ROUND} (\$8.00 * (1 + 0.0119), 2) = \$8.10$$

EXHIBIT 6 – TECHNICAL SPECIFICATIONS FOR ROLL CARTS

Following are minimum requirements for Solid Waste and Recyclables Roll Carts as required within the scope of this Agreement. Franchisee must provide a prototype of each of the City's program-sized Roll Carts (Solid Waste and Recycling) that meet the following technical specifications for City approval prior to ordering the City's Roll Carts. The City reserves the right to waive the requirement of a prototype.

Construction and Design	<ul style="list-style-type: none"> • Must meet ANSI Standards Z245.30 and AZ245.60 "Type B/G" containers, all rules, regulations, and laws pertaining to this product. • Roll Carts must be produced by a major manufacturer. • The upper lift point shall be permanently molded into the Roll Cart and the lower must be a 1" diameter galvanized free floating metal bar or composite equivalent, securely attached to prevent failure or loss. Molded bars are unacceptable. • The Roll Cart must be manufactured with a narrow width design to fit through a 30" door opening.
Size (Capacity)	<ul style="list-style-type: none"> • Three different sized Roll Carts are required with the following capacities: <ul style="list-style-type: none"> ○ Large = 94-96 gallon ○ Medium = 64-66 gallon ○ Small = 32-35 gallon
Materials	<ul style="list-style-type: none"> • Must be rotationally or injection molded using medium to high density 100% recyclable polyethylene. • Minimum resin weight of unassembled Roll Cart, including cart body and lid, must be: <ul style="list-style-type: none"> ○ 30 pounds or greater for large Roll Cart ○ 22 pounds or greater for medium Roll Cart ○ 15 pounds or greater for small Roll Cart • Resin used in the manufacturing process must contain a minimum of 25% post-consumer recycled material. • All plastic parts must be stabilized against ultraviolet light deterioration with an UV stabilizer additive.
Body	<ul style="list-style-type: none"> • The body of the Roll Cart must be one piece. • The Roll Cart wall and bottom thickness must be a minimum of .150 inches. • The body of the Roll Cart must be designed with a drag rail on the container bottom and reinforced in the area that contacts the ground with a molded-in bottom wear strip. • The top of the body must be molded with a reinforced rim to add structural strength and stability to the container and to provide a flat surface for lid closure. This reinforced rim must have a raised inner perimeter. The rim of the Roll Cart must not be designed to have an inward radius to obstruct free flow emptying the material out of the container.
Lid	<ul style="list-style-type: none"> • Lids must be of a configuration that they will not warp, bend, slump, or distort to such an extent that it no longer fits the body property or becomes otherwise unserviceable.

	<ul style="list-style-type: none"> • The lid must be one-piece construction and securely attached to the rear of the wheeled section of the Roll Cart using a rustproof, weather-resistant fastener system. • The lid must be hinged to open to a position of 270 degrees from the closed position and hang open without stressing the lid, body, or tipping over the Roll Cart. • Lids must be designed to be easily removed in the event of damage or failure. Lid latches are not acceptable.
Handle	<ul style="list-style-type: none"> • Each Roll Cart must have a horizontal handle(s) to provide comfortable gripping areas for pushing or pulling the Roll Cart. • The handle shall be integrally molded into the body or lid, and only plastic surfaces shall be exposed to the hands of the user.
Wheels/Axle	<ul style="list-style-type: none"> • Roll Carts must be equipped with two (2) plastic molded or rubber wheels making the cart capable of being easily moved and maneuvered. • Wheels shall be snap-on or attached in a way that prevents unintended detachment. • Wheels must be a minimum of 10 inches in diameter for large and medium Roll Carts and a minimum of 8 inches in diameter for small Roll Carts. • Each Roll Cart shall be furnished with a minimum 5/8 inch diameter axle with a corrosion-resistant coating that must be securely attached to the body by molded axle retainers. • The wheels and axle must be rated to meet the maximum load requirements of 3.5 pounds per gallon.
Stability	<ul style="list-style-type: none"> • Roll Carts must be able to remain stable and upright in winds up to 30 miles per hour when empty.
Color	<ul style="list-style-type: none"> • Color must not be streaked in the finished product and must be colorfast so that the color does not alter significantly with normal use. Painted Roll Carts are unacceptable. • The Solid Waste Roll Cart shall be grey with a grey lid and black wheels. • The Recycling Roll Cart shall be blue with a blue lid and black wheels. • The final color selection must be approved by the City prior to manufacturing.
Markings	<ul style="list-style-type: none"> • The City must approve all markings. • Sequential serial numbers must be molded, branded, or hot stamped into the front of the body with white color. • An eight to ten (8-10) alpha/numeric serial number shall be used as determined by the City. • A Winter Park City logo and recycling logo must be clearly molded, inscribed, or hot-stamped into both sides of the body with the following wording in 1 inch lettering on the lid: <ul style="list-style-type: none"> ○ Property of the City of Winter Park. ○ Instructions for which side of the Roll Cart must face the street for collection. ○ Recycling Roll Cart lids must include program instructions as determined by the City.

	<ul style="list-style-type: none"> ○ ANSI and regulatory labeling required. ● In-mold label on the cart lid.
RFID Tags	<ul style="list-style-type: none"> ● Each Roll Cart must have a unique integrated RFID tag installed into the Roll Cart. ● RFID tags must be passive UHF with an optimal operating frequency of 860-960 MHz. ● RFID tags must have an optimal operating temperature of -40°F to +149°F. ● The dry inlay must meet ISO/IEC 18000-6C and EPD Global Gen 2 standards. ● RFID tag values must be written and locked. ● All RFID tags must be attached so that the tags have no exposure to outside elements, are not visible to the customer, and are tamper-resistant. ● RFID tags placed inside of the body of the Roll Cart are unacceptable. ● Adhesive or sticker RFID tags are unacceptable. ● Each RFID tag must be tested at the manufacturing facility to ensure that it is working properly.
Warranty	<ul style="list-style-type: none"> ● Roll Carts must be fully (100%) warranted against defects in materials and workmanship for a minimum period of ten (10) years from the date of delivery and be transferrable to the City at the expiration of this Agreement. ● The warranty must be unconditional and non-prorated providing the City with assurance of full Roll Cart replacement. The warranty must survive the termination of any contract for the manufacture and/or A&D of Roll Carts. ● Warranty is understood to include the following coverage: <ul style="list-style-type: none"> ○ Failure of the lid to prevent rainwater from entering the Roll Cart when the lid is closed on the body. ○ Damage to the body, the lid, or any component parts through opening or closing the lid. ○ Failure of the lid hinge to remain fully functional and continually hold lid in the originally-designed and intended positions when either opened or closed. ○ Failure of the body and lid to maintain its original shape. ○ Wear through of Roll Cart bottom so that it leaks liquid. ○ Failure of the wheels to provide continuous, easy mobility, as originally designed. ○ Failure of any part to conform to minimum standards as specified.
Asset Management	<ul style="list-style-type: none"> ● A manufacturing database must be maintained that includes each Roll Cart's RFID tag identification, serial number, date of manufacture, location of manufacturer, Roll Cart type, color, and size. ● At the time and point of delivery, the RFID tag, date, time, and latitude/longitude of the Roll Cart's delivery must be captured and associated with the manufacturing database and the residential physical address to which the Roll Cart is assigned.

	<ul style="list-style-type: none">• The combined databases consisting of the manufacturing information and A&D information shall be uploaded into the web-based Service Verification System no later than seven (7) Days following the Commencement Date and maintained through the term of this Agreement as provided for in Article 12.15.• At the termination of this Agreement the asset management database shall be transmitted to the City in an acceptable format.
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EXHIBIT 7 – TECHNICAL SPECIFICATIONS FOR CONTAINER RFID TAGS

Following are minimum requirements for the RFID tags required to be placed on all Containers, except for Roll Carts, used for Multi-Family and Commercial Collection Service within the scope of this Agreement. Roll Carts shall meet the RFID tag requirements defined in Exhibit 6. Compactors and Roll-Offs are not required to have RFID tags.

Technical Specs	<ul style="list-style-type: none">• RFID tags must be passive Ultra High Frequency (UHF) with an optimal operating frequency of 860 – 960 MHz• Read range: 6 foot minimum• Protocol: EPC Class 1 Gen 2
Environmental Specs	<ul style="list-style-type: none">• RFID tags must have an optimal operating temperature of -40°F to +149°F• Waterproof• Chemical resistant appropriate for Solid Waste collection application• Mechanical resistant appropriate for Solid Waste collection application
Mounting Specs	<ul style="list-style-type: none">• Encapsulated tag designed for mounting• Mounting surfaces: Metal, plastic, etc.
Memory Requirement	<ul style="list-style-type: none">• EPC 96 bits; User 512 bits; TID 64 bits. EPC and User memory reprogrammable, TID is locked at point of manufacturer

EXHIBIT 8 – RECYCLABLES PROCESSING PAYMENT

The processing payment shall be remitted quarterly for all Program Recyclables collected from Residential Customers, Multi-Family Customers, the Center Street Service Area, City Facilities, City-sponsored events, and City-designated public areas. The Recyclables processing payment shall be based on the inbound tons as measured by the facility scales at which the Recyclables are initially received. Commercial Recyclables collected with Program Recyclables shall thereby be considered Program Recyclables.

Payment per inbound ton of Single Stream Program Recyclables shall be calculated as follows:

The Franchisee shall calculate the Average Market Value (AMV) of the Single Stream Program Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. dollars per ton) first posted in the collection schedule for which payment is being made in RecyclingMarkets.net multiplied by the composition percentages as defined in the table below. For illustrative purposes, the Table 1 below calculates the AMV for a collection schedule January 1 – March 31, 2016, which is based on the commodity prices first posted in January 2016.

Table 1 – Average Market Value of Single Stream Program Recyclables Sample Calculation

AMV Calculation for January 1, 2016 – March 31, 2016					
Material	Index Description	January 2016 Index Value	Market Value (\$/Ton)	Material %	Average Market Value (\$/Ton)
Mixed paper	PS 1 baled, F.O.B. seller's dock	42.50	\$42.50	23.97%	\$10.19
Newspaper	PS 8 baled, F.O.B. seller's dock	52.50	\$52.50	13.72%	\$7.20
Corrugated containers	PS 11 baled, F.O.B. seller's dock	77.50	\$77.50	15.76%	\$12.21
Aseptic cartons	PS 52 baled, F.O.B. seller's dock	0.00	\$0.00	0.43%	\$0.00
Aluminum cans	Cents/lb., sorted, baled and delivered	54.50	\$1090.00	1.42%	\$15.48
Steel cans	\$/Ton, sorted, baled and delivered	17.50	\$17.50	2.01%	\$0.35
PET	Cents/lb., baled and picked up	7.75	\$155.00	4.60%	\$7.13
Natural HDPE	Cents/lb., baled and picked up	28.50	\$570.00	1.64%	\$9.35
Colored HDPE	Cents/lb., baled and picked up	21.50	\$430.00	1.53%	\$6.58
Plastics #3-7	Commingled #3-7, cents/lb., baled & picked up	0.50	\$10.00	4.36%	\$0.44
Bulky mixed rigid	Cents/lb., baled and picked up	0.50	\$10.00	0.62%	\$0.06
Glass (3 Mix)	\$/Ton, delivered	-17.50	(\$17.50)	15.28%	(\$2.67)
Contamination	N/A (market value shall remain fixed at 0)	N/A	\$0.00	14.66%	\$0.00
				100.00%	\$66.32

The processing payment for Single Stream Program Recyclables shall be made according to the payment schedule in Article 16.3. for the inbound tons of Single Stream Program Recyclables as measured by the facility scales at which the materials are initially received multiplied by the payment in Table 2.

Table 2 – Payment per Inbound Ton of Single Stream Program Recyclables based on the AMV Value

Average Market Value (\$/Ton)		Contractor Payment to City/ (City Payment to Contractor) (\$/Ton)
Low	High	
<\$70.00	\$70.00	(\$50.00)
\$70.01	\$80.00	(\$40.00)
\$80.01	\$90.00	(\$30.00)
\$90.01	\$100.00	(\$20.00)
\$100.01	\$110.00	(\$10.00)
\$110.01	\$120.00	\$0.00
\$120.01	\$130.00	\$0.00
\$130.01	\$140.00	\$0.00
\$140.01	\$150.00	\$0.00
\$150.01	>\$150.01	\$0.00

Sample Calculation of Single Stream Program Recyclables

Assumptions: Inbound Tons = 800
Calculated AMV (Table 1) = \$66.32
Proposed payment for AMV <\$70.00 = \$5.00

Inbound Tons * Proposed Payment = 800 * \$5.00 = \$4,000

Payment per inbound ton of Segregated Cardboard shall be calculated as follows:

The processing payment for segregated cardboard shall be remitted according to the payment schedule in Article 16.3. for the inbound tons of segregated cardboard collected from the Center Street Service Area, City Facilities, and any other City-designated collection Containers as measured by the facility scales at which the cardboard is initially received multiplied by zero percent (0%) of the market value of cardboard as identified in the AMV, Corrugated Containers (PS 11 baled, F.O.B. seller's dock). Should it not be operationally feasible to maintain a separate route for the City's segregated cardboard, the Franchisee may mix the City's segregated cardboard with non-City segregated cardboard and assume the tonnage collected to be equal to seventy-five (75) pounds per uncompacted cubic yard based on the size of Containers serviced.

Sample Calculation of Segregated Cardboard

Assumptions: Inbound Tons = 15
Market index for corrugated containers (Table 1) = \$77.50
Proposed percentage = 75%

Inbound Tons * Market Index * Proposed percentage = 15 * \$77.50 * 75% = \$871.88

The Franchisee acknowledges and accepts the following:

- A. The material percentages used for calculating the AMV are best estimates of the composition of the City's Program Recyclables. The composition used is an average of the results of ten (10) Single Stream recycling composition studies performed in Florida jurisdictions during the past two years. Because different processors use different equipment and technologies, they will have varying amounts of processing Residue. Therefore, the material percentages do not attempt to estimate or include processing Residue. Franchisee has utilized its industry knowledge and experience processing materials similar to the City's Program Recyclables as defined herein in evaluating the accuracy of these percentages to the City's recycling stream and developing its financial proposal accordingly.
- B. The market index utilized (RecyclingMarkets.net) is intended to reflect the average value, in the Southeast United States, of each material included in Program Recyclables. It is not intended to equate to the commodity revenue received by the Franchisee. Franchisee took this into consideration when developing its financial proposal.
- C. For the purposes of calculating revenue, the value of contamination in the AMV table shall remain fixed at \$0. Franchisee took this into consideration when developing its financial proposal.
- D. If at any time during the term of the Agreement RecyclingMarkets.net no longer posts or otherwise provides the applicable market indices, then the parties shall mutually select an appropriate replacement source for the required information from among the sources recycling industry professionals utilize to obtain reliable Recovered Material pricing information.
- E. The payment formulas shall be used for calculating the Recyclables processing payment throughout the term of the Agreement. Franchisee shall submit the detailed AMV calculation showing how the AMV was determined for the payment period, as well as the calculation for determining the payment per inbound ton of Single Stream Program Recyclables and segregated cardboard.
- F. If, in the future, the City or Franchisee wishes to have a recyclables composition study performed, the party requesting such study shall pay for the study unless otherwise agreed upon. The final methodology and selection of a qualified entity to conduct the study must be approved by the Contract Manager. The City reserves the right to have a representative onsite throughout the recycling composition study. Study results are subject to final approval by the Contract Manager and shall not be unreasonably withheld. If approved by the Contract Manager, adjustments to the composition percentages provided in this Exhibit, shall become effective for the following month and the remainder of the Agreement, or until further adjusted in a future composition study.